

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 22, 2017, which found that the appellant was ineligible for amounts of Child Care Subsidy she received from April, 2016 to April, 2017 and that there was an overpayment that must be repaid. The ministry determined that the appellant did not comply with the requirements of sections 15(1) and 16(1) of the Child Care Subsidy Regulation (CCSR) in submitting billing in the manner and form specified and that she did not record the reasons for absences in an attendance register and therefore received funding for which she was not eligible.

**PART D – RELEVANT LEGISLATION**

Child Care Subsidy Act (CCSA) Sections, 5: 7 (1), 7: (4), and  
Child Care Subsidy Regulations (CCSR) sections 15 and 16.

## **PART E – SUMMARY OF FACTS**

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated August 1, 2017 advising her of their decision with overpayment calculation forms.
- Daycare monthly attendance forms for April, 2016 to April, 2017.
- The appellant's Request for Reconsideration, signed September 5, 2017.
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The appellant is an owner/operator of a daycare and has received Childcare Subsidy funding for some of the children who attended the daycare.

The ministry conducted an audit of the appellant's daycare attendance records, covering the period of 1 April 2016 to 30 April 2017, in July of 2017.

The audit found that the documentation provided by the appellant did not indicate reasons for a child's absence from day care, as required by CCSR section 16(2). Thus the audit concluded that an overpayment had been made in relation to seven children, which the applicant was to repay to the ministry in the amount of \$11,264.04

The appellant appealed the decision on 5 September 2017 and submitted further documentation.

The Ministry reconsideration decision of 22 September 2017 upheld the prior decision that the appellant was overpaid and must repay the required amount.

### **Notice of Appeal:**

In her notice of appeal dated 5 October 2017, the appellant stated as reasons for appeal that she had submitted paperwork proving that the children were in her care. As well, she argued that she does not owe the amount due. The appellant also argued that the ministry did not make its decision within the allotted timeframe. The appellant stated that the original letter she received concerning the audit was for Child Care Operating Funding not Child Care Subsidy.

### **Appeal Submissions:**

In her appeal submissions, the appellant argued that she has had seven inspections over the seven years she has operated her business and it was never mentioned that she needed to record reasons for a child's absence. The appellant also argued that, at reconsideration, she did not know that this was a requirement or she would have provided this information. She stated that she has since reviewed the regulations and understands that this is a requirement. The appellant explained that she has kept a logbook for the daycare that, in conjunction with information from the children's parents, has allowed her to establish reasons for most of the children's absences. The appellant also submitted further documentation providing the reasons for the children's absences from day care.

In its appeal submission, the ministry acknowledged that if the appellant's appeal material been received before the reconsideration decision a different amount might have been requested for repayment.

### **Admissibility:**

The panel finds that the information provided in the Notice of Appeal and appellant's appeal submissions is admissible in accordance with Section 22 (4)(b) of the *Employment and Assistance Act*, because provides elaboration on the material previously submitted. However, the panel finds that the additional documentation provided by the appellant with her appeal submissions to document the reasons for the children's absences is not admissible in accordance with Section 22 (4)(b) of the *Employment and Assistance Act*, because this information was not before the ministry at reconsideration.

The panel finds that the ministry's appeal submission consists of argument and will be considered as such.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is the reasonableness of the ministry decision,xc which found that the appellant was ineligible for amounts of Child Care Subsidy she received from April, 2016 to April, 2017 and that there was an overpayment that must be repaid. The ministry determined that the appellant did not comply with the requirements of sections 15(1) and 16(2) of the Child Care Subsidy Regulation (CCSR) in submitting billing in the manner and form specified and that she did not record the reasons for absences in an attendance register and therefore she had received funding for which she was not eligible.

### **Legislation**

#### **Child Care Subsidy Act**

##### **Section 7 – Overpayments, repayment and assignments.**

- (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).

##### **Section 5: Information and Verification**

- (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.

## Child Care Subsidy Regulation

### Accounts and payment

**15** (1) Child care providers must submit billing for child care subsidies to the minister in the manner and form specified by the minister.

(2) The minister must pay

- (a) child care subsidies for child care described in section 2 (c) directly to the parent, and
- (b) child care subsidies for child care described in section 2 (a), (b) or (b.1) directly to the child care provider.

(3) Despite subsections (1) and (2), a non-profit agency providing child care support services may pay the caregiver and submit accounts to the ministry for reimbursement.

(4) If a licence issued for a child care setting under the *Community Care and Assisted Living Act* is cancelled, the minister may accept, for up to 30 days after the date the licence is cancelled, billing for subsidized child care provided in that setting.

(5) No child care subsidy will be paid to a child care provider under subsection (2) (b) for a day on which the child care setting is closed, unless the day is a statutory holiday.

(6) In subsection (5), "**statutory holiday**" means any day, except Sunday, that is listed as a holiday in the *Interpretation Act*.

### If a child is absent or is withdrawn without notice

**16** (1) The minister may continue to pay a child care subsidy for a period of up to 2 weeks for child care provided in a licensed child care setting, a registered licence-not-required child care setting or a licence-not-required child care setting, if a child is absent because

- (a) the child is on vacation, or
- (b) the child or parent is ill.

(2) The child care provider must record the reason for the absence in an attendance register.

(3) If a child for whom a child subsidy is paid is withdrawn without notice from a child care setting, other than the child's own home, or at any time before the end of a month and the vacancy is not filled, the minister may pay the following to the operator of the setting:

- (a) the monthly child care subsidy, if during that month the child attended the setting for 1/2 or more of the month;
- (b) 1/2 of the monthly subsidy, if the child attended the setting for less than 1/2 of the month.

**Repayment Amount:**

The appellant states in her appeal submissions that she is appealing the amount of the requested repayment. However, as section 7(5) of the CCSA specifies, a decision as to the amount of repayment for which a person is liable is not open to appeal under section 6(3). As such, the panel finds that it is beyond the authority of the tribunal to address the amount of the repayment. Furthermore, the panel notes that the repayment amount is presently unknown, as the ministry has indicated in the reconsideration decision that a recalculation of amounts owed for four of the children will be conducted.

**Eligibility:**

The appellant's position is that she was not made aware of the requirement to keep a register with reasons for absences for each child; however she now realizes that this was a requirement under section 16 of the CCSR. She disputes the amount of the repayment required and asks for a recalculation based on the records she has provided.

The ministry's position is that the appellant failed to maintain and provide records as required by sections 15 and 16 of the Child Care Subsidy Regulation and is thus subject to a repayment under section 7 of the CCSA. The ministry noted, however, that if the appellant's appeal material been received before the reconsideration decision a different amount might have been requested for repayment.

The panel notes that appellant has acknowledged that she did not submit the documentation for reason for a child's absence from the day care center as required by CCSA Section 5, and Section 16 (2) of the CCSR. However, she argues that she was unaware of this requirement and this was an unintentional mistake that she will not make in the future. The appellant also acknowledges that ignorance in relation to requirements does not absolve her of responsibility for abiding by the regulations. The panel concludes that the question of whether the appellant failed to comply with the requirements set out in the CCSR is not in dispute. The panel finds that the appellant did not comply with the requirements of CCSR 16 (2) by not recording the reasons for the absence of the children from day care. As such, the panel finds that the ministry's determination that the appellant received funds for which she was not eligible is reasonable. The panel also finds the ministry's determination that the appellant is liable to repay amounts received for which she was not eligible is reasonable. And, as noted above, it is not within the panel's jurisdiction to make a determination as to the ministry's determination on the repayment amount.

The tribunal finds that the ministry decision was reasonably supported by the evidence and confirms the decision. The appellant is not successful on appeal.