

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”), dated January 22, 2020 (the “Reconsideration Decision”). In the Reconsideration Decision, the Ministry found that the Appellant had received child care subsidies for which the Appellant did not qualify and was liable to repay the Ministry \$8,532.71. The reasons that the Ministry found that the Appellant was not eligible for the subsidies which had been provided by the Ministry included:

- having a family income that made the Appellant eligible only for a child care subsidy that was less than what the Appellant had been issued; and
- having not met the criteria in section 3 of the Child Care Subsidy Regulation (“CCSR”).

**PART D – RELEVANT LEGISLATION**

Child Care Subsidy Act (“CCSA”), sections 5 and 7  
CCSR, sections 3, 7, 8, 9, 10, and 14 Schedule A

**PART E – SUMMARY OF FACTS**

The Appellant is a recipient of child care subsidies under the CCSA and CCSR.

The information before the Ministry at the time of the Reconsideration Decision included:

- the Ministry's eligibility calculator worksheets for the Appellant and the Appellant's child for the period covering July 1, 2015 to July 31, 2018;
- a handwritten note from a person in whose home the Appellant lived for part of the time that the Ministry had found the Appellant had been overpaid the child care subsidy. The note set out that:
  - the Appellant had lived at the home alone with the Appellant's child from 2014 to 2017; and
  - the author of the letter had previously made a mistake when they had previously informed the Ministry that the Appellant's family had lived at the home (the "Landlord Letter");
- a statutory declaration (the "Declaration"), sworn November 6, 2019, from a person who knows the Appellant's spouse in which the person declared that:
  - the Appellant's spouse had substance abuse issues starting in 2014;
  - the Appellant and the Appellant's spouse lived separately between July, 2014 and July, 2018; and
  - the Appellant's spouse had lived with the person during the time of separation;
- an e-mail from an MLA to the Ministry's verification officer for the Appellant's file;
- a 2018 T4 from an employer of the Appellant, showing that the Appellant earned \$17,283.69 in employment income in 2018 (the "Appellant's 2018 T4");
- a 2018 T4 from an employer of the Appellant's spouse, showing that the Appellant's spouse earned \$18,000.00 in employment income in 2018 (the "Spouse's 2018 T4");
- a typed note, dated March 6, 2019, from the same person who swore the Declaration, which described the addictions of the Appellant's spouse and stated that the Appellant had lived with the person when the Appellant and the Appellant's Spouse were separated but without confirming what timeframe that was;
- a letter, dated February 24, 2019, confirming that the Appellant's spouse had sought treatment at an addiction recovery facility between July 25, 2018 and August 21, 2018;
- a Medical Condition form, dated November 4, 2019, completed by the Appellant's doctor, which sets out that the Appellant had a medical condition that kept the Appellant from working and caring for the Appellant's child in parts of 2017 and 2018 (the "Doctor's Note");
- a letter from the Appellant's spouse's doctor, dated March 4, 2019, setting out that the Appellant's spouse had been a patient since 2013 and had issues with street drugs and alcohol, was admitted to hospital, and had a suspended driver's licence in 2017 (the "Doctor's Letter");
- an Employment Details form showing where the Appellant and the Appellant's spouse worked between January 1, 2016 and March 31, 2018;
- a note from the Appellant's doctor, dated June 4, 2019, describing the Appellant having been advised to rest and not return to work until March 12, 2018 (the "Doctor's Note");
- an Employee History Detail Journal from one of the employers of the Appellant's spouse for the period from January 1, 2018 to December 31, 2018, showing that the Appellant's spouse had earned \$14,835.73 in net income in 2018 with that employer (the "2018 Pay Summary");
- monthly pay stubs from June 30, 2017 to October 31, 2017 for the Appellant's spouse, showing that the Appellant's spouse had a net income of \$12,888.63 in that period;
- monthly pay stubs from June 30, 2015 to December 31, 2015 for the Appellant's spouse, showing net income of \$12,748.08 in that period (the "Spouse's 2015 Pay Stubs");
- monthly pay stubs for April 30, 2015 and May 31, 2015 for the Appellant's spouse, in the amounts of \$1,128.46 and \$1141.53, respectively, and had net earnings of \$2,2699 from the start of this employment up to May 31, 2018;
- pay stubs for the Appellant for May 15, 2018 and May 31, 2018, in the amounts of \$821.78 and \$731.04, respectively (the "2018 Pay Stubs");
- a summary of the Appellant's earnings and deductions for the period from July 17, 2015 to December 22, 2017 (the "2015 to 2017 Pay Summary") and a questionnaire completed by the Appellant's employer for that period. The summary indicates that the Appellant had net earnings of:
  - \$9,113.94 in 2015;

