

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated March 12, 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 unclaimed dividend income received, pursuant to Sections 7 and 9 of the *Child Care Subsidy Regulation (CCSR)*; and,
- the child care was not needed for one of the eligible reasons listed in Section 3(2) of the CCSR.

PART D – Relevant Legislation

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

Child Care Subsidy Regulation (CCSR), Section 3, 7 and 9

PART E – Summary of Facts

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

- 1) Statement of Child Care Subsidy Payments issued for the period from July 2010 through March 2012;
- 2) Statement of Benefit Plans for the period April 1, 2012 through August 31, 2013;
- 3) 2012 Annual Report for a BC company listing the appellant's spouse as the Secretary/Treasurer and his mother as the President;
- 4) Child Care Subsidy Self-Employment form dated November 30, 2011 indicating in part that the gross income is \$56,000 and the permitted operating expenses are \$55,750, for a net income of \$250;
- 5) Child Care Subsidy Self-Employment form dated June 5, 2012 indicating in part that the gross income is \$50,000 and the permitted operating expenses are \$63,500, for a net loss of \$13,500;
- 6) Child Care Subsidy Self-Employment form dated December 2, 2012 indicating in part that the gross income is \$107,000, the permitted operating expenses are \$116,160, for a net loss of \$9,160;
- 7) Letter dated May 18, 2013 from the appellant and her spouse to the ministry stating in part that notices of assessment from Canada Revenue Agency are provided. The appellant's spouse runs his mother's family business because his mother is ill and he does not take any pay for doing it. He receives residual commission income from a previous occupation; he received actual income of \$6,708.98 in 2010 and \$6,938.97 in 2011. The business has not done well over the past few years so his mother decided to sell the building in 2010 and the accountants decided to give dividend income on paper to the appellant's spouse and his mother. They did not receive any of these amounts of money from the dividend income showing in the assessments. On every occasion that they discussed the dividends with the ministry, they were told that the only income reported on the child subsidy forms is "income coming into our household", to only include income that they actually receive. The dividend income on the assessment has never entered their household and is only there for accounting purposes to reduce a capital gain on the sale of a building in the name of her spouse's mother;
- 8) Tax Return Summaries and Notices of Assessment for the appellant and her spouse for the years 2010, 2011 and 2012. For the appellant's spouse, the 2010 Tax Return Summary shows a taxable amount of dividends from a taxable Canadian corporation of \$91,250 plus net commission income of \$6,659.93 for total income of \$97,909.93. The 2011 Tax Return Summary shows dividends of \$40,000 plus net commission income of \$6,904.63 for total income of \$46,904.63. The 2012 Tax Return Summary shows dividends of \$13,750 plus net commission income of \$5,802.83, universal child care benefit of \$1,200 and total income of \$20,752.83 ;
- 9) Letter dated September 13, 2013 from the ministry to the appellant stating in part that the child care subsidy benefit was calculated and issued based on the reason for care being employment for both the appellant and her spouse. It was brought to the ministry's attention that the appellant's spouse was not actually employed with his mother's company but was in fact assisting his parent without recompense. Income tax documents indicated substantial dividend payments made to the appellant's spouse. This income, although not received in hand, is reportable and when averaged over the years, reduced subsidy eligibility to zero until July 2012 and then a reduced subsidy for the period August 2012 to December 2012. The enclosed overpayment calculation for the sum of \$9,504.89 includes the amounts of subsidy that the ministry believes were received and for which the appellant may not have been eligible;

