

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of January 22, 2019 in which the ministry determined that the appellant was not eligible for child care subsidy for the period of October and August 2017 due to not reporting an increase in income, pursuant to section 5 and 7 of the Child Care Subsidy Act, and sections 7-14 of the Child Care Subsidy Regulation.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act Sections 5, 7
Child Care Subsidy Regulation Sections 7-14
Child Care Subsidy Regulation Schedule A

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

- 1) **January 24, 2017** – the appellant was issued a benefit plan for Child Care Subsidy for the period of January 1, 2017 to November 30, 2017. The ministry notes that the rate was set for 10 full days in one month, for two children, in the amount of \$177.00/month for each child. The subsidy was based on the appellant's employment, which paid \$24.78 per hour, 7.5 hours/day, 2 days per week. The total income at that time was assessed to be \$1, 626.80.
- 2) **October 20, 2017** – the Child Care Subsidy Service Centre (CCSSC) conducted a review of your file for renewal of the Child Care Subsidy. The ministry noted that your renewal fax was received by the CCSSC on September 27, 2017. The application was signed on September 22, 2017. Attached to the application was two paystubs, along with page 2 of the Child Care Arrangement form. After a review of the information, the ministry left a voice message for appellant requesting for her to confirm when the change of circumstances occurred; specifically, when the number of days she worked and the days she required care for increased.
- 3) **November 6, 2017** – in a telephone conversation with the CCSSC regarding the renewal of the appellant's subsidy, she advised the ministry that her work schedule and hourly wage increased beginning September 1, 2017 onward. The appellant's wage increased to \$29.50/hr and from 2 days a week to 4 days a week.
- 4) **August 22, 2018** – the verification and Audit Officer sent a letter to the appellant's employer, requesting a copy of her pay statement for the period of January 1, 2017 to August 19, 2017, in order to review the file.
- 5) **September 6, 2018** – the Audit Officer received a four-page Employee History Detail Journal. The information outlined the appellant's hourly wages and net pay for the period of January 7, 2017 and August 25, 2017.
- 6) **October 19, 2018** – the ministry recalculated the eligibility for Child Care Subsidy using the information provided by the employer, the Audit Officer found that you were ineligible to receive amounts of subsidy that you received for the period of August 2017 to October 2017, resulting in an overpayment of \$1,062.00 that the appellant is liable to pay.
- 7) **July 27, 2017** - attached to the Request for Reconsideration is a letter from the employer dated, July 27, 2017 which outlines the increase in pay and wage beginning in July, 2017 until March 2018.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of January 22, 2019 in which the ministry determined that the appellant was not eligible for child care subsidy for the period of October and August 2017 due to not reporting an increase in income, pursuant to section 5 and 7 of the Child Care Subsidy Act, and sections 7-14 of the Child Care Subsidy Regulation.

The relevant section of the legislation is as follows:

Child Care Subsidy Act**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:

(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.

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).

Income test

7 (1) An applicant is not eligible for a child care subsidy if the family's adjusted annual income equals or exceeds the following:

- (a) \$111 000 for a child receiving child care in a licensed child care setting;
- (b) \$85 000 for a child receiving child care in a registered licence-not-required child care setting;
- (c) \$70 000 for a child receiving child care
 - (i) in a licence-not-required child care setting, or
 - (ii) in the child's own home as described in section 2 (c).

Amount of subsidy

8 (1) In this section:

"full time child care" means child care for which the minister may pay a child care subsidy that is provided for the equivalent of at least 20 full days per month;

"full time subsidy amount", in relation to a child receiving part time child care, means the monthly child care subsidy determined in accordance with subsection (3), (4) or (5), as applicable, that would apply if the child were receiving full time child care;

"number of full days" means the number of full days per month for which the minister may pay a child care subsidy;

"number of half days" means the number of half days per month for which the minister may pay a child care subsidy;

"parent fee" in relation to a parent, means the fee the parent is charged by the applicable child care provider for child care for which the minister may pay a child care subsidy;

"part time child care" means child care for which the minister may pay a child care subsidy that is provided for less than the equivalent of 20 full days per month.