- \$12,559.83 in 2016; and
- \$16,343.20 in 2017;
- a BC Assessment Roll Report (the “BC Assessment”) describing the details of a home purchased by the Appellant and the Appellant’s spouse on June 26, 2017 (the “House”);
- a declaration signed by the Appellant and the Appellant’s spouse on May 25, 2015, confirming their understanding that they were required to supply information to the Child Care Subsidy Program if there were any changes to the information provided on their application (the “Application”);
- a letter, dated September 25, 2018, from the Ministry’s verification officer to the owners of a home the Appellant and the Appellant’s spouse lived at prior to the purchase of the home described in the BC Assessment;
- address histories for the Appellant and the Appellant’s spouse from both the Insurance Corporation of British Columbia (ICBC) and the Medical Services Plan (“MSP”), showing that the Appellant started using the House as a mailing address for ICBC on July 25, 2018 and for MSP on December 11, 2017 and the Appellant’s spouse started using the House as a mailing address for ICBC on December 7, 2017 and for MSP on February 14, 2018;
- an Overpayment calculation chart, dated November 28, 2019 (the “November 28 Chart”) which calculated an overpayment of child subsidy of \$8,532.71;
- a letter from the Ministry’s verification officer, dated November 28, 2019 to the Appellant;
- an Overpayment calculation chart, dated July 25, 2019 (the “July 25 Chart”), which calculated an overpayment of child subsidy of \$9,072.81;
- a letter from the Ministry’s verification officer, dated July 25, 2019 to the Appellant;
- an Overpayment calculation chart, dated February 14, 2019 (the “February 14 Chart”), which calculated an overpayment of child subsidy of \$12,942.65;
- a letter from the Ministry’s verification officer, dated February 14, 2019 to the Appellant;
- A Verification and Audit Request for Reconsideration, submitted by the Appellant, dated December 29, 2019, in which the Appellant states that the Appellant was the only person caring for the Appellant’s children during the time that the Appellant’s spouse was suffering from an addiction condition;

In the Notice of Appeal, the Appellant stated that the Appellant had been a single parent, caring for the Appellant’s child, during a period in which the Appellant’s spouse was spending income on “street drugs and alcohol addiction.”

The Appellant did not attend at the hearing. This was unfortunate because the Appellant could have shed light on some of the discrepancies and contradictions in the documentary evidence and provided more detailed explanations of the family’s circumstances during the years in which the overpayments were calculated. Nevertheless, the panel proceeded with the hearing of the appeal in the Appellant’s absence after confirming that the Appellant had received confirmation of the date and time of the hearing.

At the hearing of the Appeal, the Ministry relied on the November 28 Chart which can be summarized as follows:

| Time Period                   | Monthly Overpayment Amount | Number of months | Reason for Overpayment   |
|-------------------------------|----------------------------|------------------|--------------------------|
| July, 2015 to November, 2015  | \$337.61                   | 5                | Excess income            |
| December, 2015                | \$132.22                   | 1                | Excess income            |
| March, 2016                   | \$429.61                   | 1                | Not eligible for subsidy |
| April, 2016                   | \$80.36                    | 1                | Excess income            |
| April, 2016 & May, 2016       | \$185.77                   | 2                | Administrative error     |
| June, 2016 & July, 2016       | \$1.85                     | 2                | Excess income            |
| June, 2016 & July, 2016       | \$19.62                    | 2                | Administrative error     |
| August, 2016 to October, 2016 | \$21.47                    | 3                | Excess income            |
| February, 2017                | \$550.00                   | 1                | Not eligible for subsidy |
| March, 2017                   | \$137.50                   | 1                | Excess income            |
| April, 2017 to May, 2017      | \$21.47                    | 2                | Excess income            |
| June, 2017 to October, 2017   | \$550.00                   | 5                | Not eligible for subsidy |
| December, 2017                | \$537.46                   | 1                | Not eligible for subsidy |

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|                           |          |   |                          |
|---------------------------|----------|---|--------------------------|
| April, 2018 to July, 2018 | \$472.40 | 4 | Not eligible for subsidy |
|---------------------------|----------|---|--------------------------|

The panel admits the statements in the Notice of Appeal as evidence that was not part of the record before the Ministry but which the panel considers to be reasonably required for a full and fair disclosure of all matters related to the Reconsideration Decision, pursuant to section 22(4) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for all of the child care subsidies that were paid and that the Appellant is liable to repay the Ministry \$8,532.71 in overpayments of a child care subsidy between July, 2015 and July, 2018.

