

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated April 10, 2018, made by the Ministry of Children and Family Development (the Ministry), which determined that the Appellant was ineligible for a portion of the Child Care Subsidy (CCS) paid for the months of January 2015 through February 2016, resulting in an overpayment in the amount of \$5,502.10.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CSA) Sections 1, 4, 5 and 7(1)

Child Care Subsidy Regulation (CCSR) Sections 2, 8(1) and (1.1) and Schedule A

PART E – SUMMARY OF FACTS

The Appellant is in receipt of a CCS for four children (the Children) in her care. The Children have all reached school age.

The evidence before the Ministry at the time of the reconsideration decision included:

1. Two page letter from the Appellant to the Ministry dated March 5, 2018 requesting reconsideration of the Ministry's decision and expressing disagreement with the Ministry's findings regarding the form and structure of the child care arrangement between the Appellant and the child care provider (the Provider);
2. Two page letter from the Provider to the Ministry dated March 5, 2018 expressing disagreement with how the Ministry described the child care provided for the Children in its decision and outlining the duties that the Provider undertook on the children's behalf;
3. One page letter from the vice principal of the school attended by the Children verifying that the Children "have not been under (the school's) care afterschool hours because (the school) does not offer (an) afterschool child care program";
4. Letter from the Ministry to the Appellant dated March 11, 2016 advising the Appellant that the Ministry has reviewed information submitted by the Appellant regarding the CCS and determined that the Appellant is eligible for a reduced amount of CCS to a maximum of \$607 per month beginning March 1, 2016, appending the relevant legislation and advising the Appellant that she had 20 business days from receipt of the letter to request a reconsideration of the Ministry's decision;
5. Two page Ministry form titled "Child Care Subsidy Assessment", approved on March 11, 2016 showing a "Plan Effective Date" of March 1, 2016 and a "Plan Expiration Date of June 30, 2016 and indicating a total monthly CCS in the amount of \$607;
6. Letter from the Ministry to the Appellant dated January 3, 2018 advising the Appellant that the Ministry has reviewed the CCS paid to the Appellant for the Period January 2015 to February 2016 and determined that the Appellant had received \$5,502.10 of subsidy funding to which she was not entitled under Section 3 of the CCSR, and appending a "list of documents and relevant legislation that support this decision";
7. Four page Ministry form titled "Child Care Subsidy Child Care Arrangement" dated April 27, 2015 providing the name and address of the Provider and the child care hours and daily rates charged by the Provider for each of the four Children;
8. Five page Ministry form titled "Child Care Subsidy Application" dated September 22, 2014 signed by the Appellant and the Appellant's spouse listing the names of the four Children who require child care;
9. Five page Ministry form titled "Child Care Subsidy Application" dated October 8, 2015 signed by the Appellant and the Appellant's spouse listing the names of the four Children who require child care; and

10. Two page Ministry document entitled “Child Care Subsidy Overpayment Calculation” prepared and signed by the Ministry and dated December 29, 2017 in the name of the Appellant, listing the names of the Children and the overpayment amounts by month from January 2015 through February 2016 and indicating a total overpayment for the 13 month period of \$5,502.10.

Additional information

In her Notice of Appeal dated May 07, 2018, the Appellant stated that she disagreed with the reconsideration decision because the information collected from the Children’s care provider was inaccurate.

On June 11, 2018, a community social services agency provided a three page letter (the June 9 Letter) to the Employment and Assistance Appeal Tribunal which was shared with the Ministry on June 12, 2018. The letter, dated June 9, 2018 and addressed “To Whom it May Concern”, provided additional background information regarding the Provider, her spouse and the four Children and asked the Ministry to reconsider its previous decision “based on the context of the situation, the lack of other support options, and the extenuating circumstances of the four (Children) in question”.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and “oral and written testimony in support of the information and records” before the Ministry when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant based on information available to the Ministry on the date that it made its reconsideration decision.

The Panel considered the information contained in the NOA to be argument.

The Ministry did not object to the admittance of the written testimony included in the June 9 Letter. The Panel considered most the information contained in the June 9 Letter to be in support of the information and records before the Ministry when the decision being appealed was made. The following information contained in the June 9 Letter was not admitted by the Panel because the Panel determined that it was not information or in support of information that the Ministry had at the time that the reconsideration was made:

- The Appellant and her spouse had not applied for the Canada Child Tax Benefit between January 1, 2015 and February 28, 2016 even though “they were probably eligible”; and
- In March 2017 the Appellant and her spouse “signed a 54.01 custody agreement that entitled them to an increased \$3,600 per month payment for caring for their grandchildren”.