(2) For the purposes of applying the definitions of "full time child care" and "part time child care" in subsection (1), 2 half days are the equivalent of one full day.

(3) If a family's adjusted annual income is less than or equal to the following, the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving:

- (a) \$45 000 for a child receiving child care in a licensed child care setting;

(b) \$39 000 for a child receiving child care in a registered licence-not-required child care setting;

(c) \$24 000 for a child receiving child care

(i) in a licence-not-required child care setting, or

(ii) in the child's own home as described in section 2 (c).

(4) If a family's adjusted annual income exceeds the applicable amount under subsection (3) (a), (b) or (c), the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount determined in accordance with the applicable formula in Schedule A, whichever is less, for the type of child care the child is receiving.

(5) Despite subsections (3) and (4), the monthly child care subsidy for a child described in section 7 (2) who is receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving.

(7) The monthly child care subsidy for a child receiving part time child care is the parent fee or the amount determined in accordance with the following formula, whichever is less, for the type of child care the child is receiving:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(8) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided in a licensed preschool is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$\left[\frac{\text{number of half days}}{20} \right] \times \text{full time subsidy amount}$$

(9) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care that is care surrounding school day is the parent fee or the amount determined in accordance with

the following formula, whichever is less, for that type of child care:

$$\left[\frac{(\text{number of half days} \times 0.83333) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(10) If the child care is arranged or recommended by staff delegated under the *Child, Family and Community Service Act*, after staff have

- (a) offered support services or agreements to the child and family under section 16 (2) (a) of that Act,
- (b) begun an assessment under section 16 (2) (b.1) of that Act, or
- (c) begun an investigation under section 16 (2) (c) of that Act,

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.

Calculation of family's adjusted annual income

9 (1) In this section, "previous year" means the year previous to the current calendar year:

(2) In relation to a child care subsidy that is to be determined based on a family's adjusted annual income, the minister must calculate the family's adjusted annual income as follows:

- (a) by adding, for the applicant and the applicant's spouse, if any, the annual income for the person determined under subsection (3) or (4), as applicable;
- (b) by deducting from the amount calculated under paragraph (a) any applicable amounts under subsection (5).

(3) For the purposes of subsection (2), the minister must calculate the annual income of the applicant and the applicant's spouse, if any, by

- (a) determining the person's income for the previous year, or for the year before the previous year if a notice of assessment is not available for the person for the previous year, as
 - (i) the amount reported on line 150 of the person's notice of assessment if there has been no notice of reassessment for the applicable year, or
 - (ii) if there was a notice of reassessment for the person, the amount reported

on line 150 of the notice of reassessment, and

(b) deducting from the income determined under paragraph (a) all amounts, if any, reported on line 145 of the notice of assessment or notice of reassessment that applies under paragraph (a).

(4) If a notice of assessment is not available for either of the 2 calendar years before the current year with respect to the applicant or the applicant's spouse, if any,

(a) the applicant may give to the minister a statement, in the form required by the minister, attesting to the applicant's or the applicant's spouse's, as applicable, total income from all sources except social assistance payments, stated in Canadian dollars, for the previous year, and

(b) on receiving income information satisfactory to the minister under paragraph (a), the minister may determine the annual income of the person based on that information.

(5) For the purposes of this section, the following deductions may be made, if applicable:

(a) \$0 for the first dependant in the family who is not a child with special needs;

(b) \$2 000 for each additional dependant in the family;

(c) \$3 000 for each child with special needs in the family.

Income review

9.1 (1) In this section:

"estimated increased annual income" means the estimated income from all sources except social assistance payments, stated in Canadian dollars, for the applicant, or the applicant's spouse, if any, for the 12-month period beginning the month after the month in which the income of the applicant or the applicant's spouse, as applicable, increased.

(2) Despite section 9 (3), if the income of the applicant or of the applicant's spouse, if any, has decreased,

(a) the applicant may request the minister to conduct an income review by giving to the minister a statement, in the form required by the minister, attesting to the estimated decreased annual income of the applicant or the applicant's spouse, as applicable, and

(b) the minister may determine the annual income of the person based on that information.