*Legislation*

Section 5 of the CCSA requires applicants to provide specific information and to authorize the Ministry to obtain information to verify eligibility:

**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.

Section 7 of the CCSA provides for repayment to the Ministry where an overpayment of a child care subsidy occurs:

### **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).

Section 3 of the CCSR describes the basic conditions for eligibility for child care subsidies:

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

**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.

Section 7 of the version of the CCSR in force during the relevant period provided for an additional income test for eligibility for a child care subsidy:

#### **Income test**

- 7** (1) An applicant is not eligible for a child care subsidy for a child receiving a type of child care if
- (a) the family's monthly net income exceeds the child's threshold, and
  - (b) the result of the calculation under section 8 (2) for the child is not more than zero.
- (2) Subsection (1) does not apply to an applicant if the child care is for a child
- (a) in relation to whom the applicant has entered into an agreement with a director under [section 8](#) of the *Child, Family and Community Service Act*,
  - (b) in relation to whom the applicant, by agreement under [section 94](#) of the *Child, Family and Community Service Act*, exercises a director's rights or carries out a director's responsibilities,
  - (c) of whom the applicant has interim or temporary custody under an order of the court under [section 35 \(2\) \(d\)](#), [41 \(1\) \(b\)](#), [42.2 \(4\) \(c\)](#), [49 \(7\) \(b\)](#) or [54.01 \(9\) \(b\)](#) of the *Child, Family and Community Service Act*,
  - (d) of whom the applicant has custody under an order of the court under [section 42.2 \(4\) \(a\)](#) of the *Child, Family and Community Service Act*, if the applicant is the other person referred to in [section 42.2 \(4\) \(a\) \(i\)](#),

(e) who is receiving assistance under the authority of the [Child in the Home of a Relative Program Transition Regulation, B.C. Reg. 48/2010](#), and the applicant is the relative with whom that child resides.

Section 8 of the version of the CCSR in force during the relevant time period spelled out the mechanism for calculating the amount of a child care subsidy when eligibility was established:

**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.

(2) If a family's monthly net income exceeds a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is

$$A - B$$

where

A = the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care;

B = the amount of A for the child, divided by the sum of the amounts of A for all children in the family receiving child care described in [section 2](#), multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold.

(2.1) Repealed. [B.C. Reg. 388/2004.]

(2.2) The child care subsidy for a child described in section 7 (2) is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care the child is receiving.

(3) If child care is required for less than 20 days per month, the child care subsidy will be prorated based on the daily rate set out in Schedule A or the daily parent fee, whichever is less.

(4) If the child care is

(a) arranged or recommended by staff delegated under the [Child, Family and Community Service Act](#), after staff have

(i) offered support services or agreements to the child and family under section 16 (2) (a) of that Act,

(i.1) commenced an assessment under section 16 (2) (b.1) of that Act, or

(ii) commenced an investigation under section 16 (2) (c) of that Act, or



(b) provided through a Young Parent Program, and the child care provider operating the Young Parent Program confirms, in the form and manner specified by the minister, that the parent is participating in the Young Parent Program, 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.

(5) In this section, "**parent fee**" means the payment made by the parent for a child care space.

Section 9 of the version of the CCSR in force at the relevant time described how a family's income was calculated for the purposes of determining the amount of a child care subsidy:

#### **How monthly net income is calculated**

**9** (1) The monthly net income of a family is calculated by adding the income that each person in the family receives per month, including, but not limited to, the following:

- (a) employment income;
- (b) self-employment income;
- (c) spousal support paid to a spouse;
- (d) employment insurance benefits;
- (e) workers' compensation benefits;
- (f) training allowances;
- (g) investment income, including interest;
- (h) tips and gratuities;
- (i) money earned by providing room and board, less essential operating costs;
- (j) rental income of any kind, less essential operating costs;
- (k) grants, bursaries or scholarships, except
  - (i) the amount for tuition or books, and
  - (ii) with respect to grants provided under the British Columbia Student Assistance Program, \$50 for each week covered by the grant.

(2) When calculating net income under subsection (1), the following are considered not to be income:

- (a) income earned by a dependent child;
- (b) the basic family care rate for foster homes;
- (c) assistance paid under the [Employment and Assistance Act](#) or assistance paid under the [Employment and Assistance for Persons with Disabilities Act](#);
- (d) a family bonus;
- (e) the basic child tax benefit;

- (f) a goods and services tax credit under the [Income Tax Act](#) (Canada);
- (g) a sales tax credit under the [Income Tax Act \(British Columbia\)](#);
- (h) the BC earned income benefit;
- (i) maintenance paid for, and passed on to, a person with disabilities or a person aged 19 or older;
- (j) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (k) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (l) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (m) post adoption assistance payments provided under [section 28 \(1\)](#) or [30 \(1\)](#) of the [Adoption Regulation, B.C. Reg. 291/96](#);
- (n) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (o) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program;
- (p) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Ages 6-18 Program;
- (q) payments granted by the government of British Columbia under [section 8 \[agreement with child's kin and others\]](#) of the [Child, Family and Community Service Act](#);
- (r) payments granted by the government of British Columbia under an agreement referred to in [section 93 \(1\) \(g\) \(ii\)](#) of the [Child, Family and Community Service Act](#);
- (s) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (t) loans provided under the British Columbia Student Assistance Program or under a student loan program of the federal government, the government of a province or the government of a jurisdiction outside Canada;
- (u) a benefit paid under [section 4 \(1\)](#) of the [Universal Child Care Benefit Act](#) (Canada);

(v) the low income climate action tax credit under [section 8.1](#) of the *Income Tax Act (British Columbia)*;

(w) the climate action dividend under [section 13.02](#) of the *Income Tax Act (British Columbia)*.

Section 10 of the version of the CCSR in force at the relevant time described how a child's threshold was calculated for the purposes of determining the amount of a child care subsidy:

**How child's threshold is calculated**

**10** (1) The threshold income level for a child receiving a type of child care is calculated by adding

- (a) the base threshold income level applicable under subsection (2) for the child's family, and
- (b) the amounts applicable to the child under subsection (3).

(2) The base threshold income level for a child's family is the amount set out in Column 2 opposite the family's size in Column 1:

| Column 1<br>Family Size | Column 2<br>Base Threshold<br>Income Level                     |
|-------------------------|--|
| 2 persons               | \$1 082  |
| 3 persons               | \$1 275  |
| 4 persons               | \$1 418  |
| 5 persons               | \$1 571  |
| 6 persons               | \$1 704  |
| 7 persons               | \$1 837  |
| 8 persons               | \$1 960  |
| 9 persons               | \$2 083  |
| 10 persons              | \$2 206  |
| more than 10 persons    | \$2 206 for the first 10 plus \$123 for each additional person |

(3) The base threshold income level for a child is increased as follows:

- (a) by \$125 per month for each person in the child's family who
  - (i) is a child with special needs,
  - (ii) is a person with disabilities, or

- (iii) has reached 65 years of age;
- (b) by \$515 per month for a child who
  - (i) has not reached school age and is receiving child care
    - (A) in a licence-not-required child care setting, or
    - (B) in the child's own home as described in [section 2](#) (c), or
  - (ii) is of school age and is receiving child care in any child care setting;
- (c) by \$1 500 per month if the child has not reached school age and is receiving child care
  - (i) in a licensed child care setting, or
  - (ii) in a registered licence-not-required child care setting;
- (c.1) Repealed. [B.C. Reg. 145/2011, s. 3 (d).]
- (d) by \$100 per month if the child
  - (i) is a child with special needs, and
  - (ii) receives a type of child care described in [section 2](#).

Section 14 of the CCSR requires recipients of subsidies to notify the Ministry of any changes to their circumstances:

**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.

Finally, Schedule A to the version of the CCSR in force at the relevant time spelled out the rates for child care subsidies for various types of care:

**Schedule A**

[en. B.C. Reg. 398/2007, s. 2; am. B.C. Regs. 337/2008, s. 7; 145/2011, s. 4; 56/2012.]

(Section 8)

| Item | Column 1           | Column 2A   | Column 2B    | Column 3A   | Column 3B    |
|------|--------------------|---|--------------|---|--------------|
|      | Type of Child Care | 4 Hours or Less Daily<br>unless both before and<br>after school care provided |              | More than 4 Hours Daily<br>or both before and<br>after school care provided |              |
|      |                    | \$ Per Day  | \$ Per Month | \$ Per Day  | \$ Per Month |

| <b>Subsidy Rates for Licensed Child Care Settings</b>                        |  |       |        |       |        |
|--|--|-------|--------|-------|--------|
| <b>Licensed Group Care and Multi-Age Child Care</b>                          |  |       |        |       |        |
| 1  | G1 – Group (children under 19 months)  | 18.75 | 375.00 | 37.50 | 750.00 |
| 2  | G2 – Group (children 19 months and over but under 37 months)                                   | 15.90 | 317.50 | 31.75 | 635.00 |
| 3  | G3 – Group (children who have reached 37 months of age but who have not reached school age)    | 13.75 | 275.00 | 27.50 | 550.00 |
| 4  | G4 – Group (children of school age)  | 10.38 | 207.50 | 20.75 | 415.00 |
| <b>Licensed Family Child Care and In-Home Multi-Age Child Care</b>           |  |       |        |       |        |
| 5  | J1 – L Family (children under 19 months)   | 15.00 | 300.00 | 30.00 | 600.00 |
| 6  | J2 – L Family (children 19 months and over but under 37 months)                                | 15.00 | 300.00 | 30.00 | 600.00 |
| 7  | J3 – L Family (children who have reached 37 months of age but who have not reached school age) | 13.75 | 375.00 | 27.50 | 550.00 |
| 8  | J4 – L Family (children of school age)   | 10.38 | 207.50 | 20.75 | 415.00 |
| 9  | Repealed. [B.C. Reg. 145/2011, s. 4 (d).]  |       |        |       |        |
| <b>Licensed Preschool</b>  |  |       |        |       |        |
| 10   | N1 – (children who have reached 30 months of age but who have not reached school age)          | 11.25 | 225.00 | –     | –      |
| <b>Subsidy Rates for Licence-not-required Child Care Settings</b>            |  |       |        |       |        |
| 11   | F1 – LNR (children under 19 months)  | 10.95 | 219.00 | 21.90 | 438.00 |
| 12   | F2 – LNR (children 19 months and over but under 37 months)                                     | 10.10 | 202.00 | 20.20 | 404.00 |
| 13   | F3 – LNR (children 37 months and over)   | 8.85  | 177.00 | 17.70 | 354.00 |
| <b>Subsidy Rates for Registered Licence-not-required Child Care Settings</b> |  |       |        |       |        |
| 14   | R1 – RLNR (children under 19 months)   | 15.00 | 300.00 | 30.00 | 600.00 |

|  |  |       |        |       |        |
|--|--|-------|--------|-------|--------|
| 15   | R2 – RLNR (children 19 months and over but under 37 months)  | 15.00 | 300.00 | 30.00 | 600.00 |
| 16   | R3 – RLNR (children who have reached 37 months of age but who have not reached school age)   | 13.75 | 275.00 | 27.50 | 550.00 |
| 17   | R4 – RLNR (children of school age)   | 10.38 | 207.50 | 20.75 | 415.00 |
| <b>Subsidy Rates for Care Surrounding School Day –<br/>All Child Care Settings Except Child's Own Home with Respect to Additional Child<br/>and 1st Child of School Age if Another Younger Child in Family is H1 or H2</b> |  |       |        |       |        |
| 18   | L2 – children of school age not in child's own home child care setting and 1st child of school age in child's own home child care setting unless another child in the family, younger than school age, is in category H1 or H2               | 8.75  | 175.00 | 10.50 | 210.00 |
| <b>Subsidy Rates in the Child's Own Home Child Care Setting<br/>(as described in <a href="#">section 2 (c)</a>)</b>  |  |       |        |       |        |
| 19   | H1 – (1st child under 19 months)   | 9.85  | 197.00 | 19.70 | 394.00 |
| 20   | H2 – (1st child 19 months and over)  | 7.95  | 159.00 | 15.90 | 318.00 |
| 21   | H3 – (2nd child under 19 months)   | 4.95  | 99.00  | 9.90  | 198.00 |
| 22   | H4 – (each additional child, whether or not receiving care surrounding school day, including 1st child of school age receiving care surrounding school day if another child in the family, younger than school age, is in category H1 or H2) | 3.68  | 73.50  | 7.35  | 147.00 |

*Panel Decision*

From July, 2015 to July, 2018, there were two primary reasons why the Appellant was found to have received an overpayment of a child care subsidy. The first reason was that the Appellant's net family income was higher in certain periods than the net income upon which the Ministry based the subsidy that had been paid to the Appellant. The second reason was that the Appellant had received a subsidy in several months for which the Appellant was not eligible for any subsidy because the Appellant did not meet the criteria set out in section 3 of the CCSR.

The first time period for which the Ministry found an overpayment of the child care subsidy was from July 2015 to December, 2015. In this period, the Appellant was paid a child care subsidy of \$635.00 per month, based on a pay stub from the Appellant's spouse's employer, showing an amount of \$1,181.88 until November, 2015. The Appellant's subsidy was recalculated at \$429.61 starting in December, 2015 after the Appellant notified the Ministry of the changes in employment and provided pay stubs as proof of income.

The first time period for which the Ministry found an overpayment of the child care subsidy was from July 2015 to December, 2015. In this period, the Appellant was paid the full applicable child care subsidy of \$635.00, based on net income below the basic child threshold of \$1,275.00 plus the additional threshold of \$1,500.00 at the G2 rate. The panel notes that the category of care, the age of the Appellant's child, and the size of the family was not in issue in the appeal. The amount of the subsidy was based on the Appellant's initial application which only included the pay stubs from the Appellant's Spouse's employer, showing an amount of \$1,181.88 until November, 2015. The Appellant's subsidy was recalculated at \$429.61 starting in December 2015, after the Appellant notified the Ministry of the changes in employment for both the Appellant and the Spouse and provided pay stubs as proof of income.

Following investigation by the Ministry's verification officer, the Ministry determined that the average monthly income from July, 2015 to November, 2015 of the Appellant and the Appellant's Spouse was actually \$3,450.22, resulting in actual eligibility of just \$297.39 per month for that period. The average income calculated by the Ministry's verification officer is consistent with the Spouse's 2015 Pay Stubs and the 2015 to 2017 Pay Summary. It is not clear how the Ministry calculated the Appellant's subsidy to be \$429.61 starting in December, 2015 at the time the Appellant advised of the change and later calculated the eligible subsidy to be \$297.39 from July, 2015 to November, 2015. However, based on the Appellant's average income, the \$297.39 figure appears to be correct.

The Appellant later indicated and provided evidence that there were periods of time between 2014 and 2017 in which the Appellant and the Appellant's Spouse were separated and the Appellant was a single parent. For those periods, the Appellant may be arguing that eligibility for the subsidy ought to have been governed by section 3(2)(a) of the CSSR or that the income of the Appellant's Spouse should not have been included in the calculation of the applicable subsidy amount. Either way, the panel finds that the Ministry reasonably determined that Appellant was not a single parent during this or subsequent periods given the following:

- the Application was signed by both the Appellant and the Appellant's spouse;
- the Appellant submitted income information for both the Appellant and the Appellant's Spouse;
- the evidence indicating that a separation had occurred, including the Declaration, the Doctor's Note, the Doctor's Letter, and the Landlord Letter, were all produced during the process of verification (the Appellant does not appear to have reported any change in circumstances to the Ministry regarding a separation) and were from sources that the Ministry found were not independent, including friends and family members of the Appellant and the Appellant's spouse and their doctor; and
- the evidence from independent sources such as ICBC and from MSP indicated that the Appellant and the Appellant's spouse were living together in this and subsequent periods.

The panel considered all the evidence as a whole, and notes that there was evidence that the family unit was experiencing multiple difficulties such as addiction issues and possible separation periods. However, conflicting timelines were provided by family, friends and independent sources such as ICBC and MSP and the Appellant does not appear to have informed the Ministry of a separation until June of 2017. As a result, the panel finds that the Ministry reasonably determined that section 3(2)(b) of the CSSR was applicable to the Appellant's circumstances, that the incomes of both the Appellant and the Appellant's spouses were relevant in the calculation of the child care subsidy, and that the Appellant was overpaid a child care subsidy for the period of July, 2015 through December, 2015 in the amount of \$1,820.27.

The panel notes that the Ministry confirmed in the Reconsideration Decision that it had been provided with income information for the Appellant and the Appellant's Spouse in November of 2015. As section 5 of the CSSR does not provide for any limit on when verification and audits can occur, the Appellant was found, for the period from July, 2015 to November, 2015, to have received an overpayment that could have been identified much sooner.

The Appellant was also provided a child care subsidy of \$429.61 in March, 2016, after having not claimed a subsidy in January or February of 2016. The information contained in the 2015 to 2017 Pay Summary confirms that the Appellant had no income in either February or March of 2016. There is also no documentation confirming that the Appellant's spouse worked in March, 2016. There was no information before the Ministry as to the reason that both the Appellant and the Appellant's spouse appeared not to have worked in March, 2016. The Panel finds that the Ministry was reasonable in its determination that neither the Appellant nor the Appellant's spouse qualified for a subsidy for any of the reasons set out in section 3(2)(b) of the CCSR and the panel finds that the Ministry reasonably determined that the Appellant was not eligible for a child care subsidy at all in the month of March, 2016, resulting in an overpayment of \$429.61.

In April, 2016, the Appellant received a child care subsidy in the amount of \$429.61. On verification, the Ministry determined that the Appellant was only eligible for a subsidy in the amount of \$349.25 based on having worked 11 days in April, 2016. The panel finds that this is consistent with the information in the 2015 to 2017 Pay Summary, which indicates that the Appellant worked only 15 hours during the pay period ending April 3, 2016 and earned no other income in April, 2016. While it is not clear how the Ministry pro-rated the subsidy for the month of April, 2016, the panel's view is that the Ministry's calculation was possibly generous to the Appellant if the Appellant only required child care for roughly half of the month and, in the result, the Ministry was reasonable in determining an overpayment of \$80.36 for April, 2016.

In May 2016, the Appellant's application for a renewal of the child care subsidy was reviewed. The renewal application contained updated income information for both the Appellant and the Appellant's Spouse. On May 27, 2016 the Child Care Subsidy Service Centre ("CCSSC") was provided with updated income information. The updates in the information provided to the CCSSC resulted in top up amounts, which amounted to administrative errors during the verification and audit process. The Reconsideration Decision does not indicate what information was provided or how it differs from the pay statements collected by the Verification and Audit Officer. This appears to be another instance where an overpayment levied against the Appellant could have been identified much earlier based on information that had been provided to the Ministry.

In addition to the \$80.36 overpayment in April, the Ministry also appears to have "topped up" the April child care subsidy to \$615.38, based on the information provided in the Appellant's application for a renewal of the child care subsidy. This resulted in an additional payment of \$185.77 to the Appellant for which, on verification, the Ministry determined that the Appellant was not eligible. Based on the panel's finding that the Ministry reasonably determined that the Appellant was entitled to a child care subsidy in the amount of \$349.25 in April, the panel also finds that the Ministry reasonably determined that the top up amount issued to the Appellant in April, 2016 of \$185.77 was also an overpayment.

The Appellant was issued a monthly child care subsidy of \$615.38 in May, June, and July, 2016. During the verification process, the Ministry determined that the Appellant was entitled to only \$613.53 in each of those months, resulting in overpayments of \$1.85 in each of June and July of 2016, a reversal of the top up payment of \$185.77 in May, 2016 (but with a corresponding underpayment of \$183.92 for that month). Based on the Appellant's average monthly net income of \$1,792.87 for the months from May to July, 2016 (\$2,179.35 in May, \$1,586.66 in June, and \$1,612.60 in July) and the fact that the Appellant's spouse does not appear to have earned any income, the panel finds that the Ministry was reasonable in finding the above-described overpayments in the amounts of \$185.77 for May, 2016, and \$1.85 for each of June and July, 2016.

In each of June and July, 2016, the Ministry also issued a top up of \$19.62 to the Appellant. While the reason for this is not clear from the Reconsideration Decision, the verification process determined that the Appellant was eligible for a subsidy of \$613.53 in June and July. The panel finds that the \$19.62 top ups received by the Appellant in June and July of 2016 were over and above the subsidy received in the amount of \$615.38 in those two months and were also reasonably determined by the Ministry to be overpayments.

Starting in August, 2016 and ending in July, 2018, the Ministry paid a child care subsidy in the amount of \$550.00 per month to the Appellant. This is the G3 rate in Schedule A of the CCSR for parents whose net monthly income does not exceed the threshold in section 10 of the CCSR.



On verification, the Appellant was found to have been eligible for a subsidy of \$528.53 per month for the months of August, September, and October, 2016. In those three months, the Appellant's incomes were \$1,524.62, \$1,724.50, and \$1,728.86, respectively. The Appellant's spouse does not appear to have earned any income in those months. As the Appellant's average net monthly income was slightly higher than the child threshold provided for in section 8 of the CCSR, the panel finds that the Ministry reasonably calculated that the Appellant had been overpaid \$21.47 in child care subsidies in each of August, September, and October of 2016.

The Appellant received no subsidy between November, 2016 and January, 2017. In February, 2017, however, the Appellant received a subsidy in the amount of \$550.00. The 2015 to 2017 Pay Summary, however, indicates that the Appellant was not working in February, 2017 and the evidence before the panel does not indicate that the reason for this is one of the reasons set out in section 3 of the CCSR. The panel finds that the Ministry reasonably determined that the Appellant was not eligible to receive any child care subsidy in February, 2017, because there was no reason for child care, and that there was an overpayment of \$550.00 in that month.

In March, 2017, the Ministry determined that the Appellant was not entitled to a child care subsidy based on the full rate because of a reduced work schedule in that month. The Ministry held that the Appellant was entitled to a subsidy of just \$412.50, based on having worked only three weeks. The 2015 to 2017 Pay Summary appears to show that the Appellant actually worked 33.5 hours for the pay period ending March 19, 2017. As the evidence before the Ministry does not establish that the reason the Appellant appears to have worked for less than 20 days in March, 2017 is for one of the reasons set out in section 3 of the CCSR, the panel finds that the Ministry reasonably determined that there was an overpayment of \$137.50 (\$550.00 less \$412.50) for March, 2017.

The 2015 to 2017 Pay Summary indicates that the Appellant was back to working full time hours in the months of April and May of 2017 and had net incomes of \$1,651.96 and \$1,725.87 in those two months. The Appellant's spouse does not appear to have earned any income in those two months. As the net income earned by the Appellant in April and May of 2017 were slightly higher than the threshold amount of \$2,775.00 provided for in section 8 of the CCSR, the panel finds that the Ministry reasonably calculated the Appellant's eligibility for a child care subsidy to be \$528.53 in April and May of 2017 and determined that an overpayment of \$21.47 had been made in each of those two months.

In June of 2017 the Reconsideration Decision notes that the Appellant advised the Ministry of the separation from the Appellant's Spouse. For the reasons noted earlier, the panel finds that, in consideration of all of the conflicting evidence about separation, the Ministry was reasonable in its determination that the Appellant and the Appellant's Spouse did not separate. The Appellant and the Appellant's Spouse bought a house together in June of 2017. ICBC records show that the Appellant began using the address of the house as a mailing address on July 25, 2018. Ministry of Health ("MOH") records show the Appellant used the house address as a mailing address on December 11, 2017 and as a physical address on August 2, 2018. ICBC records show that the Appellant's Spouse began using the House as a mailing address on December 7, 2017. MoH records show that the Appellant's Spouse used the house address as a physical residence from February 14, 2018. The landlord of the previous residence had also informed the verification and audit officer that both the Appellant and the Appellant's Spouse moved out in July of 2017.