- 10) Letter dated September 25, 2013 from the appellant and her spouse to the ministry stating in part that they are in total disagreement with the ministry's assessment. The appellant's spouse has been employed by the company for some time. The fact that the company has not made any money for the past 4 years, due to economics in the area, is the reason that he has not been able to receive an income for his work. He has a signed employment contract and when the business sells, or his mother passes away, he will get paid accordingly. The "money we bring in to our home" is as they have stated on all correspondence. As far as the dividend income goes, they were never received into their hands. It was explained to them that "income" as it pertains to childcare subsidy, is money coming into their household. All of their conversations were taped and listening to them will explain their dispute.
- 11) Letter dated October 9, 2013 from the ministry to the appellant stating in part that the appellant's response was received by email on October 4, 2013 and the appellant was issued subsidy for the purpose of full-time employment for her and self-employment for her spouse. As the appellant's spouse was not paid for his work, he was considered as volunteering.
- 12) Letter dated October 20, 2013 from the appellant and her spouse to the ministry stating in part that they are in total disagreement with the ministry's assessment. The appellant's spouse was not a volunteer in his mother's family business. The appellant's spouse has a self-employed contract which states that he was to receive \$3,000 per month to manage the company. The business did not generate enough capital to pay the appellant's spouse and the payments owed are still outstanding;
- 13) Child Care Subsidy Eligibility Calculator dated October 29, 2013;
- 14) Email correspondence between the appellant's spouse and the ministry dated October 24, 2013 in which the ministry wrote that the ministry does not record actual conversations with the Child Care Subsidy Service Centre but record on the electronic running record when and why a particular client calls. The ministry provided information on the access to information process; and,
- 15) Request for Reconsideration- Reasons dated February 10, 2014.

In her Request for Reconsideration, the appellant wrote that:

- The dividend income was never 'received' by the appellant or her spouse.
- In speaking with the ministry numerous times, income was described on all occasions as money which comes into the home as income and the money in question was never brought into their home as income.
- The company is owned by the mother of the appellant's spouse.
- The appellant's spouse had a contract with the company to help run the business for a salary of \$3,000 per month and the company was not able to pay because of slow economic conditions. The building was sold which houses the business.
- Without the appellant or her spouse knowing, the accountants allocated dividends to the name of the appellant's spouse to minimize capital gains taxes for the mother.
- There is no money in the business since the bank owned most of the building.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that no dividend money was received as it was only an accounting strategy.

At the hearing the appellant and her spouse stated that:

- They applied for the child care subsidy because, at the time, they were not bringing much income into the home and they could not afford to pay for child care.

- Although the appellant's spouse was supposed to receive \$3,000 per month in salary from his mother's company, and he has a letter from his mother agreeing to that, the company did not do well for about 5 years and was in debt.
- The appellant's spouse started working for the company in 2006 or 2007 and was trying to help his parents by getting the company out of debt.
- The building that the company owned was sold to save the company. When asked, the appellant's spouse stated that he was not sure when the building was sold but it would have been either late in 2011 or in 2012.
- There was a big loan on the building that had to be paid out on the sale, plus the other debts owed by the company, so the appellant's spouse did not receive anything towards his outstanding salary. The expense for wages paid to employees, as set out on the Self-Employment forms, was for the 3 employees of the company since the company ran a service business as well as the real estate development business.
- Since there was no money in his mother's company, the appellant's spouse never received a salary from the company. Both of his parents are ill and the company has since been sold to provide his parents with funds "in their old age."
- The appellant and her spouse did not know that the company's accountants decided to pay dividends. The appellant and her spouse never lied about what they had received. They let the accountants do the planning and they decided to pay dividends into the owners' and directors' names.
- Asked when the appellant and her spouse found out about the dividends, the appellant's spouse stated that they had a meeting with the accountants after the letter was received from the ministry. The accountants told them that they could receive up to \$27,000 in dividend income with no tax repercussions. The tax payable on some of the dividends was about \$7,000 and the bill was to be covered by the company.
- There was a capital gain of about \$300,000 on the sale of the building and the dividends were paid out of the company to avoid paying tax on the capital gain. The appellant's spouse understood that by paying the dividends, the profit on the sale of the building would be reduced.
- While the tax information shows that dividends were paid to him and that his total income was around \$97,000 in 2010 and \$46,000 for 2011, the dividend amounts were not reported to the ministry because the dividends were not received into the household.
- The commission amounts indicated in the tax information are from the previous employment of the appellant's spouse, that continues to pay residual annuity payments. They thought these payments were reported to the ministry.
- Asked about Child Care Subsidy Self-Employment forms filed with the ministry, the appellant's spouse stated that the gross income amounts are income to his mother's company and not his self-employment income. The permitted operating expenses were estimated by him because the ministry asked what the company was making and pressed for some information and he is "not sure if it is even close."

