

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated April 8, 2014 which found that the appellant was not eligible for child care subsidies received, and is liable to repay these amounts, because the family's monthly net income exceeded the child's threshold due to undeclared employment income received, pursuant to Sections 7 and 9 of the *Child Care Subsidy Regulation* (CCSR).

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), Sections 5 and 7

Child Care Subsidy Regulation (CCSR), Section 7 and 9

PART E – Summary of Facts

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

- 1) Child Care Subsidy Application form dated November 4, 2011;
- 2) Child Care Subsidy Child Care Arrangement form dated November 4, 2011;
- 3) Letters dated November 16 and November 24, 2011 from the ministry to the appellant requesting further information;
- 4) Statement for an account held by the appellant at a financial institution, for the period October 1, 2011 through November 10, 2011;
- 5) Undated letter from the appellant in which she wrote that her husband is not in Canada and has never been to Canada before. He does not have any source of income as he is a student;
- 6) Copy of Identity Card for the appellant, mostly illegible;
- 7) Course Verification Form indicating the appellant's participation in two self-paced courses from September 6, 2011 to June 15, 2012 for a minimum of 2 hours per day to be spent in course work for each course, Monday through Friday;
- 8) Letter dated July 4, 2012 from a community education program regarding the appellant's participating in self-paced courses from July 9 to August 17, 2012;
- 9) Child Care Subsidy Application form dated July 10, 2012;
- 10) Letter dated September 10, 2012 from a community education program confirming the appellant's registration in courses from September 12, 2012 to January 18, 2013;
- 11) Letters dated February 1, 2013 from a community education program confirming the appellant's registration in courses from July 9, 2012 to June 14, 2013, and from February 4, 2013 to June 14, 2013;
- 12) Child Care Subsidy Application form dated February 4, 2013;
- 13) Letter dated September 9, 2013 from the ministry to the appellant's employer requesting confirmation of earnings for the last 12 months;
- 14) Pay Statements for the appellant for the period January through March 2013;
- 15) Letter dated October 3, 2013 from the ministry to the appellant stating in part that the ministry has determined that the appellant received \$4,665.44 of subsidy funding for which she was not eligible and enclosing the Overpayment Calculation;
- 16) Child Care Subsidy Overpayment Calculations for the period from November 2011 through March 2013, resulting in totals of \$4,665.44 and \$3,701.44;
- 17) Employment Information for the appellant with monthly net pay received for September 2012 through August 2013;
- 18) Ministry handwritten notes; and,
- 19) Request for Reconsideration- Reasons dated January 13, 2014.

In her Request for Reconsideration, the appellant wrote that:

- The \$3,701 was money she received in the period November 2011 to September 2012 in support of her daughter while the appellant was in school.
- During this period, she was not working and her only source of income was what she received from Employment Insurance (EI) and she was granted the child care subsidy.
- After September 2012, she started working again and was not making enough money to afford daycare for her daughter and, being the sole provider, she applied for the child care subsidy for a second time in November 2012 and provided her pay stub from work.
- She has provided documents to show she was eligible to receive the \$3,701 given to her because she was in school and her only source of income came from EI.
- She is a hard working single parent with a full-time job and yet she is still having difficulties

paying for daycare on her salary alone.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is not satisfied with the amount she has to pay.

At the hearing the appellant stated that:

- She did not know all the requirements of the program.
- In September 2011 she had her child and she decided that she wanted to go to school and upgrade. There were family members who said she could go to school and apply for a child care subsidy. She applied and, in November 2011, she was approved for the child care subsidy and she started school.
- At that time, her only income was from EI. She decided to take more courses and applied again for the child care subsidy with a letter from the school to confirm that she was attending classes. She spent more than the required time working on the computer since she was having some difficulties with English language,
- In September 2012, a year after she had her child, she went back to work. She realizes now that she was supposed to inform the child care center as soon as she went back to work but, instead, she waited to send the information. Her application had already gone through so she thought she would wait until the next application.
- When she was at school, she had a neighbor caring for her child some of the time and the appellant also cared for her child some of the time. When the appellant returned to work and was also taking courses she needed to have full-time day care and found another provider.
- She did not know that it was 'illegal' not to report the change in her income.
- In January 2013, the ministry said she was not eligible for the child care subsidy.
- She believes she was eligible for the child care subsidy when she was going to school and her only income was EI but she agrees that when she started working her situation changed and she was not eligible for the entire subsidy.
- She agrees that she was not eligible for the subsidy for September 2012, which is when she started working, until December 2012, because she reported her income to the child care center in January 2013 and the child care center was aware of her income at that time.
- She is now working and taking classes and needs the child care subsidy because she cannot afford full-time day care on her salary alone. She is working hard as a single mother and trying to make improvements for her and her child.

