

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (ministry) Reconsideration Decision dated August 21, 2018, which found that the appellant was ineligible for amounts of Child Care Subsidy she received from July 1, 2017 to April 30, 2018, resulting in an overpayment which must be repaid.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA) sections 5, 7

Child Care Subsidy Regulation (CCSR) sections 1 Definitions, 2, 14

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A Child Care Subsidy Child Care Arrangement form signed by the appellant and the child care provider July 1, 2017, with the box "Licence-not-required (LNR) ticked.
- A ministry Child Care Subsidy Overpayment Calculation form dated June 11, 2018 for the period July 1, 2017 to April 1, 2018, with a total of \$5,196.00.
- A letter from the ministry to the appellant dated June 11, 2018, advising her of their findings.
- The appellant's Request for Reconsideration, signed August 7, 2018, with a note from the appellant: "It states that child care subsidy is payable if child care is provided in a licence-not-required child care setting. This is exactly what happened. Most unfortunately, I do not have any documents to support my request. We didn't do anything wrong."
- A copy of a marriage certificate dated April 28, 2007.
- A copy of the appellant's driver's licence.
- Copies of the appellant's children's birth certificates.
- A copy of a Child Care Subsidy Request to Renew signed by the appellant June 15, 2017.
- Copies of the appellant's pay stubs for the period September 4 to October 1, 2017.
- A copy of a pay stub, dates illegible.

The appellant included a letter with her Notice of Appeal to the Tribunal. It states that in 2017, she switched child care providers to a family friend. When the paper work was filed, she and the provider were "hesitant of the legal language used in the description of the different types of caregivers that may provide care that are covered by Child Care Subsidy". She wrote that at the beginning of the initial application process both she and the provider called the toll-free contact number to confirm that their arrangement of the family friend coming from out of town to watch the children in her daughter's house was acceptable. They did not document the conversation. They did not receive any conflicting information and went ahead with the application. It was not their intention to file an incorrect application that was unacceptable to the ministry. They were not being deceptive in any way. They feel they both tried to confirm the validity of the application to the best of their abilities with the resources they had available. They were nothing but honest and forthcoming in their application, and a number of ministry officials she has spoken to have described the issue as a clerical error or an administration error and informed her that the application should not have been approved in the first place. They didn't do anything wrong on purpose. She is a single mother supporting 3 children and does not have \$5,000.

The panel accepts the appellant's letter as argument.

The ministry, in the Reconsideration Decision, wrote that the appellant made an application for Child Care Subsidy (CCS) in 2017 indicating that her two children would be attending licence-not-required (LNR) child care setting starting July 1, 2017. It was approved. On April 18, 2018, the ministry was made aware that the care provider was providing LNR while providing Child's Own Home Child Care to another client in their home, while LNR care is defined as taking place in the home of the primary caregiver. The ministry cancelled the benefit plan as a result of an ineligible child care arrangement. The ministry wrote that they then confirmed with the provider that she was providing in home care to another client in their home. The amount of CCS paid for the period was \$5,196.00, and due to the ineligible child care setting, the ministry determined that this was an overpayment which the appellant is liable to repay.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which found that the appellant was ineligible for amounts of Child Care Subsidy she received from July 1, 2017 to April 30, 2018, resulting in an overpayment which must be repaid.

Legislation**CCCA****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).

CCSR**Definitions**

1 (1) In this regulation:

"licence-not-required child care setting" means a child care setting that

- (a) is in the home of the primary caregiver,
- (b) need not be licensed under the *Community Care and Assisted Living Act*, and
- (c) is not registered under the Child Care Resource and Referral Program in accordance with the standards specified in the Child Care Resource and Referral Program Standards Manual that is on file with the office of the Deputy Minister,

but does not include the family home of a child being cared for in the setting;

What types of child care may be subsidized?

2 The minister may pay a child care subsidy if a type of child care set out in Column 2 of a table in the Schedule 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.

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.

The appellant's position is that she and the child care provider each telephoned the ministry to confirm that the proposed arrangement of the provider coming from out of town to watch the children in her daughter's home was acceptable. She argued that she did not intend to be deceptive and submits that she attempted to confirm the validity of the arrangement in calls to the ministry. She does not have the resources to repay the amount the ministry calculated as an overpayment.

The ministry's position is that the appellant received a \$5,196.00 in Child Care Subsidy that she was not entitled to, and she is liable to repay it. Because the care was provided outside of the home of the primary caregiver, it was not an eligible arrangement under section 2 of the CCSR.

The panel notes that the overpayment calculation by the ministry appears to be incorrect. The amounts for both children are repeated for the date 2018-Apr-01. This would reduce the total by \$420.00.

The panel notes the requirements stated in section 2 of the Child Care Subsidy Regulation, 'What types of child care may be subsidized, subsection (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. It is apparent from the appellant's written statement that she and the child care provider were aware that the provider was coming from out of town to care for the children in her daughter's house. The ministry subsequently found that the caregiver was providing care to another client in their home.

The appellant described the child care arrangement in her application of July 1, 2017 as 'Licence-not-required (LNR) day care. She wrote in her letter to the Tribunal that she and the caregiver both called the ministry to confirm that the arrangement was acceptable. The conversation with the ministry is not documented. Due to this, the panel cannot rely on this statement, and also notes that there is no discretion in the applicable legislation that would allow a ministry worker to approve a child care arrangement that is not provided for under the Regulation.

The panel concludes that the ministry reasonably determined that the appellant's child care arrangement was not eligible for funding, the appellant was therefore not entitled to it and it must be repaid pursuant to section 7(1) of the Child Care Subsidy Act.

The panel confirms the ministry decision.

The appeal is not successful.

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

PRINT NAME

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 July 16

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 July 16

PRINT NAME

Marilyn Mellis

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 July 16