

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated June 4, 2012 which held that the appellant is liable to repay the sum of \$2,458.97 in child care subsidy she claimed during July 2010 for which she was not eligible pursuant to Sections 5 and 7 of the *Child Care Subsidy Act (CCSA)*, and Sections 1, 14 and 15 of the *Child Care Subsidy Regulation (CCSR)*. The ministry determined that the appellant did not provide child care service herself as she was away from the country.

PART D – Relevant Legislation

Child Care Subsidy Act – Section 5
Child Care Subsidy Act – Section 7
Child Care Subsidy Regulation – Section 1
Child Care Subsidy Regulation – Section 14
Child Care Subsidy Regulation – Section 15

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration decision consists of:

- Child Care Subsidy Overpayment Calculation for July 2010 dated March 20, 2012;
- A copy of an e-mail dated March 12, 2012 from one of the parents to the ministry;
- A copy of an e-mail from the appellant to the parents of the children in care informing them that she would be away the whole month of July and will be back on August 2, 2010;
- A copy of an e-mail from the ministry's Audit Officer to one of the parents dated February 23, 2012;
- A copy of an e-mail from one of the parents to the ministry dated February 23, 2012;
- A copy of an e-mail from one of the parents to the appellant dated August 20, 2010;
- A note from one of the parents stating that she received \$150 from the appellant on August 19, 2010;
- A copy of an e-mail from the appellant to the ministry dated January 17, 2012 stating that she was away for 3 weeks in July 2010 and asked her friend to take care of the children in her care;
- Copies of the Child Care Subsidy Arrangement forms signed by the appellant on July 4, 2010;
- A copy of the Child Care Subsidy Eligibility Calculator;
- Request for Reconsideration dated March 19, 2012;

The appellant in the request for reconsideration stated that prior to leaving for holiday; she introduced her friend to her clients as a babysitter. This babysitter had a license at the time and took care of one of the children. Respecting the overpayment, the appellant stated that she paid \$900 from the subsidy she received for the month of July, 2010 to this babysitter. The appellant submitted that she was not aware that the new babysitter should have applied for the subsidy. The appellant submitted that when she came back from her trip, one of the parents asked her to pay \$600 from the subsidy money. This client claimed that she had to pay someone else to take care of her child. The appellant stated that she gave \$600 to this parent under the supervision of her manager. The appellant submitted that this parent received the money and signed a note acknowledging that the appellant did not owe her any money. The appellant stated that she does not have any money and if she has to pay the rest of the subsidy money she received for July 2010, she is requesting to pay the amount in monthly installments.

The appellant in the Notice of Appeal dated June 18, 2012 submitted that she has already paid \$1500 and has proof of the payment in writing. The appellant stated that she cannot afford to pay this amount again. The appellant stated that she is ok with the balance.

The ministry submitted that the appellant claimed one month's child care subsidy payment in July 2010 when she was not providing care. The appellant was out of the country during this month and had another care provider serving her clients. The ministry submitted that the CCSR does not permit care providers to sub-contract or provide care at any address other than that indicated on the care arrangement form. Furthermore, the ministry submitted that the appellant is a "Registered Licence Not Required", RLNR care provider and so is paid subsidy at the RLNR rate. Her substitute was not RLNR, which further compounds the ineligibility of the July 2010 care arrangement. The ministry submitted that the appellant is liable to re-pay the subsidy paid to her for July 2010 for the amount of \$2,458.97.

The panel makes the following findings of fact:

- The appellant is a RLNR care provider;
- The appellant signed and submitted Child Care Subsidy Claim for 4 children, for the month of July, on July 4, 2010;
- The appellant received \$2,458.97 subsidy for July 2010;
- The appellant was away from the country during July 2010 and did not provide childcare services to her clients;
- The appellant informed the parents of the children in care that she was going to be away and provided a name of another childcare provider to the parents as her substitute.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision dated June 4, 2012 that determined the appellant is liable to repay \$2,458.97 in child care subsidy she received during July 2010 for which she was not eligible as the appellant was away and did not provide childcare.

Section 5(2) of the CCSA states that 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.

Section 7 of the CCSA deals with overpayments, repayments and assignments and states:

- (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).

Pursuant to Section 1 of the CCSR "registered licence-not-required child care setting" means a child care setting that

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

Pursuant to Section 15 (5) of CCSR no child care subsidy will be paid to a child care provider under subsection (2) (b) for a day on which the child care setting is closed, unless the day is a statutory holiday

The appellant argued that she is disputing the reconsideration decision as she has already paid \$1500 to one of the children's parent and to the babysitter. The appellant in the Notice of the Appeal agreed to pay the difference to the ministry.

The ministry submitted that the appellant submitted claims for childcare subsidy for the month she was out of the country and is liable to re-pay the full amount to the ministry and that the ministry does not participate in any dispute between clients and care providers. The ministry argues the childcare subsidy was paid to the appellant during a period of time when she was not providing care and the subsidy payment is not transferable.

Section 5(2) of the CCSA states that 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. The panel finds that the appellant submitted childcare subsidy claims for July 2010 and failed to notify the ministry that she was away from the country.

Section 15(5) of the CCSR states that no childcare subsidy will be paid to a child care provider for a day on which the child care setting is closed. The panel finds that the appellant is not eligible to receive any childcare

subsidy for the month of July 2010 while she was away from the country, as her child care setting was closed during this period of time.

Pursuant to Section 7 (1) of the CCSA, 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. The panel finds that the appellant's business was not open during July 2010 and that the appellant was not entitled to receive child subsidy during the time she did not provide childcare and as such, is liable to repay the government the amount she was not entitled to. The appellant argues that she paid \$1500 of the child subsidy she received to one of the parents and the babysitter. The panel does not have jurisdiction to make decision on the dispute between the appellant, the substitute caregiver and the parents.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence before it and was a reasonable application of the legislation. Therefore, the panel confirms the ministry's reconsideration decision.