

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Children and Family Development (“the ministry”) dated February 26, 2014 which held that under Section 7 of the Child Care Subsidy Regulation; the appellant had received an overpayment of Child Care Subsidy from October 1, 2011 to January 31, 2012, in the amount of \$3,037.76 that she was not entitled to receive and which must be repaid pursuant to the Child Care Subsidy Act, Section 7(1).

### PART D – Relevant Legislation

Child Care Subsidy Act, (CCSA), Sections 1, 5, 6, 7, 10 and 11.  
Child Care Subsidy Regulation (CCSR), Sections 2, 3, 7, 8, 9, 10 and 14.

## PART E – Summary of Facts

### Procedural Issue

At the outset of the hearing, the appellant expressed concerns to the ministry regarding her privacy as it related to her interaction with the ministry to which the ministry responded. The panel chair explained that this was a separate matter from the reconsideration decision at issue. Both parties acknowledged this and the hearing proceeded.

The evidence before the ministry at the time of reconsideration included:

- a Child Care Subsidy Application dated January 7, 2011 for 2 children signed by the appellant indicating that her spouse was seeking employment;
- a Child Care Subsidy Application dated December 29, 2011 for 2 children signed by both parents indicating that both were employed;
- a Day Care Claims for Authorization log dated August 2011 - January 2012 for \$426.25 per month for Child 1;
- a Day Care Claims for Authorization log dated August 2011 - January 2012 for \$390.73 per month for Child 2;
- the bi-weekly net pay records of the appellant's spouse dated August 24, 2011 - January 2012;
- the bi-weekly pay records of the appellant for January 2011;
- a ministry's History Report on the appellant dated May 27, 2010 - February 14, 2012 noting that the appellant's spouse has been employed since September 6, 2011;
- a Child Care Subsidy Eligibility Calculator which refers to the Assessment Date as September 30, 2012 and indicates the total monthly income of the family unit is \$5045.42 and the family income exemption level is \$1418;
- a Child Care Subsidy Overpayment Calculation chart dated December 11, 2013 which indicated that there was undeclared income from the spouse's employment from October 2011 - January 2012;
- a letter from the Verification and Audit Officer dated December 11, 2013 which informed the appellant of the Child Care Subsidy overpayment of \$3037.76; and
- a Request for Reconsideration dated February 1, 2014 with a note from the appellant indicating that the decision is wrong because of the clarity of the original letters sent and the time frames in which it was done. The appellant states that the initial letter indicated that the subsidy was granted for a period of time and although a disclaimer was added to report any changes, the fact that they were granted a term of subsidy is misleading. The appellant also states that during the review, she gave her information in a timely manner while the ministry took 10 months to provide her with a letter indicating that there was an overpayment.

On appeal, the appellant indicated that she is unable to afford the payment and still has 2 children receiving child care and pays the full amount for childcare.

At the hearing, the appellant testified that she had checked the ministry website which doesn't indicate that a client is required to provide a change of information before the renewal date, and doesn't state when you are or are not eligible for a subsidy. She stated that she did not commit an offense under Section 10(2) of the CCSA because she did not knowingly mislead the ministry. The appellant further testified that under Section 11(2) of the CCSA, there is a time limit of 12 months after the facts on which the information is based first came to the minister's attention. The appellant stated that she had renewed their application for child care subsidy on December 29, 2011, at which time they provided updated information of her husband's employment, that she received a call early in 2013 to advise that the child care subsidy would be reduced and

that she received the notice of Overpayment on December 11, 2013, 2 years later. In response to a question from the panel about the declaration confirmed by the applicant on her first CCS application to "promptly supply information to the Child Care Subsidy Program if there is a change to any of the information", the appellant responded that she did not receive a copy of the application form and that she did check the website which did not provide the information she needed to know. The appellant also argued that she is entitled to affordable, accessible child care and it is a hardship for her to repay the overpayment.

At the hearing, the ministry testified that Sections 10 and 11 of the CCSA are not applicable as the ministry is not pursuing an offence in this matter. The ministry stated that the issue is about the change of employment which was not reported to the ministry as required by the legislation and that there is no time restriction in legislation for the ministry's review. The ministry representative added that they have no ability to reduce or wave the total overpayment however, repayment options are available. The ministry relied on its reconsideration decision and submitted no new information.

