APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development ("the ministry") Reconsideration Decision of January 13, 2015 in which the ministry declared the appellant ineligible for a child care subsidy (CCS) from June 1, 2013 to September 30, 2014 because she failed to report her status as married on her CCS application and because she and her husband did not meet the eligibility criteria under Sections 3 and 5 of the Child Care Subsidy Regulation (CCSR) for CCS as a two parent family, which resulted in the receipt of CCS to which the appellant was not entitled and liability to repay under Sections 5 and 7 of the Child Care Subsidy Act (CCSA).

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) Sections 5, 7
Child Care Subsidy Regulation (CCSR) Sections 1, 3, 5.

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PART E – Summary of Facts

No ministry representative attended the hearing. After confirming that the ministry had been notified of the hearing the panel proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).

The following evidence was before the ministry at the time of reconsideration:

- CCS application signed by the appellant on June 13, 2013 declaring her need for child care for her four children and her marital status as "single, separated, divorced or widowed", and listing her address as House #1;
- CCS application signed by the appellant on June 26, 2014 declaring her need for child care for her four children and her marital status as "single, separated, divorced or widowed", and listing her address as House #1;
- CCS self employment form dated June 13, 2013;
- CCS self employment form dated May 29, 2014;
- CCS Child Care Arrangement forms dated January 24, 2013, May 28, 2013, June 3, 2013, June 23, 2013, and June 26, 2014;
- Marriage License and Marriage Certificate certifying a marriage between the appellant and her husband (M) on March 14, 2004 in another country;
- September 15, 2013 letter from Citizenship and Immigration Canada addressed to M at the House #1 address, refusing M's application for permanent residence in Canada because he failed to produce previously requested documentation and complete a medical examination;
- written record of a telephone conversation between the appellant and ministry staff dated August 1, 2014 in which the appellant states that:
  - she is legally married to M who has been in Canada since 2013 and who lives at her parents' home but sometimes spends the night in the appellant's basement;
  - M has been given a deportation notice but is still in Canada and is seeking permanent residency;
  - M's lawyer has advised M to use the appellant's address as his own;
  - M has no social need as he isn't legally able to work and sleeps all day.
- October 22, 2014 Equifax report listing the appellant's address as House #2 and M as the appellant's spouse;
- October 22, 2014 letter from the ministry to the appellant's landlord requesting a copy of the appellant's tenancy agreement and names of other tenants and occupants of House #2;
- scanned copy of August 29, 2014 tenancy agreement between the appellant and the landlord for rental of House # 2;
- e-mail message to the ministry from the landlord dated November 12, 2014 stating that she was told that the appellant, her husband M, and their four children would be residing as tenants in House #2;
- December 3, 2014 letter from the ministry to the appellant enclosing CCS overpayment calculation (12 pages) totaling $16,944.95 for the period June 2013 to September 2014;
- December 3, 2014 letter from a marriage counsellor confirming that between spring 2012 and the end of 2013 he counselled M and the appellant and that the couple was separated but hoped to improve their relationship;
- appellant's request for reconsideration dated December 9, 2014 with attached typewritten letter from the appellant in which she states:
  - she relocated to BC with her children and visited M frequently in his country of origin;

- M moved the children and some of their belongings to BC but returned to his country of origin and they separated;
- several months later M came to BC with the intention of applying for permanent residency and moved in with the appellant;
- the family dynamic became increasingly difficult and M took control of the appellant's finances and credit card;
- as a result of marital discord M left the appellant's home and moved into a cabin on the property of the appellant's parents with the understanding that he would stay there until he received his permanent residency, at which point the appellant hoped they could regain some order in the home;
- M became addicted to prescription drugs for depression and pain and slept for days at a time;
- M was coming to the appellant's house regularly in order to prove himself to the appellant and to satisfy Citizenship and Immigration Canada that they were together as a family;
- M's residency application was denied and he was given a year-long extension to remain in Canada;
- the appellant told a ministry employee in a telephone conversation that although she and M were separated they had to give the appearance of being together for immigration purposes;
- subsequent to the telephone conversation the ministry approved the appellant's 2014 CCS application;
- House #1 was sold and the appellant was successful in renting House #2 next door to her parents in part because the landlord assumed that M was involved as a tenant;
- she hopes that one day her family will be strong again;
- during the past 3 months M has been more present in the family;
- the children's daycare environment has been enriching to them and has provided them with stability.

- undated letter from the appellant to the ministry in which the appellant states:
  - during the period June 1, 2013 – September 30, 2014 there were many emotional and physical changes in the lives of the appellant and M;
  - from June 1, 2013 to the winter of 2013/14 the appellant and M were living separately and attending weekly counseling sessions;
  - from the winter of 2013/14 to August 2014 M stayed most weekends with the appellant and her children ;
  - in June 2014 the appellant applied for CCS as a single parent because she was the only responsible adult and M was facing deportation;
  - in September 2014 the appellant and her children moved into House #2 with M initially residing in a cabin next door but soon spending more time with the appellant and the children in House #2;
  - the relationship between the appellant and M is still fragile but the children are happier seeing their father more frequently.

At the hearing the appellant acknowledged that during the period June 2013 to September 2014 she received $16,944.95 in CCS. She told the panel that since moving to Canada she has not considered herself a married person, even though she has not filed for legal separation. She added that M was diagnosed with depression several years ago but had never told her of his mental health

condition. When he arrived in Canada he was a totally different man and not capable of looking after the children. M did not disclose his mental health condition to the appellant until just before the Reconsideration Decision in January 2015. The appellant acknowledged that she and M attempted to work out their marriage during the period June – December 2013.

In her Notice of Appeal dated January 29, 2015 the appellant stated that M is not physically and emotionally able to care for their children due to his underlying medical conditions of clinical depression, anxiety disorder and severe somnolence (drowsiness or sleepiness). He has not taken medication since moving to Canada. The lack of medication, stress related to immigration and inability to obtain a work permit have degraded his physical and emotional wellness for the past three years.

The appellant presented a letter from a physician dated January 27, 2015 as new evidence at the hearing. The physician stated that M suffers from chronic depression and anxiety associated with marked somnolence and because of his condition he was not fit to care for his children. He concluded by saying that M is now under his care.

The panel finds that the physician's letter is admissible as evidence in support of the appellant's position under EAA Section 22 (4) because it endorses the information before the ministry at the time of reconsideration that M sometimes slept for days at a time and was not able to care for the children.

In the reconsideration decision the ministry determined that the appellant was ineligible for CCS during the period June 1, 2013 to September 30, 2014 because she was legally married and lived in a marriage-like relationship with M. On December 3, 2014 the appellant told an officer of the ministry audit branch that she reported herself as married on her income tax filings. The appellant and M presented themselves as married and living at the same address to Citizenship and Immigration Canada, Canada Revenue Agency and the landlord of House #2. The ministry determined that the appellant's circumstances constituted a two parent family in which both parents must demonstrate a need for care, as set out in CCSR Section 3 (2) (b). The ministry was not satisfied that M exhibited the need for care required for a two parent home. The ministry also noted that M was not eligible as an applicant for a CCS because he did not meet the citizenship requirements set out in CCSR Section 5.

The ministry also determined that because the appellant received CCS in the amount of $16,944.95 to which she was not entitled she was liable to repay to the ministry the amount that she received pursuant to CCSA Section 7 (1).

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of January 13, 2015 in which the ministry declared the appellant ineligible for a child care subsidy (CCS) from June 1, 2013 to September 30, 2014 because she failed to report her status as married on her CCS application and because she and her husband did not meet the eligibility criteria under Sections 3 and 5 of the Child Care Subsidy Regulation (CCSR) for CCS as a two parent family, which resulted in the receipt of CCS to which the appellant was not entitled and liability to repay under Sections 5 and 7 of the Child Care Subsidy Act (CCSA).

The relevant legislation is as follows:

CCSA

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.

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).

CCSR

Definitions

1 (1) In this regulation:

"spouse", in relation to a parent, means anyone who

(a) is married to the parent, or

(b) is living with the parent in a marriage-like relationship;

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.

