

APPEAL NUMBER  
2021-00068

**PART C – DECISION UNDER APPEAL**

Under appeal is the January 20, 2021 decision of the Ministry of Children and Family Development (the ministry) which determined that the appellant was not eligible for \$6,433.79 of the Child Care Subsidy (CCS) received between June 2017 and April 2018. The ministry determined that an overpayment resulted from an increase in the appellant's income that was not reported in accordance with section 5(2) of the Child Care Subsidy Act (the Act) and that, pursuant to section 7 of the Act, the appellant must repay the CCS for which the appellant was not eligible.

**PART D – RELEVANT LEGISLATION**

*Child Care Subsidy Act* (the Act), sections 5 and 7

Child Care Subsidy Regulation (the Regulation), sections 7 and 14

**PART E – SUMMARY OF FACTS**

**Information available at reconsideration**

- 1) Screen shot of Child Care Subsidy Centre (CCSC) notes from the appellant's file, showing entries for April 17, 24 and 27 of 2017 and two entries for April 5, 2018, is included in the appeal record. One of the April 5, 2018 entries is opened to reveal the complete notes which include:

*Tc from clt reg renewal. Completed FAIR-C. Clt no longer employed at [employer A]. Last day was 2017Jun1. Started new job 2017Jun2. Updated employment details. Advised clt of the importance of keeping CCS informed of any changes. Clt verbally declared two Mar15 and Feb28 ps. Updated income. Advised I would run b/p until end of May, which can be extended once p/s received. Cp details remain the same.*

*\*\*\*Submitted CF2960 for undeclared income.*

*Sent denial ltr.*

It appears that, with the possible exception of the April 19, 2017 entry, which is less than one line, the full content of the other entries cannot be viewed from the screen shot.

- 2) April 5, 2018 letter from the ministry to the appellant advising of eligibility for the CCS effective May 1, 2018 up to a maximum of \$50.11 per month.
- 3) A CCS Overpayment Calculation and other documentation respecting the child care provided to the appellant's child is included in the appeal record.
- 4) In the reconsideration decision, the ministry states that a review of its records indicates the following:
  - April 10, 2017, the appellant's renewal application of the same date was received by the CCSC. The appellant was issued a benefit plan based on paystubs indicating that in March 2017 the appellant received two payments from employer "A" of \$1,243.41 for a total monthly income of \$2,486.82. The monthly CCS benefit for the period May 1, 2017 to April 30, 2018 was determined to be \$635.00
  - There was no correspondence between the appellant and the CCSC until April 5, 2018 when the appellant contacted the ministry via telephone to verbally provide information for renewal of the CCS. The appellant advised of having ceased employment with employer "A" June 1, 2017, at which time the appellant began a new job. The ministry advised the appellant that the previous benefit plan was based on employment with employer "A" and stressed the importance of keeping the ministry informed of any changes in circumstances. The appellant understood.
  - April 5, 2018, based on two paystubs verbally declared by the appellant for the

period February 28 – March 15, 2018 for a total monthly income of \$3,751.78, the appellant was found eligible for monthly CCS in the amount of \$50.11. There were no changes to the type or frequency of child care required.

- December 1, 2020, the Verification and Audit unit sent the appellant a letter advising of an overpayment of CCS for the period between June 2017 and April 2018 due to undeclared employment income. The ministry determined that the appellant was eligible for monthly CCS of \$50.11 but received \$635 for those months, resulting in an overpayment of \$6,433.79.

5) The appellant's Request for Reconsideration dated January 6, 2021. The appellant writes that the June 2017 job change was reported to the ministry via phone when it occurred and that the appellant asked if a new application needed to be submitted and was told no. The appellant was never told that the CCS would be reduced; had that been the case, the appellant would have been unable to continue with daycare. In August 2018, the appellant telephoned the ministry to advise that the appellant had been laid off and to find out what help was available until the appellant got a new job. The ministry told the appellant that in September 2018 the subsidy would be changing to the Affordable Child Care Benefit but did not advise the appellant of any overpayment of CCS. The appellant reports being owed \$28,000 in child support, which the appellant does not expect to receive, and states "I have been doing my best to give my child the best life I can as a single income home, however this debt I shouldn't owe, will put us in a very bad position."