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

- There are 3 people in the appellant's family unit, including the appellant, her spouse and their child.
- In July 2010 the appellant applied for a child care subsidy. The appellant reported that she was employed with a financial institution and her spouse was self-employed with a company.
- From June 2010 to December 2012 the appellant submitted Self-Employment forms to declare

self-employment income earned by the appellant's spouse.

- On January 9, 2013 the appellant advised that the company is owned by the mother of the appellant's spouse. The appellant's spouse is a director of the company and not drawing a salary. Instead of self-employment income, the appellant's spouse was in receipt of residual income from a former investment of approximately \$750 per month. The appellant and her spouse thought this was reflected on the Child Care Subsidy application form, but the information had not been reported.
- In May 2013, the appellant provided Notices of Assessment from the Canada Revenue Agency for the years 2010, 2011 and 2012 which shows additional income in taxable dividends received by the appellant's spouse in the amount of \$91,250 in 2010, \$40,000 for 2011 and \$13,750 for 2012.

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 unclaimed dividend 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 3 of the *Child Care Subsidy Regulation (CCSR)*, provides:

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
 - (iv) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]
 - (v) each parent has a medical condition that interferes with their ability to care for their child.

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 child care subsidies received over the period June 2010 through December 2012 because the family's monthly net income exceeded the child's threshold due to dividend income received over the period, pursuant to Sections 7 and 9 of the CCSR, and the child care was not needed for one of the eligible reasons listed in Section 3(2) of the CCSR as the appellant's spouse was not getting paid for his work with the company. The ministry argued that the tax information received in 2013 for the appellant's spouse indicates that taxable

dividends were received in the years 2010, 2011 and 2012 and must be included in the calculation of the family's monthly net income as these amounts are considered income from investments, as set out in Section 9(1) of the CCSR. The ministry argued that the dividends increase the net income used to calculate subsidy eligibility, and were not reported to the ministry. The ministry argued that due to the total income of the appellant's family unit, she was not eligible for the child care subsidy from June 2010 to July 2012 and she was eligible for a reduced subsidy for the period August 2012 to December 2012.

Appellant's position

The appellant's position is that the amounts set out for dividend income on the tax information for the appellant's spouse was not reported to the ministry because these funds were never received into their household income. The company for which the appellant's spouse is a director sold a building because the company was not doing well and the accountants decided to give dividend income on paper to the appellant's spouse and his mother to reduce the capital gains tax payable. The appellant argued that on every occasion that they discussed the dividends with the ministry they were told that the only income reported on the child subsidy forms is "income coming into our household." The appellant also argued that her spouse has been employed by his mother's company for some time and the fact that the company has not made any money for the past 4 years, due to economics in the area, is the reason that he has not been able to receive an income for his work. The appellant argued that he has a signed employment contract/letter which states that he was to receive \$3,000 per month to manage the company and when the business sells, or his mother passes away, he will get paid accordingly. The appellant argued that her spouse was not a volunteer in his mother's family business.

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 appellant received child care subsidies at any time over the period June 2010 to December 2012 for which she was not entitled. The appellant does not dispute that her spouse's 2010 Tax Return Summary shows a taxable amount of dividends received from a taxable Canadian corporation of \$91, 250 and, while the appellant acknowledged that this amount was not reported to the ministry, she explained that they were told by the ministry to only report income coming into their household. It was not until May 2013 that the appellant provided tax information to the ministry, in the form of Tax Return Summaries and Notices of Assessment from the Canada Revenue Agency for the years 2010, 2011 and 2012, that the ministry was able to consider the appellant's eligibility for the child care subsidy over the period June 2010 to December 2012 in light of this specific information about the payment of dividends.