### **Findings of Fact**

There are 4 people in the family unit.

The family's total monthly income on application dated January 7, 2011 was assessed at \$3526.54.

The monthly rate for licensed family care was \$700 per child.

The potential subsidy for Child 1 was \$ 585.

The potential subsidy for Child 2 was \$536.25.

Child 1 received \$426.25 subsidy per month from August 1, 2011 - January 31, 2012 for daycare service.

Child 2 received \$390.73 subsidy per month from August 1, 2011 - January 31, 2012 for daycare service.

Each child's threshold was calculated as \$2918.

On January 6, 2012, the appellant submitted an updated Child Care Subsidy Application which noted her spouse's full-time employment beginning September 6, 2011.

Based on the paystubs of the appellant's spouse, the family's total monthly income was reassessed at \$5045.42 on September 30, 2012.

As the total family monthly income was \$5045.42 with a threshold of \$2918 per child, the monthly subsidy eligibility was reduced to \$30.02 for Child 1 and \$27.52 for Child 2.

An overpayment of Child Care Subsidy for \$3037.76 was calculated on December 11, 2013.

A registered letter dated December 11, 2013 informed the appellant that she is required to pay the Child Care Subsidy Overpayment.

**PART F – Reasons for Panel Decision**

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that under Section 7 of the Child Care Subsidy Regulation; the appellant had received an overpayment of Child Care Subsidy from October 1, 2011 to January 31, 2012, in the amount of \$3,037.76 that she was not entitled to receive and which must be repaid pursuant to the Child Care Subsidy Act, Section 7(1).

**Relevant Legislation  
Child Care Subsidy Act**

**Definitions**

1 In this Act:

"child care" means the care and supervision of a child in a child care setting, other than

(a) by the child's parent, or

(b) while the child is attending an educational program provided under the School Act, the Independent School Act or a law of a treaty first nation in relation to kindergarten to grade 12 education;

"child care setting" means any setting in which child care is provided, including

(a) a facility licensed under the Community Care and Assisted Living Act to provide child care, and

(b) the child's own home;

"child care subsidy" means a payment made under this Act to or for a parent to subsidize the costs of child care;

"parent" includes a person with whom a child resides and who stands in place of a parent of the child.

5 (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

(a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;

(b) seek verification of any information supplied by a person referred to in paragraph (a);

(c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;

(d) collect from a person information about another person if

(i) the information relates to the application for or payment of a child care subsidy, and

ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

(3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may

(a) declare the person ineligible for a child care subsidy until the person complies, or

(b) reduce the person's child care subsidy.

(4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

**Reconsideration and appeal rights**

6 (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:

(a) a decision that results in a refusal to pay a child care subsidy to or for the person;

(b) a decision that results in a discontinuance or reduction of the person's child care subsidy.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.

(3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of the Employment and Assistance Act.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the Employment and Assistance Act and the regulations under that Act.

No appeal from decision based on same circumstances

6.1 If a person reapplies for a child care subsidy after

(a) the person's eligibility for the child care subsidy has been determined under this Act,

(b) a right of appeal under section 6 (3) has been exercised in respect of the determination referred to in paragraph (a), and

(c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented,

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

**Overpayments, repayments and assignments**

- 7 (1) If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.
- (2) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy
- (3) A repayment agreement may be entered into before or after a child care subsidy is paid.
- (4) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is a debt due to the government and may
- (a) be recovered by it in a court of competent jurisdiction, or
- (b) be deducted by it from any subsequent child care subsidy or from an amount payable to that person by the government under a prescribed enactment.
- (5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

**Offence of supplying false or misleading information**

- 10 (1) A person commits an offence who supplies, in an application under this Act or when required or directed under section 5 (1), (2) or (4) or the regulations, information that is false or misleading with respect to a material fact.
- (2) A person does not commit an offence under subsection (1) if, at the time the information was supplied, the person did not know that it was false or misleading and, with the exercise of reasonable diligence, could not have known that it was false or misleading.
- (3) A person who commits an offence under this section is liable on conviction to a fine of not more than \$2 000 or to imprisonment for not more than 6 months or to both.
- (4) In addition, the court may order a person convicted of an offence under this section to pay the government all or part of any amount that person received under this Act as a result of committing the offence.