(7) Despite section 9 (2), on receiving a statement referred to in subsection (6) of this section, if the minister is satisfied that the income increase may result in a decrease in the amount of child care

subsidy, the minister must calculate the family's adjusted annual income as follows:

(a) by adding, for the applicant and the applicant's spouse, if any,

(i) the lesser of

(A) the annual income of the person referred to in subsection (6) whose income increased determined in accordance with subsection (6) (b), or

(B) the annual income of that person determined in accordance with section 9 (3) or (4), as applicable, and

(ii) the annual income of the applicant or the applicant's spouse, if any, determined in accordance with section 9 (3) or (4), if applicable;

(b) by deducting from the amount calculated under paragraph (a), the applicable amounts under section 9 (5).

(8) If the minister is satisfied that the family's adjusted annual income calculated under subsection (7) will result in a decrease in the amount of child care subsidy, the minister must redetermine the amount of child care subsidy using the family's adjusted annual income calculated under subsection (7) as the basis for the calculation under section 8.

Notifying the minister of change in circumstances

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 Service Centre

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant was not eligible for child care subsidy during the period between August to October 2017, based on the fact that the family income exceeded the amount that would qualify for a full or a partial subsidy as legislated under sections 7 and 8 and Schedule A of the Child Care Subsidy Regulation.

The ministry held that the information faxed by the appellant through CCSSC on September 27, 2017 – Child Care Subsidy Renewal, dated September 22, 2017 declared that there were no changes in information and that she would be required to promptly supply information to the Child Care Subsidy Program if there is any change to any of the information she provided in the application.

The position of the ministry is such that the appellant knew she had a substantial increase in wage and hours worked, and although she informed the CCSSC of the change verbally in November 2017, the appellant did not note the income increase in the renewal application submitted in September 2017. At the hearing, the ministry explained that unless the renewal declaration indicates a change, the ministry would not consider a review mid-

benefit cycle. Moreover, the ministry held that the appellant knew of the income change in July of 2017, and had received a letter from the employer dated July 27, 2017 highlighting these changes. The ministry's position is that the letter could have been attached to the September 2017 declaration the appellant made at the time of the renewal. The overpayment equates to \$1,062.80.

The appellant's position is that it was the responsibility of the ministry to consider the information provided to the CCSSC in November, 2017 and the paystubs attached to the renewal application, which showed the increase in income. At the hearing, the appellant argued that the ministry staff should have addressed the change when she notified the CCSSC, and that the overpayment she incurred be assumed by the ministry.

As outlined, in Section 5(2) of the Child Care Subsidy Act, 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, and in **Section 14 of the Child Care Subsidy Regulation**, 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 Service Centre.

The panel finds that the evidence establishes that the appellant did provide notification on November 6, 2017 in a telephone conversation to the Child Care Subsidy Service Centre that the wage and hours had increased. However, the panel considered that the appellant knew in July 2017 that her hours and wage had increased, and when she submitted the renewal child care subsidy application in September 2017, she signed a declaration that no changes had occurred. The panel considered that the appellant knew or ought to have known that the changes occurred within the benefit period, and would have been of interest to the ministry in determining her eligibility.

The panel finds that the ministry acted reasonably when determining the appellant did not adequately inform the ministry of the changes when she submitted her renewal application for the relevant benefit period. While it is acknowledged the appellant had a phone conversation with the CCSSC about the increase, the conversation took place approximately three months after the change had occurred, and the declaration on the September 2017 renewal application should have also reflected this change.

Accordingly, the panel finds that the decision of the ministry to determine the appellant was provided an child care subsidy overpayment of \$1062.00 for the period between August and October 2017 is reasonably supported by the evidence. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the *Employment and Assistance Act*. The appellant therefore is not successful in her appeal.

APPEAL NUMBER

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

PRINTNAME

Jennifer Armstrong

DATE(YEAR/MONTH/DAY)

2019/05/06

PRINTNAME

Bill Haire

DATE(YEAR/MONTH/DAY)

2019/05/06

SIGNATUREOFMEMBER

PRINTNAME

Wayne Reeves

DATE(YEAR/MONTH/DAY)

2019/05/06

SIGNATUREOFMEMBER