**Information provided on appeal and admissibility**

- i) March 26, 2021 Notice of Appeal. The appellant repeats that the ministry was advised via telephone of the job change when it occurred, that the ministry stated that the appellant did not need to redo an application and did not indicate a reduction of CCS. The appellant also reports having advised the ministry of address changes three times and notes that the ministry continued to send the higher amount of CCS and then sent a bill years later.
- ii) April 15, 2021, 2-page appeal submission from the appellant in which the appellant writes:

*They stated in their records that I did call at the time of my job change however, they said I did not state my job change. It was the entire and only reason I phoned them – as I am very aware that you need to report a job change. I was told very clearly on the phone that I did not have to fill out another application for changes. I was told to go about it as normal. I also changed my mailing address – 2 times back then and recently 2 times yet again! Which I have on email conversation with [ministry worker] when she first sent me the info. I did not receive mail that said I would be going from almost \$600 a month subsidy for daycare to only about \$55. Had I received this – I would have had to pull my child from daycare....I called again months later in August 2018 and spoke to another woman who I again gave my updated mailing address to. I was calling to renew my subsidy because I was laid off from my job and couldn't*

*afford daycare until I found another job. She said, very clearly – do not worry about this as subsidy is changing to the Affordable Child care Benefit next month in September.*

The appellant also questions why the ministry cannot listen to the recorded telephone conversations it had with the appellant and why the appellant would continue to receive the higher amount of CCS if not eligible. Additionally, the appellant describes the financial need for the higher amount of CCS and comments “I’m still blown away that a slight change in my income would make such a significant drop in subsidy for a single parent.”

- iii) April 20, 2021 ministry appeal submission stating that the ministry’s submission is the reconsideration summary provided in the Record of Ministry Decision.

The panel admitted the additional information provided in the appellant’s NOA and appeal submission, which relates to eligibility for CCS for the period at issue, as evidence required for the full and fair disclosure of all matters related to the appeal under section 22(4) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

**Issue on Appeal**

The issue on appeal is whether the ministry's decision that the appellant received CCS from June 2017 through April 2018 for which the appellant was not eligible and must repay is reasonably supported by the evidence or a reasonable application of the legislation. That is, was the ministry reasonable in concluding that unreported income resulted in an overpayment of CCS and that an administrative error did not occur?

**Panel Decision**

*Positions of the Parties*

The appellant's position is that an overpayment of CCS should not be assessed because the file was poorly and incorrectly handled by the ministry and because the appellant would have been unable to afford child care without the higher subsidy. The ministry was informed of the change in employment at the time it occurred, told the appellant that a new application was not required and then sent the appellant a bill for the overpayment years later.

The ministry's position is that the appellant did not comply with the requirement of section 5(2) of the Act to notify the CCSC, by writing or by telephone as required by section 14 of the Regulation, of any change in circumstances affecting eligibility for the CCS as soon as possible after the change occurred. The ministry relies on its records which indicate that there was no communication between the appellant and the CCSC following the establishment of the 12 month CCS benefit period beginning May 1, 2017 until April 5, 2018 when the appellant contacted the ministry regarding the renewal of the CCS and advised the ministry of a change in employment as of June 1, 2017. This change reduced monthly CCS eligibility as of June 1, 2017 to \$50.11 from the previously determined \$635.00. Section 7(1) of the Regulation states that if CCS is paid to or for a person who is not entitled to it, that person is liable to repay the amount to which the person was not eligible. Accordingly, the appellant is required to repay the amount of CCS for which the appellant was not eligible for the period June 1, 2017 through April, 30, 2018. Having found that the appellant did not advise the CCSC of the change in employment until April 5, 2018, the ministry concludes that it did not make an administrative error.

*Panel Analysis*

The legislation, section 5(2) of the Act and section 14 of the Regulation, requires a person receiving CCS to notify the CCSC in writing or by telephone of any change in circumstances that may affect eligibility as soon as possible. The appellant does not dispute the notification requirement or the re-calculation of CCS eligibility amount for June 2017 through April 2018 based on the increased income, though the appellant finds the reduction in the amount of CCS

shocking. In dispute is when the ministry was advised of the appellant's change in employment income and what effect the date of notification has on the requirement to repay any CCS for which the appellant was ineligible. The appellant states that the ministry was advised by telephone at the time the appellant obtained the new job, June 2017, whereas the ministry relies on its records which indicate that the appellant did not report the new job until April 5, 2018 when renewing the yearly CCS benefit plan.