**Other provisions relating to offences**

- 11 (1) Section 5 of the Offence Act does not apply to this Act or the regulations.
- (2) The time limit for laying an information for an offence under this Act is 12 months after the facts on which the information is based first came to the minister's attention.
- (3) A document purporting to have been issued by the minister, certifying the date on which the minister became aware of the facts on which the information is based,
- (a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and
- (b) is proof of the certified facts unless there is evidence to the contrary.

**Child Care Subsidy Regulation**

**What types of child care may be subsidized?**

- 2 The minister may pay a child care subsidy if the child care is provided
- (a) in a licensed child care setting,
- (b) in a licence-not-required child care setting,
- (b.1) in a registered licence-not-required child care setting, or
- (c) in the child's own home, but only if the child care is provided by someone other than a person who
- (i) is a relative of the child or a dependant of the parent, and
- (ii) resides in the child's home.

**Circumstances in which subsidy may be provided**

- 3 (1) The minister may pay a child care subsidy only if
- (a) the minister is satisfied that the child care is needed for one of the reasons set out in subsection (2),
- (b) the child care is arranged or recommended under the Child, Family and Community Service Act, or
- (c) the child care is recommended under the Community Living Authority Act in respect of a child who has a parent approved for or receiving community living support under the Community Living Authority Act and the minister is satisfied that the child care is needed.
- (2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:
- (a) in a single parent family, because the parent
- (i) is employed or self-employed,
- (ii) attends an educational institution,
- (iii) is seeking employment or participating in an employment-related program, or
- (iv) has a medical condition that interferes with the parent's ability to care for his or her child;

- (b) in a two parent family, because
    - (i) each parent is employed or self-employed, attends an educational institution or participates in an employment-related program,
    - (ii) one parent is engaged in an activity listed in subparagraph (i) and the other is seeking employment,
    - (iii) one parent is engaged in an activity listed in subparagraph (i) and the other parent has a medical condition that interferes with that parent's ability to care for his or her child, or
    - (v) each parent has a medical condition that interferes with their ability to care for their child.
- Income test

- 7 (1) An applicant is not eligible for a child care subsidy for a child receiving a type of child care if
- (a) the family's monthly net income exceeds the child's threshold, and
  - (b) the result of the calculation under section 8 (2) for the child is not more than zero.
- (2) Subsection (1) does not apply to an applicant if the child care is for a child
- (a) in relation to whom the applicant has entered into an agreement with a director under section 8 of the Child, Family and Community Service Act,
  - (b) in relation to whom the applicant, by agreement under section 94 of the Child, Family and Community Service Act, exercises a director's rights or carries out a director's responsibilities,
  - (c) of whom the applicant has interim or temporary custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c), 49 (7) (b) or 54.01 (9) (b) of the Child, Family and Community Service Act,
  - (c.1) of whom the applicant has been permanently transferred custody under an order of the court under section 54.01 (5) or 54.1 (3) of the Child, Family and Community Service Act,
  - (d) of whom the applicant has custody under an order of the court under section 42.2 (4) (a) of the Child, Family and Community Service Act, if the applicant is the other person referred to in section 42.2 (4) (a) (i),
  - (e) who is receiving assistance under the authority of the Child in the Home of a Relative Program Transition Regulation, B.C. Reg. 48/2010, and the applicant is the relative with whom that child resides, or
  - (f) who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e), provided
  - (i) on a reserve, within the meaning of the Indian Act (Canada), by the government of Canada, or
  - (ii) by the Nisga'a Nation or a treaty first nation.

**Amount of subsidy**

- 8 (1) If a family's monthly net income does not exceed a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care.
- (1.1) If a parent is eligible for a subsidy for more than one type of child care set out in Schedule A, the minister may determine which subsidy rate applies.
- (2) If a family's monthly net income exceeds a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is

**A - B**

where

A = the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care;  
 B = the amount of A for the child, divided by the sum of the amounts of A for all children in the family receiving child care described in section 2, multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold.

