

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Children And Family Development (the ministry) dated December 17, 2015 which held that the appellant was not eligible for a Child Care Subsidy (CCS) from January 1, 2014 to August 31, 2015 because of her dependant marriage-like relationship with W during this period pursuant to Section 2(c)(i) and (ii) of the Child Care Subsidy Regulation and that there was an overpayment of \$5,990.96.

## PART D – Relevant Legislation

Child Care Subsidy Act, (CCSA), Sections 5 and 7.  
Child Care Subsidy Regulation, (CCSR). Sections 1, 2, 3, 4 and 14.  
Definitions of “dependant” and “spouse”.

## PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

### **The information before the ministry at the time of reconsideration included:**

- CCS Application form dated October 16, 2013 and signed by the appellant.
- CCS Child Care Arrangement form dated and signed by the appellant on January 24, 2014 and also signed by W, who indicated that he was the Child Care Provider and did not live in the same home as the child.
- CCS Child Care Arrangement form dated and signed by the appellant on March 15, 2014 and also signed by W, who indicated that he was the Child Care Provider and did not live in the same home as the child.
- CCS Child Care Arrangement form dated and signed by the appellant on August 18, 2014 and also signed by W, who indicated that he was the Child Care Provider and did not live in the same home as the child.
- CCS Application form dated September 22, 2014 and signed by the appellant who did not note a Child Care Provider.
- CCS Application form dated July 7, 2015 and signed by the appellant who indicated that W was the Child Care Provider with a start date of September 1, 2015 and an end date of September 1, 2016.
- 3 undated Employee earnings and benefits statements from the appellant.
- A written statement dated May 6, 2013 from the appellant's nephew regarding a personal experience.
- A written statement dated May 6, 2013 from the appellant's friend. (unreadable)
- A written statement dated November 27, 2015 from W, who indicated that he is the appellant's 2<sup>nd</sup> cousin; that he travelled from his Mom's to the college and sometimes stayed with friends; that when his friend's place was condemned he asked if he could stay at the appellant's; that he has stayed at the appellant's; that he started babysitting for the appellant in January 2014; and that he is not in any type of relationship with the appellant.
- A written statement dated December 2, 2015 from the foster son of the appellant who indicated that he has lived at the appellant's since January, 2013 and he had hoped to be the child's care provider himself but was denied. He stated that he shared a bedroom with W who stayed there when he was taking courses and otherwise lives at his mom's. The foster son indicated that the appellant often lets family and friends stay with her for short times.
- Income Tax Return Information sheets for years 2012, 2013 and 2014 which indicate W's address to be the same as his mother's.
- Owner's Certificate of Insurance and Vehicle License for a vehicle owned by the mother of W at her address.
- A Consumer Report dated May 4, 2015 which identifies W as the spouse of the appellant and living at the same address.
- A Safety Plan from the child's biological mother dated August 20, 2015.
- A response from the appellant's landlord received by the ministry on October 28, 2015 which notes that the appellant lives with her daughter and adopted daughter.
- A copy of an e-mail dated November 12, 2015 from a Child Safety social worker who indicated

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that they have been re-involved with the family since May 5, 2015 and that the appellant has stated that she and W have been in a common-law type relationship for approximately the last 2 years and as of October, 2015 W is no longer living with her family and that they had broken up.

In her Request For Reconsideration dated December 2, 2015, the appellant stated that the Child Safety social worker came to her home and asked about the appellant's biological daughter. The appellant indicated that her biological daughter stays in the home once in a while and when she is there W supervises. The appellant stated that the social worker did not ask her about any relationship. In her written statement also dated December 2, 2015, the appellant indicated that she had spoken to someone from the ministry, who asked her personal questions, was sarcastic and treated her as if she was stupid. The appellant stated that while she tried explaining everything, she was not thinking straight as they had just buried her grandfather so she just answered okay, whatever and then hung up. The ministry representative asked for W's tax papers and claimed that his car insurance was under her address.

In the Notice of Appeal dated December 23, 2015, the appellant indicated "Wrong information" and asked why W's mother couldn't be contacted. Also the appellant stated that the landlord knows them by numbers and not names.

Prior to the hearing, on February 1, 2016 a submission addressed to the ministry was received from the mother of W who indicated that she doesn't know why she is being involved, and heard that she had talked to a ministry representative which she denies.

Pursuant to section 22(4) of the Employment and Assistance Act, the panel admits the statement in the Notice of Appeal as being consistent with and in support of evidence of the appellant's circumstances that were before the ministry at the time of reconsideration.

The panel finds that the last submission provided by the mother of W and received after the reconsideration decision also supports the evidence that was before the ministry at the time of reconsideration, and accordingly admissible for review.