Oral Evidence Presented at the Hearing

At the hearing, the Appellant provided background information with respect to how she gained custody of the four children in 2008 and became their guardian in 2017, and a history of her relationship with her daughter (the children's mother) and the children. The Appellant explained how her medical condition did not allow her to look after the children fulltime, and how she had engaged the Provider to assist her. She stated that she was "happy to have (the Provider) in her life", and that the Provider looked after the children "out of the goodness of her heart". However, the Appellant acknowledged that the Provider was not good with paperwork and did not keep detailed, daily records of when she looked after the children, or how many she cared for on a given day.

The Appellant stated that she did not agree with some of the conclusions reached by the adjudicator. In particular she stated that the Provider looked after much more than just transportation to school in the morning on school days because, as indicated in the Provider's letter dated March 5, 2018 referred to above, she also came to the house early each day to make sure that all four children were prepared for school, had eaten breakfast and packed their lunch and homework before driving them to school.

The Appellant also explained that she signed over the monthly subsidy cheques that she received from the Ministry to the Provider who put those funds in trust for the children's education. The Provider told the Appellant that she did not need the funds from the subsidy payments as she had a pension. The Appellant stated that after legally becoming guardian to the children in 2017 she arranged with the Ministry to stop receiving the CCS, even though there were still significant costs associated with raising the children. She gave the example of one child recently requiring braces for his teeth, \$5,000 of the cost of which was not covered by medical insurance. She explained that she didn't know how the Ministry had calculated the overpayment amount and that its demand for payment of \$5,502.10 was causing her a great deal of stress

At the hearing, the Ministry provided a brief summary of the legislation and explained that the required repayment amount was calculated by a Ministry adjudicator as a result of a detailed review of the hours that the Ministry determined the Provider had spent looking after the children over the 13 month period in question based on the verbal evidence given by the Provider in response to questions posed by the adjudicator when she was interviewed over the telephone in March 2016. The Ministry explained that the amount of the overpayment was determined largely based on two factors they believed to be true: the Provider only looked after the two youngest of the four children most of the time, particularly on school days, and that in the school day mornings she only drove them to school, and driving children to and from school was not considered child care for the purpose of calculating the amount of the CCS.

The Ministry acknowledged that "it would have been helpful if the provider had kept track" of the times she looked after the children each day, how many of the children were looked after, and the activities she undertook on their behalf. The Ministry further acknowledged that the actual details of the child care provided over the 13 month period "was very vague" and that some of the basis of their calculation was rough estimates. The Ministry also referred to the last paragraph in the reconsideration decision which states "*The ministry finds that the information does not establish that the ministry made an administrative error. Therefore you are liable to repay the amount that was overpaid.*", and explained that in some cases the Ministry will chose not to recover a deemed overpayment of the CCS because it acknowledged that it had made an administrative error.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's reconsideration decision which found that the Appellant was ineligible for a portion of the CCS paid for the months of January 2015 through February 2016, resulting in an overpayment in the amount of \$5,502.10, was a reasonable application of the legislation or a reasonable interpretation of the legislation in the circumstances of the Appellant.

The relevant legislation is as follows:

Child Care Subsidy Act

Definitions

1 In this Act:

"**child care**" means the care and supervision of a child in a child care setting, other than

- (a) by the child's parent, or
- (b) while the child is attending an educational program provided under the *School Act*, the *Independent School Act* or a law of a treaty first nation in relation to kindergarten to grade 12 education;

"**child care setting**" means any setting in which child care is provided, including

- (a) a facility licensed under the *Community Care and Assisted Living Act* to provide child care, and
- (b) the child's own home;

"**child care subsidy**" means a payment made under this Act to or for a parent to subsidize the costs of child care;

"**parent**" includes a person with whom a child resides and who stands in place of a parent of the child ...

Child care subsidies

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

Information and verification

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

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

What types of child care may be subsidized?

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 ...

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 ...

Schedule A

Item	Column 1	Column 2A	Column 2B	Column 3A	Column 3B
	Type of Child Care	4 Hours or Less Daily unless both before and after school care provided		More than 4 Hours Daily or both before and after school care provided	
		\$ Per Day	\$ Per Month	\$ Per Day	\$ Per Month
Subsidy Rates for Licence-not-required Child Care Settings					
13	F3 – LNR (children 37 months and over)	8.85	177.00	17.70	354.00
Subsidy Rates for Licensed Child Care Settings					
Licensed Group Care and Multi-Age Child Care					
4	G4 – Group (children of school age)	10.38	207.50	20.75	415.00
Subsidy Rates for Care Surrounding School Day – All Child Care Settings Except Child's Own Home with Respect to Additional Child and 1st Child of School Age if Another Younger Child in Family is H1 or H2					
18	L2 – children of school age not in child's own home child care setting ...	8.75	175.00	10.50	210.00

* * * *

The Ministry's position is that lack of documentation available regarding the care provided and the information given to the Ministry by the Provider indicate that the children did not utilize the full amount of the CCS that was issued on their behalf between January 1, 2015 and February 28, 2016, and as a result the Ministry was not satisfied that the amount of the total CCS provided over that 13 month period accurately reflected the actual need for child care.

