

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of July 7, 2015, in which the ministry found that the appellant was not eligible for the Child Care Subsidy for November 2012 to September 2013 and for July 2014 to March 2015 according to 1, 4,7,8,9 and 10 of the Child care Subsidy Regulation because the appellant failed to accurately report her relationship status and did not report support payments received. Specifically, the appellant received CCS payments for which she was not entitled and is liable to repay \$12237.83 overpayment under the Child Care Subsidy Act section 7.

PART D – Relevant Legislation

Child Care Subsidy Act section 7
Child Care Subsidy Regulation sections 1, 4, 7, 8, and 10.

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration was:

- Copy of Vital statistics for marriage and births.
- Copy of BC Assessment Roll Reports, BC land Titles, and mortgage documentation for the family home.
- Copy of Personal Property Registry documentation listing joint holdings.
- Copy of ICBC documentation listing joint registration and tenancy.
- An Equifax Report showing joint tenancy and joint accounts.
- Statement of Verification by the auditor of the ministry's Verification and Audit unit.
- Twelve email messages containing requests and responses between the ministry's auditor and the appellant focusing on reports, supporting documentation, critical dates, financial issues, overpayment of subsidy, support payments, the living situation of her husband, virtually all of the issues pertinent to this appeal.
- In email correspondence to the ministry's auditor the appellant states that she is getting a letter from her family doctor, from a day care employee, and from her 20 year old daughter who will vouch for the separation date of 2012 but there is no evidence to this effect in the material before the panel.
- Police reports for assault, Recognizance of Bail, Engagement and Recognizance of Bail.
- A letter from her employer.
- Affidavits from 3 persons concerning the appellant's day care provider who initiated the audit investigation. The president of a school parent group, a tenant and a friend all report incidents of harassment, bullying, aggression, dishonesty, incompetence and complaints to the police about this person.
- An affidavit from a friend reporting on the abuse suffered by the appellant and the husband's behavior.
- Affidavit from the appellant correcting errors.
- A copy of Order of Divorce dated October 23, 2014 reporting the date of separation as September 21, 2013 which was signed by the appellant.
- A copy of child and spousal support payments made by the appellant's husband for June 2014 to March 2015.
- A copy of Child Care Subsidy overpayment calculations.

A letter from the ministry dated April 7, 2015 advising the appellant that she is liable for the Child Care Subsidy overpayment of \$12,237.83 she was ineligible to receive.

In her request for reconsideration dated May 13, 2015 the appellant states that many facts in this package are very incorrect and twisted into false material and the ministry's auditor has misunderstood her, the dates are incorrect. (Her husband was arrested September 21, 2013 not December 21, 2013 as reported in the ministry's auditor statement).

She reports that she has not lived in a marriage like relationship since September 2012 and encloses a letters from her employer about her marital situation and the abuse she has suffered prior to the arrest of her husband. She reports that her husband neglected to change his address as he didn't

want her knowing where he was living. She states that at no time between September 2012 and today they have lived together.

She was unaware of the criteria for submitting financial information to the ministry, has high legal costs and is owed \$40, 000 for family maintenance payments.

The house was sold in September 2014; the Divorce Order was dated October 2014.

She has attached several documents including the proof of arrest, undertaking, conditions of bail and several affidavits from parents concerning a woman who provided day care, the problem behavior of her husband, the date of separation and a letter from the crime victim's assistance program awarding her 24 one hour sessions to assist her in dealing with the effects of an offence that occurred on September 21, 2013.

In her Notice of Appeal dated July 14, 2015, the appellant states that she "not was living in marriage type relationship and asks what proof is required to solidify this". It is unfortunate that her husband was negligent in changing his address upon their separation. She states that they did not live together and didn't divide assets until the divorce was being dealt with.

She admits he did visit the home on occasion. The appellant believes that he lived with his brother-in-law for over 6 months then with a friend and relatives and with several women. She did not know where he was living, she had no address for him except for an inn in the area. She reports that she had no access to bank statements to prove that rent was paid at any other residence. She accurately reports the abuse confirmed by the police reports and the approval for counseling by Victims Services.

