

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the “Ministry”) April 15, 2014 reconsideration decision in which the Ministry determined that, in accordance with section 7(1) of the Child Care Subsidy Act, the Appellant is liable for repaying child care subsidy amounts that were overpaid to her from August 2010 to December 2012 because:

- She received single parent subsidy amounts when she was in a dependent and marriage-like relationship; and,
- She did not report any income her spouse received or any rental income from properties she owned.

PART D – Relevant Legislation

Child Care Subsidy Act Sections 5 and 7.

Child Care Subsidy Regulation Sections 1, 3, and 9.

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

For its reconsideration decision, the Ministry had the following evidence:

1. Information from its records that the Appellant:

- In August 2013, applied for a child care subsidy for her son, indicating on the application form that her marital status was “single, separated, divorced or widowed” ; she provided no information about a spouse on the application form.
- Was found to be eligible for a subsidy as a single parent at the J2 rate; that is, 20 full days per month at \$450 a month; received this rate from August 2010 to February 2011.
- From March 2011 to January 2012, received \$600 a month at the J2 rate.
- From February 2012 to December 2012, received \$550 a month at the J3 rate.
- In April 2013, confirmed to a Ministry worker that she was living in a marriage like relationship. The worker had contacted her because of anonymous information that the Appellant was living in a marriage-like relationship.

2. Ministry letter dated December 3, 2013 advising the Appellant that she had received child care subsidies totaling \$15,950 from August 2010 to December 2012 for which she was not eligible under the Child Care Subsidy Act.

3. Verification from the provincial vital statistics office that the Appellant was married on July 11, 2000.

4. Land title document for a residential address and two mortgage documents showing the Appellant as the registered owner of the property and as the borrower, and her husband as covenantor; all documents listed the same address for the Appellant and her husband.

5. Auto insurance documents showing the Appellant’s husband as the principal operator of her second vehicle.

6. Equifax Consumer Report dated November 4, 2011 identifying the Appellant and her husband, and showing the husband’s address as the same one as in the land title documents.

7. Land title documents dated April 16, 2013, showing that the Appellant owned a second property.

8. Ministry records indicating that the Appellant did not report rental income from either property.

9. Ministry child care subsidy overpayment calculation.

10. Appellant’s January 29, 2014 reconsideration request in which she wrote that she disagreed with the way the decision was reached, with the accounting and ignoring her financial needs.

In her Notice of Appeal, the Appellant wrote that the day care’s activities and other issues had not been properly reviewed. She stated that she had been investigated but the day care had not. She disagrees with the accounting and that there is any outstanding amount. She also wrote that for the past few years she has been undergoing treatments for depressions. Presently she is not in any condition mentally, physically, emotionally, neurologically or economically to handle her situation.

After the deadline for written submissions for this appeal, the Appellant sent a written statement to the Tribunal. The Panel accepted the late submission because it was related to issues in the Appellant’s appeal. The Appellant wrote that:

- The Ministry made a claim of over payment based on her so called one time assets which were not assets but liabilities; the Ministry did not consider her debts or her financial situation.

- The Ministry refused to acknowledge that it still continued to pay the subsidy to the day care even after her son stopped attending it.
- There are many other issues, from financial claim discrepancies on the part of the Ministry to her personal health which the Ministry has chosen to ignore.
- This is a very short time to prepare an appeal, and submit it. She was not keeping well and cannot function in stress.

On July 22, 2014, the Tribunal received written arguments from the Appellant's advocate, stating that:

- The Appellant submits that the person the Ministry identified as her husband is not a dependent spouse because they did not reside together and were not in a marriage or marriage like relationship. They shared child care responsibilities.
- The Ministry received but did not consider the Appellant's statutory declaration made on November 13, 2013.
- The Ministry relied on facts without context, such as insurance documents and loan documents.
- The Appellant does not share any real property with her husband. His primary address with the insurance company is not the Appellant's address, as shown in the appeal record.
- The Appellant has not been able to provide documentation regarding her husband's address because she does not have any. Her husband lives with relatives, as she reported to the Ministry on 2013-08-06, but she was told that a letter from the relatives would not suffice.
- The Appellant's child was not receiving child care subsidies and was not in child care for three months at the end of 2012.
- The Appellant did not receive rental income in excess of her liabilities. Her mortgage was \$1620.84 while the rental income was \$900.