In addition to the status of the relationship, there was some evidence that the Appellant's Spouse was unable to provide child care from June, 2017 to December, 2017 due to a medical condition. For example, the Doctor's Letter notes that the Appellant's Spouse was admitted to hospital in July of 2017. However, the Doctor's Letter does not indicate for how long the Appellant's Spouse was in hospital. The Doctor's Letter also refers to the Appellant's Spouse's driver's licence being suspended for six months but it does not indicate the reasons that the Appellant's Spouse was unable to provide child care or the specific time period in which the Appellant's Spouse was unable to provide child care. Given this evidence, the panel concludes that the Ministry was reasonable in its determinations that the Appellant and the Appellant's Spouse were not separated and that the Appellant's Spouse did not have a medical condition that interfered with the Appellant's Spouse's ability to provide child care.

The Appellant continued to receive a child care subsidy of \$550.00 per month from June, 2017 to October, 2017. During that period, the 2015 to 2017 Pay Summary indicates that the Appellant had a net income of \$8,575.33. In the same period, the Appellant's spouse had a total net income of \$13,228.17. The combined average monthly income of the Appellant and Appellant's spouse in this period was \$4,360.70. Given the combined net income of

the Appellant and the Appellant's spouse, the calculation set out in section 8 of the CCSR results in a subsidy of \$242.85 (A being \$550.00 and B being \$792.85). Accordingly, the Appellant would not have been eligible for any subsidy in the months from June, 2017 to October, 2017 and the panel finds that the Ministry reasonably determined that an overpayment of \$550.00 per month was received in each of the months from June, 2017 to October, 2017.

In December, 2017, the Appellant received a child care subsidy in the amount of \$550.00. The 2015 to 2017 Pay Summary indicates that the Appellant had a net income of \$1,395.09 in December, 2017. Then 2015 to 2017 Pay Summary also shows that the Appellant had net earnings of \$783.31 based on 72 hours of work during the pay period ending December 10, 2017. The 2015 to 2017 Pay Summary does not set out how many hours the Appellant worked in the subsequent pay period for which the Appellant was paid \$611.78. It is possible that this amount represents severance pay and that the Appellant did not work at all in that subsequent pay period. This explanation would be consistent with the Ministry's finding that the Appellant was laid off in December, meaning that while the Appellant had a need for some child care in December, it was not on a full-time basis. The Ministry calculated the Appellant's actual eligibility to be \$12.54, although it is entirely unclear as to how this figure was arrived at. Equally problematic is the Ministry's finding that the Appellant was eligible for the child care subsidy in the months of January, February, and March of 2018 for the reasons set out in the Doctor's Note. The Doctor's Note covers the period from December 12, 2017 to March 12, 2018 and the Ministry held that the Appellant had a medical condition that kept the Appellant from providing child care. Given that the Ministry accepted the information in the Doctor's Note about the Appellant's medical condition, the panel finds that the Ministry was not reasonable in its determination that the Appellant was not eligible for the full child care subsidy for the month of December, 2017 and was not reasonable in its determination that a child care subsidy overpayment of \$537.46 occurred in December, 2017.

The final period of time in which the Ministry held that the Appellant had been overpaid a child care subsidy was from April 2018 to July 2018. The 2018 Pay Stubs show that the Appellant had net earnings of \$1,552.82 in May, 2018. The 2018 T4 indicates that the Appellant had gross earnings of \$17,283.69 in 2018. This is consistent with the Appellant having had similar earnings for every other month worked in 2018 after starting employment in or about April. The 2018 Pay Summary indicates that the Appellant's spouse had net earnings of \$14,835.73, all earned between January and July, 2018 for an average of \$2,119.31 per month in those months or \$1,236.31 per month over 12 months. In calculating eligibility at \$77.60 per month, the formula in section 8 of the CCSR would have required the Ministry to have calculated the Appellant's net monthly income to be just less than \$1,500.00 per month, which is consistent with the 2018 Pay Stubs, albeit slightly lower (to the Appellant's benefit). In the result, the panel finds that the Ministry reasonably determined that the Appellant had received an overpayment of \$472.40 (\$550.00 less \$77.60) for the months from April to July of 2018.

Given all of the evidence, the panel finds that all of the overpayments calculated by the Ministry between July, 2015 and July, 2018, in the amount of \$8,532.71, were reasonable, with the exception of the \$537.46 overpayment calculated for December of 2017. The Appellant is partially successful in this appeal.

APPEAL NUMBER

2020-00033

**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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/March/9

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/March/9

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/March/9