The ministry relied on its reconsideration decision. The facts included:

- There are 2 people in the appellant's family unit, including the appellant and her child. The appellant is married but her husband is not a Canadian citizen.
- On November 4, 2011 the appellant applied for a child care subsidy. The appellant reported that she was attending an educational institution. She was found eligible for full day care and received \$399.50 per month in subsidy.
- The appellant was on maternity leave and received EI until July 2012 and her income was calculated at \$1,794 per month.
- In July 2012 the appellant's maternity leave ended and she was no longer in receipt of EI.
- The appellant returned to work in August 2012 and she did not inform the Child Care Subsidy Service Centre (CCSSC) of these changes until March 2013.
- The appellant continued to collect the Child Care Subsidy based on her income of \$1,794 per month until March 2013.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found that the appellant was not eligible for child care subsidies received because the family's monthly net income exceeded the child's threshold due to undeclared employment income received, pursuant to Sections 7 and 9 of the *Child Care Subsidy Regulation (CCSR)*, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 5 of the *Child Care Subsidy Act (CCSA)*, provides:

Information and verification

- 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.

Section 7 of the CCSA provides:

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).

Section 7(1) of the CCSR provides:

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. . . .

Section 9(1) of the CCSR provides:

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. . . .

Ministry's Position

The ministry's position is that the appellant was not eligible for a portion of the child care subsidies received over the period August 2012 through March 2013, pursuant to Sections 7 and 9 of the CCSR, because the family's monthly net income exceeded the child's threshold due to undeclared employment income received over the period. The ministry argued that the appellant's employment income increases the net income used to calculate subsidy eligibility, and was not reported to the ministry. The ministry argued that the appellant did not inform the ministry of the changes in her monthly net income until March 2013 when she submitted an application form. The ministry argued that due to the total income of the appellant's family unit, she was only eligible for a reduced subsidy for the period August 2012 to March 2013. The ministry argued that there is no discretion given to the ministry to waive a requirement to repay child care subsidy amounts for which a family unit was not eligible.

Appellant's position

The appellant's position is that the amount of her employment income was not reported to the ministry because she did not realize at the time that she had to report immediately and was waiting until her next application to do so. The appellant acknowledged that she received employment income starting in September 2012 when she returned to work and agreed that she received child care subsidy amounts for which she was not eligible after that time. The appellant argued that she reported her employment income to the ministry in January 2013 and she should not have to repay amounts paid to her after that time. The appellant argued that she is working hard as a single mother but is finding it hard to pay for full-time daycare and does not have extra money to pay back child care subsidies to the ministry.

Panel decision

Section 7(1) of the CCSA stipulates that 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. The issue to be considered by the panel on this appeal is whether the ministry reasonably determined that the appellant received child care subsidies at any time over the period August 2012 through March 2013 for which she was not entitled. The appellant does not dispute that she received

employment income starting in September 2012 and that she received child care subsidy amounts for which she was not eligible, although she argued that she reported her income to the ministry in January 2013 and believes she should not have to repay amounts paid to her after that time. Section 9(1)(a) of the CCSR provides that the monthly net income of a family is calculated by adding the income that each person in the family receives per month, including employment income. The panel finds that the ministry reasonably considered the appellant's employment income as part of the monthly net income of the appellant's family, as set out in Section 9 of the CCSR, which resulted in the family's monthly net income exceeding the child's threshold. The panel finds further that the ministry reasonably concluded that the appellant is liable to repay child care subsidy amounts paid to her in the months that the family's monthly net income exceeded the child's threshold, pursuant to Sections 7(1) of the CCSR and 7(1) of the CCSA, and that there is no discretion given to the ministry to waive the requirement to repay.

Conclusion

The panel finds that the ministry's decision, which found that the appellant was not eligible for, and is liable to repay, child care subsidies received because the family's monthly net income exceeded the child's threshold due to undeclared employment income received, pursuant to Sections 7 and 9 of the CCSR, was a reasonable application of the applicable enactment in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision.