

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated February 17, 2015 which held that the appellant was ineligible for amounts of Child Care Subsidy provided under the *Child Care Subsidy Act* (CCSA) section 7, and the *Child Care Subsidy Regulation* (CCSR) section 7, from January 1, 2012 to October 31, 2014 because the family's monthly net income exceeded the child's income threshold as outlined in the CCSR section 7, resulting in child care subsidies that the appellant was not entitled to and is required to repay.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) sections 4, 5, 6, 7
Child Care Subsidy Regulation (CCSR) section 7, 8, 9, 10

PART E – Summary of Facts

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

Documents

- Child Care Subsidy/Child Care Arrangement document dated May 24, 2012, confirming child care provision of before and after school care with a September 1, 2012 start date.
- Child Care Subsidy Application document dated November 2, 2012 setting out the appellant's employment income as \$1,239.02 monthly.
- Two Statement of Earnings and Deductions from the appellant listing monthly net pay of \$1,283.57 with hand written comments indicating one statement was for the month of July 2013, and the other for August 2013.
- Child Care Subsidy Application document dated September 12, 2013 setting out the appellant's self-employment income as \$1,283.57 monthly.
- Two Statements of Earnings and Deductions from the appellant listing monthly net pay of \$1,211.64 with hand written comments indicating that one statement was for the month of July, 2014 and the other for August, 2014.
- Child Care Subsidy Child Care Arrangement renewal request signed by the appellant on September 1, 2014.
- Child Care Subsidy Application document dated September 1, 2014 setting out the appellant's employment income as \$1,311.64 monthly.
- Child Care Subsidy Overpayment Calculation document dated January 13, 2015 detailing undeclared income and child care subsidies received from January 2012 through October 2014, and providing a total of \$8,344.32. Partial entitlement was found for the months of January 2012 through August 2012, but no entitlement was found from September 2012 onward.
- A 3 page document outlining amounts paid for child care from April 1, 2012 through October 31, 2014.
- January 13, 2015 letter to the appellant outlining that following a file review of child care subsidies received between January 1, 2012 and October 31, 2014 which included a review of statements and documents regarding her employment income, the appellant was found to have received \$8,344.32 of subsidy funding for which she was not eligible.

Documents received after the reconsideration decision

- Notice of Appeal signed and dated February 25, 2015.

General

- The appellant is part of a 3 unit family – 1 child, 2 parents.
- From May 2012 through August 2012 the appellant's child care subsidy was calculated and paid based on the appellant's employment earnings being paid on a semi-monthly pay period.
- In September 2012 the appellant's eligibility was reassessed and denied due to a change in income threshold. This review was triggered by the child reaching school age.
- On July 17, 2012 the appellant told the ministry by telephone that she was paid monthly, not semi-monthly as previously stated.
- For the following 3 renewals from 2012 to 2014 the appellant's renewal application was submitted with 2 pay stubs, and each pay stub had a written notation indicating that the

amount reflected a full month's pay.

- On September 16, 2014 the adjudicator told the appellant that the filed pay stubs showed 24 pay periods per year, and therefore declared income based on once monthly employment income was incorrect.
- On September 24, 2014 the appellant called CCSSC and said she would now be self-employed, and would earn \$1,400.00 per month.
- On November 3, 2014 the appellant's employer was contacted and it was confirmed that the appellant remained an employee paid on a semi-monthly basis.
- The amount of Child Care Subsidy declared overpayment from January 1, 2012 through October 31, 2014 was \$8,344.32.

At the hearing, the appellant relied on her written Notice of Appeal dated February 25, 2015, and offered no new evidence. She stated that part of the misunderstanding was her fault, but that the ministry should have caught the discrepancy earlier as all of the necessary information was available in the submitted documents.

At the hearing, the ministry relied on the reconsideration decision and did not introduce any new evidence.

PART F – Reasons for Panel Decision

The issue is whether the ministry's decision that the appellant was ineligible for amounts of Child Care Subsidy provided under the *Child Care Subsidy Act* (CCSA) section 7, and the *Child Care Subsidy Regulation* (CCSR) section 7, from January 1, 2012 to October 31, 2014 because the family's monthly net income exceeded the child's income threshold as outlined in the CCSR section 7, resulting in child care subsidies that the appellant was not entitled to and is required to repay, was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

The applicable legislation is summarized below.

The **CCSA** outlines the following:

4 – Child Care Subsidies

Subject to the regulations, the minister may pay child care subsidies.

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.

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.

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 **CCSR** definition section includes the following:

- "child" means an unmarried person under 19 years of age;
- "Child Care Subsidy Service Centre" means the government office responsible for administering payment of child care subsidies under the Act;
- "child's threshold" means the threshold income level calculated for a child under section 10 (1);
- "family" means a parent and the parent's dependents;
- "family's monthly net income" means the monthly net income calculated for a family under section 9;
- 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;

The **CCSR** includes the following:

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.

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

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.

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;

.....

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	Column 2
Family Size	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

The Appellant's position

The appellant argued that all of the information resulting in the overpayment has been available to the ministry since the overpayment began accumulating. The information consistently showed that she had 24 pay periods in a year, and because the ministry took so long to identify this, she is now in a position of hardship. The appellant admits that the overpayment is partly her own fault. The appellant did not raise any argument against the existence of the declared overpayment.

The Ministry's position

The ministry argued that the onus was on the appellant to notify the minister of any change in circumstances as per the legislation and this was not done. The appellant consistently provided information relied upon by the ministry indicating that her declared earnings were for a full month of work, when these earnings were actually received semi-monthly, or over 24 pay periods in a year. Semi-monthly employment income was declared by the appellant until September 2012, when a review was undertaken because the child turned school age. The appellant provided information that she was now paid on a monthly basis, however a later audit determined that this was incorrect, and she continued to be paid for her employment semi-monthly. The undeclared earnings resulted in the family net income exceeding the child's income threshold, and she was not eligible for the child care subsidy; the appellant's eligibility was affected by the undeclared income received for the period January 1, 2012 to October 31, 2014. As per section 7(1) of the CCSA the appellant is liable to repay the child care subsidy for which she was not eligible.

The Panel's findings and conclusion

The CCSA provides for child care subsidies in specific circumstances, and reconsideration and appeal rights are set out in section 6(3), which allows for an appeal of a decision by the Employment and Assistance Appeal Tribunal.

There was no argument made by the appellant that she was entitled to all of the monies received as a child care subsidy during the timeframe January 1, 2012 through October 31, 2014. The evidence at the time of reconsideration established that a child care subsidy was paid based on the appellant's applications and submissions declaring she was paid for her employment once monthly. A later audit completed pursuant to the CCSA section 5 found that the appellant was paid over 24 pay periods in a 12 month timeframe, and accordingly there was undeclared income. As this audit increased the appellant's recognized earnings and the family month net income now exceeded the threshold set out in the CCSR section 7 income test as of September 2012, child care subsidies for which she was not eligible was paid to the appellant pursuant the CCSA section 7.

The panel finds that the ministry's decision that the appellant was ineligible for amounts of Child Care Subsidy provided under the *Child Care Subsidy Act* (CCSA) section 7, and the *Child Care Subsidy Regulation* (CCSR) section 7, from January 1, 2012 to October 31, 2014 because the family's monthly net income exceeded the child's income threshold as outlined in the CCSR section 7, resulting in payment in child care subsidies that the appellant was not entitled to and is required to repay, was a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the ministry's decision.