

APPEAL NUMBER
2020-00286

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 17, 2020 which determined that between June 2012 – August 2018, the appellant was not eligible for a Child Care Subsidy (CCS) pursuant to the Child Care Subsidy Regulation (CCSR) sections 7, 8, 9 and 10 because the family unit's monthly income exceeds the child's income threshold as set out in legislation and is required to repay \$43,978.43.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA) – section 7

Child Care Subsidy Regulation (CCSR) – sections 7, 8, 9 and 10.

PART E – SUMMARY OF FACTS

Evidence at the Reconsideration

1. Verification and Audit Request for Reconsideration form dated October 13, 2020, which indicated that the ministry based its decision on “database research, ICBC, Equifax, BC Online, email communication, client (the appellant) and spouse’s 2012-2018 T4’s and NOA (notice of assessment), and phone interviews”.
2. 3-page care provider payment sheet.
3. 10-page CCS Overpayment Calculation dated August 17, 2020.
4. Letter to the appellant dated August 18, 2020 advising the appellant that they were not eligible for \$43,978.43 and that pursuant to CCSR repayment is required. This was a follow-up to a letter sent to the appellant dated July 14, 2020.
5. Request for Reconsideration signed and dated November 10, 2020, which in part stated:
 - That from 2012-2019 the appellant provided the ministry with 2 weeks pay slips to determine the eligibility for CCS.
 - The appellant does not understand the figures that have been produced in the audit.
 - Facts outside of salary figures or CRA should also be taken into consideration, such as family size, employment, schooling and the situation of the family.
 - The ministry has not considered that the appellant has a substantial student loan that needs to be repaid.
 - The appellant asks the ministry to go beyond the CRA figures to make its determination.
6. Affordable Child Care Benefit Income Declaration signed and dated September 8, 2019, in which the appellant declared an income of \$54,000.00 and argued that they cannot afford to pay the present approved CCS, the fact that they are a student was not considered and they have 2 special needs children to care for was also not considered.
7. 4-pages from the Ministry’s website which provide information regarding the CCS.
8. CCS Request to Renew for the period of 2015/09/01 to 2019/08/30.
9. Notification of Assessment 2015/08/05 for a student loan and grant.
10. Verification of Enrollment (for post secondary education) May 1, 2016 – August 31, 2016 and July 2, 2016 – August 31, 2016.
11. A list of monthly CCS from other provinces for 2017-2018.
12. University schedule for a spring semester.
13. CRA (Canada Revenue Agency) 2012 and 2013 Reassessment for the appellant and the spouse.
14. CRA 2014 Assessment for the appellant and the spouse.
15. Notice of Reassessment (NOR) for 2016, 2017, and 2018 for the appellant’s spouse.
16. T4 Statement of Remuneration Paid - 2012, 2013, 2014, 2015, 2016, 2017 and 2018 for the appellant and the spouse.
17. CRA Assessment – 2012, 2013, 2014, 2016, 2017 and 2018.
18. CRA Reassessment – 2015.
19. CCS Assessment for July 1, 2016-August 31, 2016; February 1, 2017 – February 28, 2017; July 1, 2018 – July 31, 2018.

Evidence at Appeal

1. Notice of Appeal, signed and dated December 26, 2020, which in part stated: “Contrary to the Child Care Subsidy information that the program will take a general review of applicant’s financial and family situations before deciding on the amount to grant as child care subsidy, the ministry did not take my family’s past and present situation into consideration. The ministry only used my household income as the benchmark for deciding that I collected more subsidies than was necessary”. The appellant also stated that ministry failed to take into consideration that they

have 2 special needs children, that they and their spouse had periods of unemployment during the period in question and that they were studying in school as well.

2. Duplicates of documentation which was included within Evidence at Reconsideration.

Evidence Prior to the Hearing

Letter from the appellant dated January 8, 2021 in which the appellant, in part, argued that the ministry's audit is "only based on my CRA's T4 NOT the circumstances surrounding the earnings". The appellant also argued that they have 2 special needs children, but they do not have enough money to send both to their specialized daycare. The appellant also indicated that since one special needs child is at home their work time had to be adjusted to accommodate school drop offs and pick-ups.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision, which determined that between June 2012 – August 2018, the appellant was not eligible for a CCS pursuant to the CCSR sections 7, 8, 9 and 10 because the family unit's monthly income exceeds the child's income threshold as set out in legislation and is required to repay \$43,978.43, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The CCSA sets out the following:

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).

The CCSR sets out the following:

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*,
 - (c.1) of whom the applicant has been permanently transferred custody under an order of the court under section 54.01 (5) or 54.1 (3) 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, or

(f) who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e), provided

(i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or

(ii) by the Nisga'a Nation or a treaty first nation

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

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;

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 Family Size	Column 2 Base Threshold 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.

The Appellant's Position

The appellant argued that the ministry did not take into consideration their overall situation in making its determination. In particular, the ministry did not consider that the appellant and their spouse had times of unemployment, they have 2 special needs children to care for, information other than that provided by CRA and their ability to repay \$43,978.43.

The Ministry's Position

The ministry argued that the appellant's eligibility for CCS was affected by undeclared income that they and their spouse received during the period January 2013 – August 2018. A recalculation of the appellant's eligibility using the net family income determined by CRA notice of assessment finds, as per section 7 of the CCSR, that the appellant did not meet the income test to be eligible for the subsidy. Therefore, the appellant is liable to repay the amount overpaid - \$43,978.43.