PART F – Reasons for Panel Decision

The issue under appeal is the ministry's reconsideration decision of July 7, 2015, in which the ministry found the appellant not eligible for the Child Care Subsidy for November 2012 to September 2013 and for July 2014 to March 2015 according to 1, 4,7,8,9 and 10 of the Child care Subsidy Regulation because the appellant failed to report her relationship status and did not report support payments received and is liable for the overpayment was a reasonable application of the legislation or was reasonably supported by the evidence.

The following legislation applies:

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).

Definitions

1 (1) In this regulation:

“dependant”, in relation to a parent, means anyone who resides with the parent and who

(a) is the spouse of the parent,

(b) is a dependent child of the parent,

(c) shares with the parent income or assets or any necessities of life obtained with the income or assets, or

(d) indicates a parental role for the parent's child;

“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;

How to apply for a subsidy

4 (1) To be eligible for a child care subsidy, a parent must

(a) complete an application in the form required by the minister,

(b) supply the minister with the social insurance number of the parent and each adult dependant, and

(c) supply the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy.

(2) Only one parent in the family may apply for a child care subsidy.

(3) Repealed. [B.C. Reg. 187/2007, s. (b).]

(4) A parent ceases to be eligible for a child care subsidy on the date that is 12 months after the date of application under subsection (1) or this subsection, as applicable, unless, before that date, the parent completes an application referred to in subsection (1) and otherwise complies with that subsection.

[am. B.C. Regs. 218/2003, s. 1; 187/2007, s. (b).]

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.

Amount of subsidy

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

A -
B

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.

(2.1) Repealed. [B.C. Reg. 388/2004.]

(2.2) The child care subsidy for a child described in section 7 (2) is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care the child is receiving.

(3) If child care is required for less than 20 days per month, the child care subsidy will be prorated based on the daily rate set out in Schedule A or the daily parent fee, whichever is less.

(4) If the child care is

(a) arranged or recommended by staff delegated under the *Child, Family and Community Service Act*, after staff have

(i) offered support services or agreements to the child and family under section 16 (2) (a) of that Act,

(i.1) commenced an assessment under section 16 (2) (b.1) of that Act, or

(ii) commenced an investigation under section 16 (2) (c) of that Act, or

(b) provided through a Young Parent Program, and the child care provider operating the Young Parent Program confirms, in the form and manner specified by the minister, that the parent is participating in the Young Parent Program,

the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.

(5) In this section, "**parent fee**" means the payment made by the parent for a child care space.

[am. B.C. Regs. 390/2000, s. 1; 57/2002, s. 3; 388/2004; 493/2004, s. 2; 281/2005, s. 5; 271/2006, s. 2; 187/2007, s. (d); 143/2012, s. 3; 37/2013, Sch. s. 2; 89/2014, s. 1.]

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.

How child's threshold is calculated

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 Family Size	Column 2 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

(3) The base threshold income level for a child is increased as follows:

- (a) by \$125 per month for each person in the child's family who

- (i) is a child with special needs,
 - (ii) is a person with disabilities, or
 - (iii) has reached 65 years of age;
 - (b) by \$515 per month for a child who
 - (i) has not reached school age and is receiving child care
 - (A) in a licence-not-required child care setting, or
 - (B) in the child's own home as described in section 2 (c), or
 - (ii) is of school age and is receiving child care in any child care setting;
 - (c) by \$1 500 per month if the child has not reached school age and is receiving child care
 - (i) in a licensed child care setting, or
 - (ii) in a registered licence-not-required child care setting;
 - (c.1) Repealed. [B.C. Reg. 145/2011, s. 3 (d).]
 - (d) by \$100 per month if the child
 - (i) is a child with special needs, and
 - (ii) receives a type of child care described in section 2.
- [en. B.C. Reg. 281/2005, s. 7; am. B.C. Regs. 398/2007, s. 1; 145/2011, s. 3.]