The Appellant also provided the following documents with this latest submission:

1. A statement that the rental income was a liability, with copies of mortgage payment papers (inclusive of property tax), strata fees and what she stated is proof of her rental income. She wrote that her mortgage was \$698.09 bi-weekly plus strata fees were \$324.66 monthly for a total of \$1620.84. She wrote that she received \$900 a month as rental income and there were many times she could not meet mortgage and strata payments. She ended up selling the property at a loss.
2. Her statutory declaration dated November 13, 2013 in which she declared that her husband has never been on any property ownership documents; e.g., a mortgage with her; he has co-signed loans she needed to sustain herself but only as a helping hand; her husband drives the car because she needs him to for her child's safety; he uses her address for mailing purposes.
3. She stated that she repeatedly questioned the Ministry's accounting and has unsuccessfully pointed out discrepancies in the accounting. She was unsuccessful in working with the owner/operator of the day care to allow her child to attend the 5 day program even though the day care owner/operator was receiving subsidies based on 5 day attendance. Therefore, she gave 2 months notice to remove her child from the facility which resulted in difficult exchanges.
4. Her Income tax return information for tax years 2009, 2010, 2011, 2012. For 2009, 2010 and 2011 her marital status is indicated as separated.
5. Her husband's income tax return information for tax years 2008, 2009, 2010, 2011. For 2008, his marital status is shown as separated and for the other years as divorced.
6. Bank mortgage account statement showing the account closed on October 19, 2012, and the

appellant is named as an insured client.

7. Copies of what appear to be bank statements with hand writing stating "strata fee" and with an asterisk by \$324.66; and, three documents hand labeled "rental income" with an asterisk by \$900 deposits.

With respect to the information in the Appellant's notice of appeal, in the advocate's and the Appellant's documents submitted for this appeal, the Panel finds that the information in those documents provides additional details about information that the Ministry had at reconsideration. Therefore, pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits all of that information as being in support of the evidence the Ministry had at reconsideration.

The Panel makes the following findings of fact:

1. The Appellant was married on July 11, 2000.
2. The Appellant received child care subsidies as a single parent from August 2010 to December 2012.
3. The Appellant did not report any rental income or any income from her husband to the Ministry.
4. In April 2013, the Appellant confirmed to the Ministry that she was in a marriage like relationship.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that, in accordance with section 7(1) of the Child Care Subsidy Act, the Appellant is liable for repaying child care subsidy amounts that were overpaid to her from August 2010 to December 2012 because:

- She received single parent subsidy amounts when she was in a dependent and marriage like relationship; and,
- She did not report any income her spouse received or any rental income from properties she owned.

The following legislation applies to the Appellant's circumstances in this appeal.

Child Care Subsidy Act

Information and verification

5 (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

- (a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;
- (b) seek verification of any information supplied by a person referred to in paragraph (a);
- (c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
- (d) collect from a person information about another person if (i) the information relates to the application for or payment of a child care subsidy, and (ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

(3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may

- (a) declare the person ineligible for a child care subsidy until the person complies, or
- (b) reduce the person's child care subsidy.

(4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act

Overpayments, repayments and assignments

7 (1) if a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.

(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 Regulations

1(1) In this regulation

"dependant", in relation to a parent, means anyone who resides with the parent and who

- (a) is the spouse of the parent,
- (b) is a dependent child of the parent,
- (c) shares with the parent income or assets or any necessities of life obtained with the income or

assets, or

(d) indicates a parental role for the parent's child;
"spouse", in relation to a parent, means anyone who

(a) is married to the parent, or

(b) is living with the parent in a marriage-like relationship;

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),

(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 (v) each parent has a medical condition that interferes with their ability to care for their child.

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 or child support paid to a spouse or child in the family; (d) employment insurance benefits; (e) workers' compensation benefits; (f) training allowances; (g) investment income, including interest; (h) tips and gratuities; (i) rental income of any kind, less essential operating costs; (k) grants bursaries or scholarships.

Child Care Subsidy Overpayment Calculation/Appellant's Debts

The Appellant submitted that she repeatedly questioned the Ministry's accounting regarding the amounts the Ministry said that she owed as overpayments. The Panel notes that section 7(5) of the Child Care Subsidy Act states that 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) of that act. Therefore, the Panel has no jurisdiction to review the Ministry's calculations about how much the Appellant may be liable to repay. She must discuss that with the Ministry.

With respect to the Appellant's submissions regarding her debts and her various medical conditions, the Panel notes that these are not matters that the Ministry has authority to consider under the Child Care Subsidy Act or Regulations.

As for the other issues in this appeal, the Panel has reviewed all of the submissions and information provided by both parties and has summarized them below.