**In the reconsideration decision, the ministry referred to the following:**

- Information received on May 4, 2015 from the Consumer Report confirmed that W had the same address as the appellant and prior to that he had provided the address of his mother. While confirming W's mother's address, the ministry learned that the appellant had not resided at that property for many years.
- On September 28, 2015 in a telephone conversation with the ministry, the appellant confirmed that she and W, the care provider for her adopted daughter were living together in a marriage-like relationship at her residence since 2013.
- On November 12, 2015, the ministry determined from the appellant's landlord that a man identified as W had been living with the appellant for the last year and was believed to be her boyfriend.

On February 3, 2016, the ministry noted that it will rely on the information already submitted.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of December 17, 2015 in which the ministry declared the appellant ineligible for a child care subsidy from January 1, 2014 to August 31, 2015 because of her dependant marriage-like relationship with W during this period pursuant to Section 2(c)(i) and (ii) of the Child Care Subsidy Regulation and that there was an overpayment of \$5,990.96.

### Relevant Legislation:

#### Child Care Subsidy Act Information and verification

**Section 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

**Section 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).

#### Child Care Subsidy Regulation

##### Definitions:

"**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;

### **What types of child care may be subsidized?**

**Section 2** The minister may pay a child care subsidy if the child care is provided

- (a) in a licensed child care setting,
- (b) in a licence-not-required child care setting,
- (b.1) in a registered licence-not-required child care setting, or
- (c) in the child's own home, but only if the child care is provided by someone other than a person who
  - (i) is a relative of the child or a dependant of the parent, and
  - (ii) resides in the child's home.

[am. B.C. Reg. 281/2005, s. 2.]

### **Circumstances in which subsidy may be provided**

**Section 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.

(3) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]

(4) The restriction in subsection (1) (a) does not apply in respect of child care provided in a licensed preschool unless the child care is provided to a child of school age.

[am. B.C. Regs. 57/2002, s. 2; 262/2002, s. 3; 294/2002; 387/2004, s. 2; 121/2005, s. 2; 145/2011, s. 2.]

### **How to apply for a subsidy**

**Section 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.

### **Notifying the minister of change in circumstances**

**Section 14** The notification required by section 5 (2) of the Act must be given in writing or by telephone,

- (a) as soon as possible after any change in circumstances affecting the eligibility of the parent, and
- (b) to an employee in the Child Care Subsidy Service Centre.

The ministry argues that the appellant was ineligible for CCS during the period January 1, 2014 to August 31, 2015 and is liable to repay \$5,990.96 because of her dependant marriage-like relationship with W during this period. The ministry argues further that the appellant did not report this relationship to the ministry, nor demonstrate any circumstances in which subsidy may be provided as per Section 3 of the CCSR. In addition, W was identified on the form submitted to the ministry as the care provider for the appellant's daughter while living in the child's own home.

The appellant argues that the ministry received the wrong information. She indicates that she had spoken to someone from the ministry, who asked her personal questions, was sarcastic and treated her as if she was stupid. The appellant stated that while she tried explaining everything, she was not thinking straight as they had just buried her grandfather so she just answered okay, whatever and then hung up. The appellant argues that the landlord does not know his tenants by name but only by numbers and that when the social worker came to her home, she was not asked about any relationship. Rather than contact the property of W's mother, the appellant states that the ministry should have contacted his mother personally. Also, there are 4 letters sent to the ministry in support of the appellant and the ones from W and from the appellant's foster son indicate that the appellant does not have any type of relationship with W.

### **Panel Decision**

The CCSR Section 1 definition of "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 panel finds that on 2 separate occasions, once to the Verification and Audit officer on September 28, 2015 and then to the Child Care social worker in October, 2015, the appellant informed the ministry that she was in a marriage-like relationship with W. During the period in question, W indicated on the CCS Child Care Arrangement forms that he was not living in the appellant's residence where he was providing care for her adopted daughter. However, the Consumer Report notes the appellant's address as where W currently resides. The panel finds that W has not provided another address for the time period in question while knowing that the ministry had confirmed with his mother's property that he has not resided there in years. The CCSR Section 1 definition of "dependant", in relation to a parent, means anyone who resides with the parent and who (a) is the spouse of the parent. For these reasons the panel finds that that the ministry reasonably determined that W meets the definition of spouse as per the legislation.

Further, the minister may pay a child care subsidy if the child care is provided in the child's own home, but only if the child care is provided by someone other than a person who is a relative of the child or a dependant of the parent, and resides in the child's home pursuant to CCSR Section 2 (c)(i) and (ii). The panel finds that the ministry reasonably determined that CCS was paid while W resided with the appellant in her home while providing care for her daughter for the period in question.

The panel also finds that the ministry reasonably determined that the appellant is liable to repay to the government CCS of \$5,990.96 for the period January 1, 2014 to August 31, 2015 pursuant to CCSA Section 7(1) 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.