The Appellant's position is that the information obtained verbally from the Provider does not accurately reflect the child care services she provided between January 1, 2015 and February 28, 2016, and that the funding received from the Ministry over that period was the appropriate CCS amount.

The Panel's Decision

Section 2 of the CCSR states that the Ministry may pay a CCS if the child care is provided in a licence-not-required child care setting. The Ministry does not dispute that the children in the custody of the Appellant qualified for the appropriate CCS over the period in question. Schedule A of the CCSR provides the amount of the CCS provided for periods of less than four hours a day and for periods in excess of four hours a day, together with the maximum monthly amounts in each case under different circumstances, including subsidy rates for licence-not-required child care settings for children over 37 months of age (F3), subsidy rates for care surrounding the school day for children of school age not in child's own home child care setting (L2) and subsidy rates for licensed child care settings for children of school age (G4), all of which apply at different times between January 1, 2015 and February 28, 2016 in the Appellant's circumstances, as agreed by both parties. The Panel finds that the Ministry reasonably determined that the hourly and daily rates for care codes F3, L2 and G4 as set out in Schedule A of the CCSR were the appropriate hourly and daily rates in the circumstances of the Appellant.

The Ministry also states in its reconsideration decision that the Appellant was initially authorized to receive "a special needs supplement for (one of the children) in the amount of \$150 at the S2 rate." The Panel can find no reference to a "special needs supplement" or the "S2 rate" in the legislation, nor was the Ministry able to explain what this was at the hearing. The Panel further notes that there is no reference to this payment in any of the written evidence provided other than a passing reference to it in the reconsideration decision, and therefore the Panel finds that if this supplement does exist, it is not relevant in this appeal.

The Panel notes that, in its reconsideration decision, the Ministry found that the Provider's involvement with the children in the morning on school days was limited to driving them to school, and that, while "the care provider can ... provide transportation services, (he or she) cannot claim subsidy for this arrangement". As a result, the Ministry did not provide a calculation of a subsidy for before school care in the Child Care Subsidy Overpayment Calculation. The Panel also notes that both the Appellant and the Provider gave evidence at reconsideration that in the morning before school the Provider would ensure that the children were properly dressed and fed, and that they had packed their lunches and homework before driving them to school. The Panel further notes that the Ministry did not reference this evidence in its reconsideration decision or make any allowances in its recalculation of the amount of the eligible CCS for before school care. Therefore the Panel finds that the Ministry did not consider all of the evidence presented by the Appellant in reaching its reconsideration decision.

Based on the adjudicator's review, and as set out in its reconsideration decision, the Ministry determined that the Appellant was entitled to a CCS which was \$5,502.10 less than the CCS that had been paid over that period, and has provided a Child Care Subsidy Overpayment Calculation to support that conclusion. The Panel notes that four of the amounts listed in the Child Care Subsidy Overpayment Calculation column titled "Subsidy Issued", specifically the February and March 2015 care code F3 amounts of \$500.40 in each case, the June 2015 care code F3 amount of \$360.90, and the September 2015 care code F3 amount of \$270.00 cannot be calculated by any combination of the hourly or monthly rates provided in Schedule A of the CCSR. When asked how these calculations were arrived at, the Ministry was unable to explain them. Therefore, even if the Ministry's recalculation of the number of children and the number of hours for which care was provided in each month over the 13 month period was reasonably determined, the Panel finds that the Ministry has made an error in calculating the subsidy issued

amount by using an hourly or monthly rate that is not provided in the appropriate part of Schedule A of the CCSR. As a result, the Panel finds that the Ministry's calculation of an overpayment in the amount of \$5,502.10, was not a reasonable application of the legislation in the circumstances of the Appellant.

Conclusion

The Panel finds that the Ministry's decision that the Appellant was not eligible for a portion of the Child Care Subsidy (CCS) paid for the months of January 2015 through February 2016, resulting in an overpayment in the amount of \$5,502.10, was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore the Ministry's decision is rescinded. The Appellant is successful in her appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:*Employment and Assistance Act*Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Simon clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/06/14

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/14

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/14