- (2.1) Repealed. [B.C. Reg. 388/2004.]
- (2.2) The child care subsidy for a child described in section 7 (2) is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care the child is receiving.
- (3) If child care is required for less than 20 days per month, the child care subsidy will be prorated based on the daily rate set out in Schedule A or the daily parent fee, whichever is less.
- (4) If the child care is
  - (a) arranged or recommended by staff delegated under the Child, Family and Community Service Act, after staff have
  - (i) offered support services or agreements to the child and family under section 16 (2) (a) of that Act, or
  - (ii) commenced an investigation under section 16 (2) (c) of that Act, or
  - (b) provided through a Young Parent Program, and the child care provider operating the Young Parent Program confirms, in the form and manner specified by the minister, that the parent is participating in the Young Parent Program,
 the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.
- (5) In this section, "parent fee" means the payment made by the parent for a child care space.

**How monthly net income is calculated**

- 9 (1) The monthly net income of a family is calculated by adding the income that each person in the family receives per month, including, but not

limited to, the following:

- (a) employment income;
- (b) self-employment income;
- (c) spousal or child support paid to a spouse or child in the family;
- (d) employment insurance benefits;
- (e) workers' compensation benefits;
- (f) training allowances;
- (g) investment income, including interest;
- (h) tips and gratuities;
- (i) money earned by providing room and board, less essential operating costs;
- (j) rental income of any kind, less essential operating costs;
- (k) grants, bursaries or scholarships, except
  - (i) the amount for tuition or books, and
  - (ii) with respect to grants provided under the British Columbia Student Assistance Program, \$50 for each week covered by the grant.

(2) When calculating net income under subsection (1), the following are considered not to be income:

- (a) income earned by a dependent child;
- (b) the basic family care rate for foster homes;
- (c) assistance paid under the Employment and Assistance Act or assistance paid under the Employment and Assistance for Persons with Disabilities Act;
  - (c.1) assistance that is similar in nature to any of the types of assistance provided under an Act referred to in paragraph (c) and that is paid under a program provided
    - (i) on a reserve, within the meaning of the Indian Act (Canada), by the government of Canada, or
    - (ii) by the Nisga'a Nation or a treaty first nation;
  - (d) a family bonus;
  - (e) the basic child tax benefit;
  - (f) a goods and services tax credit under the Income Tax Act (Canada);
  - (g) a sales tax credit under the Income Tax Act (British Columbia);
  - (h) the BC earned income benefit;
  - (i) child support paid for, and passed on to,
    - (i) a person with disabilities, or
    - (ii) a person who received child support before reaching 19 years of age and who continues to receive it after reaching that age.
  - (j) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
  - (k) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
  - (l) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
  - (m) post adoption assistance payments provided under section 28 (1) or 30 (1) of the Adoption Regulation, B.C. Reg. 291/96;
  - (n) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
  - (o) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program;
  - (p) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Ages 6-18 Program;
  - (q) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the Child, Family and Community Service Act;
  - (r) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act;
  - (s) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
  - (t) loans provided under the British Columbia Student Assistance Program or under a student loan program of the federal government, the government of a province or the government of a jurisdiction outside Canada;
  - (u) a benefit paid under section 4 (1) of the Universal Child Care Benefit Act (Canada);
  - (v) the low income climate action tax credit under section 8.1 of the Income Tax Act;
  - (w) the climate action dividend under section 13.02 of the Income Tax Act.
- (3) If the monthly net income of the family varies during a calendar year, the minister may calculate their monthly net income by
  - (a) estimating the annual net income that everyone in the family, other than a dependent child, will receive in the calendar year, and
  - (b) dividing the estimated annual net income by

**How child's threshold is calculated**

- 10 (1) The threshold income level for a child receiving a type of child care is calculated by adding  
 (a) the base threshold income level applicable under subsection (2) for the child's family, and  
 (b) the amounts applicable to the child under subsection (3).  
 (2) The base threshold income level for a child's family is the amount set out in Column 2 opposite the family's size in Column 1:

**Column 1**

**Family Size Column 2**

**Base Threshold**

**Income Level**

- 2 persons \$1 082
- 3 persons \$1 275
- 4 persons \$1 418
- 5 persons \$1 571
- 6 persons \$1 704
- 7 persons \$1 837
- 8 persons \$1 960
- 9 persons \$2 083
- 10 persons \$2 206
- more than 10 persons \$2 206 for the first 10 plus \$123 for each additional person