Citizenship requirements

5 An applicant is eligible for a child care subsidy only if

(a) the applicant

(i) is a Canadian citizen,

(ii) is authorized under an enactment of Canada to take up permanent residence in Canada, or

(iii) is determined under the *Immigration and Refugee Protection Act* (Canada) to be a Convention refugee or a person in need of protection.

The appellant argues that she considered herself a single parent during the period June 1, 2013 to September 30, 2014 because she was living separately from her husband M other than on weekends, and because M was not capable of caring for the children due to his mental health conditions, which caused him to absent himself or sleep for several days at a time. She argues further that M's mental health conditions were exacerbated by lack of medication, stress arising from immigration and deportation issues, and inability to work in Canada because of his visitor status. In support of her argument she introduced a physician's letter stating that M suffered from clinical depression and anxiety with marked somnolence, that his condition was aggravated by lack of medication and that he was not fit to care for his children.

The ministry argues that the appellant was ineligible for CCS during the period June 1, 2013 to September 30, 2014 because she declared herself as single, separated, divorced or widowed but was legally married and living in a marriage-like relationship with M. The ministry argues further that

the appellant and M presented themselves as married and living at the same address to Citizenship and Immigration Canada, Canada Revenue Agency and the landlord of House #2. The ministry determined that the appellant's relationship constituted a two parent family in which both parents must demonstrate a need for care, as set out in CCSR Section 3 (2) (b). The ministry was not satisfied that M exhibited a need for care as required for a two parent home. The ministry also noted that M was not eligible as an applicant for a CCS because he did not meet the citizenship requirements set out in CCSR Section 5.

The ministry also argues that because the appellant received CCS in the amount of $16,944.95 to which she was not entitled she was liable to repay to the ministry the amount that she received pursuant to CCSA Section 7 (1).

Panel Decision

The CCSR Section 1 definition of spouse provides that a "spouse", in relation to a parent, means anyone who is married to the parent or who is living with the parent in a marriage-like relationship. The legislation does not define "marriage-like relationship"; therefore the ministry assesses each relationship on a case-by-case basis. During the period in question the appellant was legally married to M and had taken no legal steps to separate. The appellant and M held themselves out to be married for immigration and income tax purposes and in order to be accepted as tenants in House #2. Although the marriage was in difficulty M continued to occupy the family home on most weekends and the couple sought marriage counselling. The panel finds that the ministry reasonably determined that the appellant was living in a marriage-like relationship.

Because the appellant was living in a marriage-like relationship her eligibility for CCS as a two parent family was dependent upon both parents demonstrating a need for care under CCSR Section 3 (2) (b). The appellant reported that her husband was suffering from mental health problems which caused him to absent himself or sleep for days at a time and that these mental health problems interfered with M's ability to care for the children. At the hearing she tendered new supporting evidence from a physician stating that M suffered from clinical depression and anxiety with marked somnolence, that his condition was aggravated by lack of medication, and that he was not fit to care for the children.

The appellant did not know what was wrong with M because did not disclose his mental health history until a few weeks before the reconsideration decision in January 2015. The physician's letter is dated January 27, 2015 and does not allude to an ongoing clinical relationship between M and the physician. During the period June 1, 2013 – September 30, 2014 M was not under a physician's care or taking medication to treat a mental health issue. The panel therefore finds that the ministry reasonably determined that the appellant did not provide sufficient evidence to demonstrate that M had a medical condition which interfered with his ability to care for his children as required by Section 3 (2) (b) (iii).

In addition, the panel finds that the minister reasonably determined that M did not meet any of the citizenship eligibility criteria set out in CCSR Section 5 because he was not a Canadian citizen, a permanent resident or a refugee, and was therefore not eligible to apply for a child care subsidy.

The panel finds that the ministry reasonably determined that the appellant is liable to repay to the government CCS for the period June 1, 2013 – September 30, 2014 because she was not entitled to

CCS during that period. The panel has no authority respecting the repayment amount, which is not open to appeal pursuant to 7(5) of the CCSA.

In conclusion the panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.