Section 9(1)(g) 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 investment income and interest. While the appellant and her spouse argued that he did not actually receive any of the funds, the panel finds that it is more likely than not that the dividend income was received by the appellant's spouse. The appellant's spouse acknowledged that he reported to Revenue Canada that this dividend income was received by him in the years 2010, 2011 and 2012. The panel finds that the ministry reasonably relied on the appellant's report to Revenue Canada as indicating that dividend income was received by him in the amounts that he claimed in his personal income tax returns for the 2010, 2011 and 2012 tax years as he is ultimately responsible for accurate filing of his personal income tax returns. The panel finds further that the ministry reasonably considered this dividend

income to be investment income and part of the monthly net income of the appellant's family, as set out in Section 9 of the CCSR.

The appellant stated that payment of dividends was recommended by the accountants to gain an advantage to the company by reducing the tax payable on the sale of a building owned by the company and that the dividends were not actually paid to him, it was just "on paper." The panel places less weight on the evidence of the appellant and her spouse as there were a number of inconsistencies, including:

- the appellant's spouse stated that he has been managing the company since 2006 or 2007 and acknowledged that he was the Secretary/Treasurer, as listed on the 2012 corporate Annual Report, and yet he stated that he had no idea that dividends were paid by the company until they received a letter from the ministry. There would have been tax owing to Revenue Canada on the dividend income reported by the appellant's spouse, as acknowledged in their letter to the ministry dated May 18, 2013;
- the appellant's spouse stated that dividends were paid by the company to reduce capital gains that were realized on the sale of the building and that the building was sold late in 2011 or early in 2012. However, the dividend income was reported to Revenue Canada as received by the appellant's spouse starting in the year 2010, prior to the earliest date that he said the building was sold.
- the appellant's spouse stated that his reporting provided to the ministry in the Child Care Subsidy Self-Employment forms was for his mother's company and not for his income from self-employment. He stated that the capital gain realized on sale of the building late in 2011 or early in 2012 was \$300,000 and yet his reporting to the ministry was for gross income for the company as of November 30, 2011 of \$56,000 and gross income as of December 2, 2012 of \$107,000.
- the appellant and her spouse stated in the May 18, 2013 letter to the ministry that the appellant's spouse receives residual commission income from a previous occupation and that he received this income of \$6,708.98 in 2010 and \$6,938.97 in 2011. The appellant stated that they thought this income was reported to the ministry, but the ministry's evidence is that this income from commissions was not reported to the ministry
- the appellant's spouse stated he started working for his mother's company in 2006 or 2007 and, in a letter to the ministry, that he has a signed employment contract in which it was agreed that he was to receive \$3,000 per month for managing the company and helping to get it out of debt. In the letter to the ministry dated September 25, 2013, he stated that when the business sells, or his mother passes away, he will get paid according to his signed employment contract. The appellant stated that the wages were paid to 3 other employees of the company, as reported by him in the Self-Employment forms. The appellant's spouse stated at the hearing that the company has "since sold" and, given a reasonable expectation of profit to his self-employment business after approximately 7 years of working for the company, the panel finds that it is more likely than not that a benefit was received by the appellant's spouse. If there was no reasonable expectation of profit to his self-employment business within a reasonable period of time, the panel finds that the ministry reasonably expected that the appellant's spouse was available to provide child care to his child rather than volunteering his time for his mother's company, pursuant to the requirement for a two-parent family as set out in Section 3(2)(b) of the CCSR.

The panel concludes that Section 3 of CCSR, which addresses the eligible reasons for child care, was not a basis for denial of eligibility for the child care subsidy given the ministry's primary analysis

in the reconsideration decision of the monthly net income of the appellant's family under Section 9 of the CSSR and the ministry's determination of partial subsidy eligibility during a period when the appellant's spouse stated he was not paid salary for his work with the company but the ministry found that he was in receipt of compensation in the form of dividend income.

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 unclaimed dividend income received, pursuant to Sections 7 and 9 of the CCSR, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the decision.