



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated November 3, 2015 made by the Ministry of Children and Family Development (the ministry) which determined that the appellant received Child Care Subsidy payments to which she was not entitled because she did not meet the citizenship requirements set out in the legislation.

PART D – Relevant Legislation

The relevant legislation is section 4 of the Child Care Subsidy Act (CCSA) and sections 1 and 5 of the Child Care Subsidy Regulation (CCSR).



PART E – Summary of Facts

The appellant is a single mother with one child. She is in Canada on a work visa, but had a permanent resident status application in process at all material times. She applied for the Child Care Subsidy (CCS) on the advice of the owner-operator of her child's daycare in July 2014. The application form asks the applicant to indicate whether they are a Canadian citizen, a permanent resident or a refugee. Applicants must be one of these in order to qualify for the CCS. The appellant did not check any of these boxes. Despite this, she was approved to receive \$630 per month from July 1, 2014 to June 30, 2015. On June 25, 2015, the appellant was informed by telephone that, upon review of her file, the ministry had determined that she did not qualify for the CCS because she did not meet the legislated citizenship requirements. In a letter dated September 18, 2015, the ministry informed the appellant that she was liable to repay the \$6,101.00 in CCS payments that she had received between July 2014 and April 2015.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant received CCS payments to which she was not entitled between July 2014 and May 2015 because she did not meet the legislated citizenship requirements was reasonably supported by the evidence or a reasonable application of the legislation.

The relevant legislation is section 4 of the CCSA and sections 1 (definition of applicant) and 5 of the CCSR.

Child care subsidies

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

Definitions

1 (1) In this regulation:

"applicant" means a parent who applies under section 4 for a child care subsidy . . .

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.

This was a written hearing. The appellant wrote in her Notice for Appeal:

I have never given false or misleading information when I applied the child subsidy. And the ministry reviewed my application and approved it in Aug. 2014. I have been authorized to receive the subsidy. Now they are insisting that I am not eligible because of my Canadian citizenship status. However, since I applied the subsidy, my Canadian citizenship and my son's Canadian citizenship status have never changed.

The appellant's advocate submitted a number of written arguments.

1. As the appellant was "induced" to apply for the CCS on the advice of her son's daycare owner-operator, the owner-operator should be responsible for the overpayment.
2. As the ministry processed the appellant's incomplete application, approved her to receive the CCS and allowed the CCS to be paid for nearly a year, this is a ministry administrative error such that the ministry bears responsibility for the overpayment and is perhaps guilty of "gross negligence".
3. The true beneficiary of the CCS payments was the appellant's son who is a Canadian citizen and should be able to attend daycare as any other Canadian citizen, so that this may be a breach of his human rights.
4. The appellant is required to pay provincial income tax and so should benefit from government programs in the same way as others who pay the tax.

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5. The appellant's application for permanent resident status has been accepted by the Federal government and is "in process".

The ministry relied on its reconsideration decision. That decision found that section 4 of the CCSA provides that the minister may pay CCS subject to the CCSR; section 1 of the CCSR defines "applicant" as the parent who applies for the CCS; section 5 of the CCSR requires that the applicant be a Canadian citizen, a permanent resident or a refugee to receive the CCS; and section 7 of the CCSA provides that if a person who is not entitled to it receives the CCS they must repay the amount received.

The panel considered the appellant's statement and each of the appellant's representative's arguments:

1. Determining whether the appellant was "induced" to apply for the CCS by her daycare provider and whether this would make the daycare provider liable is beyond the jurisdiction of the panel to determine. The panel's jurisdiction is limited to determining whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the legislation.
2. However, there are no legislative provisions dealing with administrative errors in regards to overpayments of the CCS. Under the provisions of the legislation the appellant was not eligible for the CCS and is liable to repay the amount received even if those payments were made as a result of a ministry administrative error. Determining whether the ministry is guilty of "gross negligence" is beyond the jurisdiction of the panel to determine. The panel's jurisdiction is limited to determining whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the legislation.
3. The legislation is clear that it is the citizenship status of the applicant (parent) rather than that of the applicant's child that is relevant. In this case, as the appellant did not meet the citizenship requirements, she did not qualify for the CCS. The citizenship status of her son is not relevant. Determining whether this is a breach of the child's human rights, or even referring this to the Human Rights Tribunal are beyond the jurisdiction of the panel.
4. According to the legislation, whether or not an applicant for the CCS pays income tax is not a qualification criteria. Even if it were, the criteria not met in this case is the citizenship status requirement, which the appellant did not meet.
5. The legislation requires that the applicant be "authorized under an enactment of Canada to take up permanent residence in Canada". In other words, the applicant must be a permanent resident at the time of the application for the CCS. The appellant was not a permanent resident at the time of completing the CCS application and so does not meet that requirement.

In this case, it is clear that the appellant did not meet the citizenship requirements in order to qualify for the CCS and received CCS payments to which she was not entitled.

Accordingly, the panel concludes that the ministry's decision that the appellant received CCS payments to which she was not entitled was a reasonable application of the legislation, and confirms the ministry's decision.