The Panel's Decision

The appellant did not dispute that if net income exceeds the child's threshold a recipient is ineligible for CCS or the amount owing was incorrectly calculated or how a child's threshold is calculated. However, the legislation regarding these matters, and as cited above, is clear. Therefore, the panel finds that the ministry's determination under CCSR sections 7, 8 and 10 was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant.

The panel also notes that the appellant did not dispute, or provide evidence to the contrary, that there was undeclared income, yet the ministry provided evidence of undeclared income in the form of CRA assessments. The appellant also did not dispute or provide evidence to the contrary that the income amount indicated on the CRA assessments, reassessments or NOA was incorrect. The appellant did not dispute or provide evidence to the contrary that their spouse had moved back into the family home while they were collecting CCS as a single-parent household. Without contrary information, the panel has no reason to question the legitimacy of the information from the CRA or ministry in these matters. Therefore, the panel will consider these matters to be accurate.

In its reconsideration decision the ministry noted that the appellant reported the following income:

- 2013 - \$3,788.13. However, the CRA assessment demonstrated that the combined family income was \$4,524.89 and that the difference came from the spouse's income that was not reported. The ministry noted that after calculation according to the legislation, the difference in income makes the family unit ineligible for the amount of CCS it collected.
- 2014 - \$2,061.53. In this year, the appellant declared to be a single parent family unit without child support payments. The income was then calculated to be \$2,384.79. However, in 2015 it was discovered that the appellant and his spouse were back together and expecting another child. The CRA assessment demonstrated that the combined family income was \$4,806.61 and that the difference came from the spouse's income that was not reported. The ministry noted that after calculation according to the legislation, the difference in income makes the family unit ineligible for the amount of CCS it collected.
- 2015 - \$2,077.34 and the appellant was declared to be a single parent family unit without child support. However, the appellant later indicated that he and his spouse reunited in October 2014. The ministry could no longer provide support calculated for a single parent family unit and this was retroactive. The CRA assessment demonstrated that for 2015 the family unit's income was \$4,842.96 and that the difference came from the spouse's income that was not reported. The ministry noted that after calculation according to the legislation, the difference in income makes the family unit ineligible for the amount of CCS it collected.
- 2016 - \$2,663.43. However, the CRA assessment demonstrated that the combined family income was \$3,847.83 and that the difference came from the appellant's income that was not reported. The ministry noted that after calculation according to the legislation, the difference in income makes the family unit ineligible for the amount of CCS it collected.
- 2017 - \$2,663.43. However, the CRA assessment demonstrated that the combined family income was \$7,209.06 and that the difference came from income that was not reported. The ministry noted that after calculation according to the legislation, the difference in income makes the family unit ineligible for the amount of CCS it collected.
- 2018 - \$2, 886.62. However, the CRA assessment demonstrated that the combined family income was \$8,107.14 and that the difference came from income that was not reported. The ministry noted that after calculation according to the legislation, the difference in income makes the family unit ineligible for the amount of CCS it collected.

The panel finds that the evidence presented by the ministry demonstrated that the discrepancy between the reported income and the CRA assessment income constitutes ineligibility for CCS and the legislation

requires a repayment of the amount for which the appellant was ineligible. Therefore, the panel finds that the ministry's determination under CCSR sections 7, 8, 9 and 10 was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant.

The panel notes that appellant's central argument is that the ministry did not consider a complete picture of their situation, both familial and financial, before determining that CCS in the amount of \$43,978.43 must be repaid. The issue then is whether the ministry was reasonable in its calculation of the appellant's monthly net income, which is addressed by section 9 of the CCSR.

Section 9 of the CCSR legislates that the family's net income is calculated by adding the income that each person in the family unit receives per month, including, but not limited to: a) employment income. It is this net income that will determine the eligibility of the CCS. The panel finds that it is reasonable for the ministry to rely on the information provided by CRA in determining a recipient's net income as it is a reliable source. The panel also finds that the ministry did a comprehensive review by exploring other documentation such as "database research, ICBC, Equifax, BC Online, email communication, client [the appellant] and spouse's 2012-2018 T4's and NOA (notice of assessment), and phone interviews". Though the panel is sympathetic to the appellant's situation of interrupted employment, student status and having to care for 2 special needs children, it cannot in good conscience find that these factors should have been considered by the ministry in its reconsideration decision because the legislation does not allow it.

Furthermore, the legislation does not state that a recipient is only liable to repay money that they were not eligible for if the recipient's personal matters and/or financial means allow for it. By considering personal matters and/or financial means, the ministry would be overstepping the legislation which it does not have the authority to do. As a result, the panel finds that the ministry's determination that the appellant is liable to repay the CCS overpayment was reasonable pursuant to section 9 of the CCSA.

Conclusion

The panel finds that the ministry reasonably concluded that the evidence establishes the appellant was not eligible for CCS for the period from June 2012 to August 2018. The panel therefore finds that the ministry's decision to require that the appellant repay \$43 978.43 pursuant to section 7, 8, 9 and 10 of the CCSR, was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful at appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/01/28

PRINT NAME

Sameer Kajani

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/28

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/28