- (3) The base threshold income level for a child is increased as follows:  
 (a) by \$125 per month for each person in the child's family who  
 (i) is a child with special needs,  
 (ii) is a person with disabilities, or  
 (iii) has reached 65 years of age;  
 (b) by \$51.5 per month for a child who  
 (i) has not reached school age and is receiving child care  
 (A) in a licence-not-required child care setting, or  
 (B) in the child's own home as described in section 2 (c), or  
 (ii) is of school age and is receiving child care in any child care setting;  
 (c) by \$1 500 per month if the child has not reached school age and is receiving child care  
 (i) in a licensed child care setting, or  
 (ii) in a registered licence-not-required child care setting;  
 (d) by \$100 per month if the child  
 (i) is a child with special needs, and  
 (ii) receives a type of child care described in section 2.  
 Notifying the minister of change in circumstances

- 14 The notification required by section 5 (2) of the Act must be given in writing or by telephone,  
 (a) as soon as possible after any change in circumstances affecting the eligibility of the parent, and  
 (b) to an employee in the Child Care Subsidy Service Centre.

**Ministry's Position**

The ministry's position is that the appellant was ineligible for the total amount of Child Care Subsidy provided from October 1, 2011 to January 31, 2012, which resulted in an overpayment of \$3037.76. The ministry determined that an increase in the family's net monthly income to \$5045.42 from \$3526.54 as a result of the appellant's spouse's earnings made the appellant ineligible for the subsidy which had been calculated at the lower family net income rate. As the ministry was not notified of this change in circumstance as required by the legislation until January 2012, 4 months after the spouse's change in employment, and the information does not establish that the ministry made an administrative error, the appellant is liable to repay the amount that was overpaid.

**Appellant's Position**

Although the appellant does not dispute the ministry's re-calculation of the Child Care Subsidy her position is that the decision is wrong because of the lack of clarity of the original letters sent and the time frames in which



it was done. The appellant argued that the initial letter indicated that the subsidy was granted for a period of time and although a disclaimer was added to report any changes, the fact that they were granted a term of subsidy is misleading. The appellant explained that she had checked the website which doesn't indicate that a client is required to provide a change of information before the renewal date, did not provide the information she needed to know and doesn't indicate when you are or are not eligible for a subsidy. The appellant stated that she had renewed their application for Child Care Subsidy on December 29, 2011 at which time they provided updated information of her husband's employment; that she received a call early in 2013 to advise that the Child Care Subsidy would be reduced and that she received the notice of Overpayment on December 11, 2013, 2 years later. The appellant also argued that she is entitled to affordable, accessible child care and it is a hardship for her to repay the overpayment.

### Panel's Findings

Both the ministry and the panel are bound by the provisions of the CCSA and the CCSR and have no discretion to deviate from the prescribed provisions of the legislation. As set out in Section 7(1) of the CCSR, an applicant is not eligible for child care subsidy if (a) the family's net income exceeds the child's base threshold and (b) the result amount under Section 8(2) of the CCSR for the child is not more than zero.

- a) Family's monthly net income = \$5045.42
- b) Child's threshold income exemption = \$2918
- c) The potential subsidy amount for Child 1 = \$585 and for Child 2 = \$536.25 which totals \$1121.25.
- d) The parents portion = \$1063.71.

The panel notes that while the amounts used for the calculation above are not in dispute; that as set out in Section 7 of the Child Care Subsidy Regulation, the appellant's eligibility for partial day care subsidy for both her children has been appropriately reduced according to the reassessed family monthly net income.

The panel finds that as the appellant did not notify the ministry either in writing or by telephone as soon as possible after the change in circumstances affecting the eligibility of the parents as required in the Child Care Subsidy Regulation, Section 14, that the overpayment amount was calculated accurately for the period of October 2011 - January 2012.

The panel does find it troubling that there was a delay of 2 years from when the change of the family unit's monthly net income was reported in the renewed Child Care Subsidy application dated December 29, 2011 and the registered letter from the ministry to the appellant dated December 11, 2013 informing the appellant that she must repay the Child Care Subsidy Overpayment.

The panel also finds that based on the evidence, the ministry reasonably determined that the appellant had received an overpayment of Child Care Subsidy from October 1, 2011 to January 31, 2012, in the amount of \$3,037.76 that she was not entitled to receive and which must be repaid pursuant to the Child Care Subsidy Act, Section 7. The panel therefore confirms the ministry's reconsideration decision.