Appellant's Marital Status for Child Care Subsidy Purposes

The Ministry's position is that, starting in August 2010 until December 2012, the Appellant received a child care subsidy as a single parent based on information that she provided in her application, when in fact she was in a dependent and marriage-like relationship. The Ministry acknowledged the Appellant's sworn statement; however, it noted that it must consider the available information. The Ministry submitted that it looked at the financial and social/familial aspects of the Appellant's relationship to determine if it is marriage-like. Also, the Appellant admitted to a Ministry worker that she was in a marriage-like relationship and acknowledges sharing child care responsibilities with her spouse. In the Ministry's opinion, there is sufficient evidence to establish that the Appellant's relationship with her spouse is a dependent and marriage-like relationship for the purposes of determining the amount of child care subsidy that she was eligible for from August 2010 to December 2012. Moreover, the Appellant did not report this relationship or any change in her status to the Ministry as required by section 5(2) of the *Child Care Subsidy Act*.

The Appellant argues that her husband is not a dependent spouse because they are not in a marriage or marriage-like relationship. The Appellant also declared, before a notary, that her husband has never been on any property ownership documents, although he co-signed loans for her. He also drives her car so that he can transport their child safely and she did acknowledge that they share parenting responsibilities. She submitted a statutory declaration and other documents to support her position.

The Panel's Findings

Section 1 of the Child Care Subsidy Regulation provides definitions which are applicable to the Ministry's determination of a parent's eligibility for a child care subsidy and which apply to the Appellant's circumstances. Section 1 defines "spouse" in relation to a parent as anyone who is married to the parent or is living with the parent in a marriage like relationship. The regulation also defines "dependent" in relation to a parent as someone who resides with the parent and who (a) is a spouse of the parent or (b) indicates a parental role for the parent's child.

The evidence in the appeal record is that the Appellant was married on July 11, 2000 and in April 2013 the Appellant confirmed to a Ministry worker that she was in a marriage like relationship. The Panel finds that the Appellant did not deny giving this confirmation to the Ministry.

With respect to the information the Appellant provided for this appeal, the Panel finds that that information is inconsistent and incomplete. For example, in the tax returns that the Appellant submitted, her status is shown as separated. On some of her husband's tax returns, his status is shown as separated or divorced. However, the Appellant provided no separation or divorce documents to establish that in fact she and her husband are separated or divorced, or any explanation for these inconsistencies. On the other hand, the public records that the Ministry produced showed that the Appellant and her husband shared the same address and a vehicle.

The Panel notes that even though the Appellant was able to provide her husband's tax returns and declare that they share child care responsibilities, she claimed that she could not provide evidence of a separate residential address for her husband, other than a letter from relatives. Even in her statutory declaration, the Appellant did not specifically declare that she and her husband were not residing together. She also did not provide a separate declaration from him regarding their status.

The Panel, therefore, finds that the Ministry reasonably relied on the Appellant's confirmation about her marriage like relationship and shared child care responsibilities, together with the evidence in public records to determine that the Appellant was living with her husband in a dependent and marriage like relationship during the time she received child care subsidy amounts for a single parent; that is, amounts that she was not entitled to.

Unreported Income

The Ministry's position is that the Appellant did not report any income from her husband or any rental income from either of the two properties she owned during the time she received the child care subsidies as a single parent. The Ministry noted that under section 9 of the Child Care Subsidy Regulation, net income includes rental income minus essential operating costs. It considers operating costs to include costs of operating the residence, such as utilities, but not mortgage costs.

The Appellant's position is that she did own two properties until one was sold in October 2012. She stated that she received \$900 a month rent from that property. However, the Appellant argues that her mortgage payments and strata fees totaled \$1620.84, so she had no net income from rent.

The Panel's Findings

Section 5(2) of the Child Care Subsidy Act states that a person receiving a child care subsidy must notify the minister of any change in circumstances affecting their eligibility. That would include any monthly income as defined in section 9 of the regulation. Monthly income includes employment income, self-employment income and rental income of any kind, less operating costs.

The Panel finds that there is no information in the record that the Appellant provided information to the Ministry about any income from her husband. She also provided no information about the rental income from her property until she submitted documents for this appeal. Then the Appellant submitted what appear to be bank statements showing deposits for \$900. However, she provided no rental agreements or copies of receipts that she issued to any tenants to demonstrate that in fact she received \$900 as rent. She also provided no information about any operating costs for the rental unit, such as utility bills. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant did not provide information about her husband's income or her rental income, as required by section 5(2) of the Child Care Subsidy Act, during the August 2010 to December 2012 period that she was receiving child care subsidies as a single parent.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the Panel finds that, in its reconsideration decision, the Ministry reasonably determined that the Appellant was not entitled to the child care subsidy amounts she received from August 2010 to December 2012 as a single parent and that, in accordance with section 7(1) of the *Child Care Subsidy Act*, the Appellant is liable for repaying the amounts to which she was not entitled. Therefore, the Panel confirms that decision.