

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (the Ministry) dated July 11, 2014 which held that the appellant was not eligible to receive a child care subsidy (CCS) under Section 3 (2) of the Child Care Subsidy Regulation from September 2013 to May 2014, and was therefore liable to repay the amount to which she is not entitled.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 7
Child Care Subsidy Regulation (CCSR), section 3

PART E – Summary of Facts

At the request of The Ministry, and with the consent of the appellant, a Ministry observer attended the hearing for the purposes of training.

The evidence before the minister at reconsideration was:

1. From the Ministry's files:
 - Ministry records indicating the appellant contacted the Ministry on May 9, 2013 to inquire about a renewal date and to note a change in employer.
 - A renewal application dated May 29, 2013 received by the Ministry on May 31, 2013 including information regarding the new employer and providing information on the start date (December 2012) and hours of work.
 - Ministry records noting a call by the appellant regarding the status of the renewal application and that a benefit plan had been created.
 - Integrated Case Management history notes dated June 2, 2014 stating that:
 - o A telephone call was received from the appellant on June 2, 2014 advising of a planned return to work from maternity leave on August 12, 2014.
 - o The worker advised the appellant that subsidy had been paid during that maternity leave and was therefore now in overpayment.
 - o The appellant stated that no one had informed her subsidy would be cancelled during maternity leave when she had spoken to the child care subsidy office in 2013 before starting maternity leave.
 - o The case would be sent to Verification and Audit for investigation.
 - A letter from Ministry of Children and Family Development Verification and Audit Officer dated June 3, 2014 stating that the appellant's file had been reviewed and that the officer had also received statements and documents concerning the appellant's maternity leave commencing August 12, 2013. The Ministry therefore concluded there had been overpayment in the amount of \$4,545.00, based on 9 months of subsidy payment (September 2013 – May 2014) while the appellant had no eligible reason for care during maternity leave. Attached to this letter was an overpayment chart.
2. The appellant's Request for Reconsideration dated June 17, 2014, to which was attached a letter from the appellant dated June 20, 2014 stating that she:
 - o Had contacted the child care subsidy office by phone in May 2013 and advised the ministry that she was expecting a second child in September 2013.
 - o Was not advised at this date that the expected new child would have any impact on eligibility for subsidy.
 - o Had contacted the child care subsidy office by phone in June 2013 in response to a query regarding working hours, and again advised the worker of her upcoming maternity leave.

In her Notice of Appeal, dated July 23, 2014 the appellant writes that she strongly believed she was in compliance with the requirements and eligibility. She states that she was also in contact with the Ministry as required and advised that she would be on maternity leave and yet was not advised about ineligibility.

At the hearing the appellant did not call on any witnesses or provide additional evidence. She

described her interactions with the Ministry, recalling that she had spoken with the Child Care Subsidy Service Centre in May and June 2013 and had verbally advised the worker that she was pregnant and would be going on maternity leave at the beginning of August 2013. She stated that she was advised by the worker that she could contact them for additional assistance after her child was born. This led her to understand that she was entitled to ongoing assistance with child care and she therefore continued to use child care for her first born child after beginning her maternity leave. She stated that she was not advised by the Ministry that she would not be eligible for subsidy while on maternity leave.

The appellant acknowledged that her first child continued in child care while she was on maternity leave.

The Ministry stood by its position at reconsideration. The Ministry representative explained that pregnancy and delivery do not necessarily affect eligibility, as some parents continue in employment or education and are eligible for subsidy. The Ministry also noted that repayment plans for overpayment are available (reference to this was provided in the notice of overpayment) and that the fact of overpayment would not affect the appellant's future eligibility for child care subsidy.

The panel finds that the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration.

PART F – Reasons for Panel Decision

The issue before the Panel was whether the Ministry's decision to determine the appellant was ineligible for a child care subsidy from September 2013 to May 2014, and therefore liable to repay an overpayment of \$4,545.00 was a reasonable application of the legislation or reasonably supported by the evidence.

The CCSR Section 3 *Circumstances in which subsidy may be provided*, states that:

- 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;

CCSA Section 7 *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)

The Ministry argues that: the appellant was not eligible to receive child care subsidy for the months September 2013 to May 2014 as she did not meet the requirements for eligibility under the CCSR section 3. At the hearing the Ministry representative clarified that the decision about overpayment was not intended as a punishment or sanction on the appellant. The issue was eligibility, and under the terms of the legislation the appellant did not meet any of the requirements for eligibility for a single parent:

- in employment or self-employment;
- in education;
- seeking employment or participating in an employment-related program; or
- having a medical condition interfering with her ability to care for a child).

The appellant argues that she was not advised that her intention to take maternity leave would impact on her eligibility to receive child care subsidy before she went on leave, and that she therefore

maintained her first child in child care during that period. While she admits some responsibility for the situation, she submits the Ministry is equally responsible, as the Ministry workers did not advise her that she would not be eligible for the CCS while on maternity leave when she told them she was pregnant and would be going on maternity leave.

The evidence, not in dispute, is that the appellant was on maternity leave from August 2013 to May 2014, during which time her first-born son attended child care, for which the Ministry paid a child care subsidy on the appellant's behalf. As the appellant was not employed or self-employed during this time, or met any of the other criteria for eligibility under section 3(2)(a) of the CCSA, the panel finds that the ministry was reasonable in determining that the appellant was not eligible for the CCS paid on her behalf for that period. The panel also finds that the ministry reasonably determined that, under section 7 of the CCSA, the appellant is liable to repay the overpayment arising from the CCS paid during this period of ineligibility. As provided in section 7 (5) of the CCSA, the panel has no jurisdiction over the amount of overpayment and confines its decision to the determination that an overpayment had occurred.

Accordingly, the panel finds that the Ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and therefore confirms the Ministry's decision.