In considering the evidence provided by the ministry, the panel finds that CCSC notes of the conversation with the appellant on April 5, 2018 include specific details respecting the employment that began June 2017 and confirm that the appellant was advised of the importance of keeping the ministry informed of changes to circumstances. There is no indication in the notes that the appellant stated during this conversation that the ministry had previously been notified of the change in employment. Additionally, the appellant's reconsideration and appeal submissions do not address the particulars this telephone call or question why the ministry found it necessary to advise of the importance of updating information.

The ministry also states that "Ministry records indicate there was no correspondence between you and the CCSC until April 5, 2018" at which time the appellant was seeking a renewal of the CCS benefit. This panel finds that this conclusion is supported by the CCSC notes screen shot. The panel notes that the ministry does not indicate whether other sources of information such as phone logs were available for use during the investigation.

The panel finds the appellant's information to be somewhat unclear, not supported by any documentation, and therefore not sufficient to refute the ministry's evidence. In the appeal submission, the appellant writes "They stated in their records that I did call at the time of my job change..." but the panel finds that the ministry consistently states that the appellant did not call about the job change in June 2017. The appellant also writes that, at the time the appellant obtained the new job, the appellant "was told very clearly on the phone that I did not have to fill out another application for changes. I was told to go about it as normal. I also changed my mailing address – 2 times back then and recently 2 times yet again!" This suggests that the appellant contacted the ministry on three separate occasions "back then" which, without dates or other specific details from the appellant, the panel understands to be around the time the appellant changed jobs in June 2017. As there are no entries in the CCSC notes, the ministry would have had to have failed to make entries respecting important information on all three occasions which, while possible, seems unlikely to the panel. Regarding the appellant's reference to email confirmation of one instance of communication with the ministry, in the absence of a copy of the email, and noting that all CCSC snap shot entries relate either to the telephone calls on April 24, 2017 and April 5, 2018 or to documents faxed in support of the April 2017 CCS request, it is unclear whether this communication is from "back then" or "recently" or what the appellant is referring to by "when she first sent me the info."

Again, noting that the ministry has not indicated whether other records could have been or are customarily reviewed for such investigations, given the absence of any supporting documentation from the appellant and the lack of clarity in some of the appellant's submissions, the panel finds the ministry's evidence more persuasive. Accordingly, the panel finds on a balance of probabilities that the ministry was not notified of the change in the appellant's employment until April 2018 and therefore finds that the ministry did not make an administrative

error in handling the appellant's CCS benefits. The panel notes that even if the ministry was found to have made an administrative error, the only remedy respecting an administrative error is set out in section 13(2) of the Regulation which states "If an administrative error has been made, a child care subsidy may be paid for child care provided in the 30 days before the parent completes an application under section 4." The panel also notes that the ministry does not explain why the overpayment was not dealt with until December 2020 when the ministry learned of the change in the appellant's income in April 2017. However, the panel finds that neither the Act nor the Regulation sets a time limit on the ministry's ability to seek repayment or on a recipient's liability to repay CCS for which the recipient was not eligible.

### *Conclusion*

Based on the above analysis, the panel finds that the ministry's decision that the appellant received CCS from June 2017 through April 2018 for which the appellant was not eligible which, in accordance with section 7(1) of the Act, must be repaid is reasonably supported by the evidence. Under section 7(5) of the Act, the amount that a person is liable to repay is not open to appeal; therefore, the panel makes no findings on the amount of the overpayment.

The ministry's decision is confirmed and the appellant is not successful on appeal.

**Relevant Legislation**

**Child Care Subsidy Act**

**Section 5 – Information and verification**

- (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 - Overpayments, repayments and assignments**

- (1) If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.
- (2) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy.
- (3) A repayment agreement may be entered into before or after a child care subsidy is paid.
- (4) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is a debt due to the government and may
  - (a) be recovered by it in a court of competent jurisdiction, or
  - (b) be deducted by it from any subsequent child care subsidy or from an amount payable to that person by the government under a prescribed enactment.
- (5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

**Child Care Subsidy Regulation**

**Section 7 - Income test**

- (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 custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c) or 49 (7) (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), or

(e) who is receiving assistance under section 6 of the Employment and Assistance Regulation and the applicant is the relative, within the meaning of that section, with whom the child resides.

[en. B.C. Reg. 281/2005, s. 4; am. B.C. Reg. 271/2006, s. 1.]

**Section 14 - Notifying the minister of change in circumstances**

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 Subsidy Service Centre.

[am. B.C. Reg. 337/2008, s. 5.]

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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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/04

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/04

PRINT NAME

Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/04