Ministry's position:

The ministry confirmed its reconsideration decision and explained that in cases of Child Care Subsidy payments the ministry undertakes a rigorous investigative process using evidence to support financial dependency. Detailed documentation has been provided from many agencies, municipal, government, financial and businesses that had dealings with appellant and her husband. The ministry produced documents showing joint ownership of the home, joint mortgage documents, joint registrants on 2 cars, list of several assets owned jointly and an Equifax Report showing joint tenancy and joint accounts.

If the ministry finds evidence of financial dependency it is assumed that a marriage type relationship exists. This is the same criteria used by Revenue Canada's to determine marriage type relationships for tax purposes. The ministry argued that the information in the personal affidavits have less weight than the detailed documentation obtained from reliable sources and found no evidence that separation had occurred in 2012. The ministry determined that the date of separating was the date of arrest for assault when her husband was removed from the family home by the police, September 21, 2013 but up to that time she was living a dependent marriage like relationship.

The appellant received \$10624.81 for November 2012 to September 2013 based on single parent status while living in what the ministry determined was a dependent marriage –like relationship. According to Section 7 (1), overpayments, repayments and assignments: if a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay the government the amount to which the person was not entitled. The ministry ruled that the appellant must repay the child subsidy overpayment of \$12237.83 she was not eligible for.

During the period July 2014 and March 2015 the ministry determined that a further overpayment of \$1613.02 is owed under section 7 (1). She received child and spousal support of \$2489.50 average/month from her husband but did not report the payments to the ministry on her application

for the Child Care Subsidy. She, however, later reported these amounts to the auditor as noted in his Statement of Verification. Since these payments were not reported to the ministry on the original Child Care Subsidy application, they were not included in net income calculation and the child threshold calculation under Section 10 of the legislation. Under Section 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: (c) spousal or child support paid to a spouse or child in the family.

Panel Decision

The ministry concluded that a marriage type relationship existed until the date of separation (September 21, 2013) based on documentation of financial dependency, such as being co-owners of their property, joint registration on mortgage documents, joint registrants of two vehicles, joint tenants on the BC Land Title Documents for the property and an Equifax Report showing joint accounts.

Although the appellant insists the date of separation was September 2012, the panel finds that she has failed to provide any proof of this separation date and the onus is clearly on her to provide this proof.

The auditor requested third party verification and in email correspondence. The appellant states that she is getting a letter from her family doctor, a day care employee, and her 20 year old daughter who will vouch for 2012 separation date but such evidence was not submitted. She admitted to the ministry's auditor that her husband moved back home in December 2012 although she later recanted this statement.

The panel finds that the ministry's decision that a marriage type relationship existed until September 21, 2013, as stated in the Order Of Divorce signed by the appellant, is reasonably supported by the facts. The husband was in the home on that date and was removed from the home by the police when he was arrested for assault. Section 7 CCSR requires reporting of the family income and the appellant applied as a single person in November 2012 to September 2013 and as such received child care subsidy she was not eligible for as it was not based on the family income.

The ministry determined that a further overpayment of \$1613.02 is owed under section 7(1) CCSR as the appellant received child and spousal support of \$2489.50 average/month from her husband during the period July 2014 and March 2015 but did not report the payments to the ministry on her application for Child Care Subsidy. She did report receiving these amounts to the Verification and Audit Officer as noted in his statement of verification.

Under Section 9(1) CCSR, 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: (c) spousal or child support paid to a spouse or child in the family. The panel finds that the ministry's decision that the appellant received Child Care Subsidy for which she was not eligible during the period of July 2014 to March 2015 because she received child support from her husband which was not declared as required under section 9(1) CCSR, which resulted in incorrect net income calculations for the Child Care Subsidy and the appellant receiving a subsidy for which she was not eligible for is reasonably supported by the evidence.

Section 7(1) CCSA states that if child care subsidy is paid to for a person who is not entitled to it, that

APPEAL #

person is liable to repay the government the amount to which a person was not entitled.

The Panel confirms the Ministry's reconsideration decision that the appellant received child care subsidy for which she was not eligible for.