

## PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated June 24, 2014 which held that the appellant was ineligible for amounts of Child Care Subsidy provided under the *Child Care Subsidy Act (CCSA)* section 7, and the *Child Care Subsidy Regulation (CCSR)* section 7, from March 2013 to November 2013 because she lived in an unreported marriage-like relationship beginning in March 2013 when her status changed from single parent to couple, and the family net income then exceeded the child's income threshold as outlined in the CCSR section 10, resulting in an overpayment of \$2,166.25 in child care subsidies that the appellant was not entitled to and is required to repay.

## PART D – Relevant Legislation

*Child Care Subsidy Act (CCSA)*

*Child Care Subsidy Regulation (CCSR)*

*Employment and Assistance Act (EAA)* Part 3 – Appeals

*Employment and Assistance Regulation (EAR)* Part 6 – Reconsiderations and Appeals

## 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 EAA.

The following evidence was before the ministry at the time of reconsideration:

- The appellant began receiving a child care subsidy for her daughter born October 3, 2008 from May 2009.
- The child care subsidy was based on the appellant's status as a single parent and paid accordingly from May 2009 to November 2013.
- On November 28, 2013 the appellant advised the ministry by telephone that her boyfriend moved in with her and her daughter in December 2012.
- A copy of the ministry notes concurrent with the November 28, 2013 telephone conversation outlined that there now appeared to be 2 parents, and the appellant was reminded to report these changes. The appellant said that her boyfriend was not yet technically her common-law spouse, and that her family unit consisted of herself and her daughter. The ministry advised the client that her boyfriend would be considered a spouse for the purposes of child care subsidy eligibility.
- At the request of the Verification and Audit Branch the appellant and her boyfriend provided verification of the boyfriend's self-employment income during the period they lived together, and it was determined that the combined family income was in excess of the child care subsidy thresholds from December 2012 – November 2013.
- A Child Care Subsidy Overpayment Calculation form dated March 12, 2014 confirmed the amount of subsidy paid per month from December 2012 through November 2013, and established a final overpayment amount of \$3,816.25.
- The appellant's request for reconsideration of the original ministry decision was received by a Child Care Subsidy Service Centre on May 26, 2014. Included with the request were copies of utility bills in her boyfriend's name for the period December 14, 2012 through December 2013 associated with a separate out of province residence.
- The appellant asked for a definition of a "marriage-like relationship" and the ministry provided the definitions under the CSR of 'dependent' and 'spouse' in an April 16, 2014 email.
- The appellant wrote that when she and her boyfriend began living together, there was no financial interdependence and all rent and utilities were shared on a 50/50 basis.
- The appellant wrote that at the end of March 2013 or the beginning of April 2013 she and her boyfriend started dating and spending more time together. She remained financially independent of her boyfriend however, and their social/family aspects were not "consistent with 'marriage-like'."
- The appellant submitted as part of her reconsideration argument a 5 page document entitled "Marriage-Like Dependency Relationship: July 1, 2006". The appellant indicates this is a ministry document, and it appears to provide practice and procedural information for determinations under the EAA.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision that determined that the appellant was ineligible for amounts of Child Care Subsidy provided under the *Child Care Subsidy Act* (CCSA) section 7, and the *Child Care Subsidy Regulation* (CCSR) section 7, from March 2013 to November 2013 because she lived in an unreported marriage-like relationship beginning in March 2013 when her status changed from single parent to couple, and the family net income then exceeded the child's income threshold as outlined in the CCSR section 10, resulting in an overpayment of \$2,166.25 in child care subsidies that the appellant was not entitled to and is required to repay.

The **CCSA** outlines the following:

- 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.
- 6 (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:
- (a) a decision that results in a refusal to pay a child care subsidy to or for the person;
  - (b) a decision that results in a discontinuance or reduction of the person's child care subsidy.
- (2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.
- (3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of the *Employment and Assistance Act*.
- (4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set

out in the *Employment and Assistance Act* and the regulations under that Act.

- 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** definition section includes the following:

- "child" means an unmarried person under 19 years of age;
- "Child Care Subsidy Service Centre" means the government office responsible for administering payment of child care subsidies under the Act;
- "child's threshold" means the threshold income level calculated for a child under section 10 (1);
- "family" means a parent and the parent's dependents;
- "family's monthly net income" means the monthly net income calculated for a family under section 9;
- 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;

The **CCSR** also includes the following:

- 4 (1) To be eligible for a child care subsidy, a parent must
- (a) complete an application in the form required by the minister,
  - (b) supply the minister with the social insurance number of the parent and each adult dependant, and
  - (c) supply the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy.
- (2) Only one parent in the family may apply for a child care subsidy.
- (3) Repealed. [B.C. Reg. 187/2007, s. (b).]
- (4) A parent ceases to be eligible for a child care subsidy on the date that is 12 months after the date of application under subsection (1) or this subsection, as applicable, unless, before that date, the parent completes an application referred to in subsection (1) and otherwise complies with that subsection.

- 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.

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 Subsidy Service Centre.
- 17 (1) A person who wishes the minister to reconsider a decision made under the Act must deliver to the Child Care Subsidy Service Centre a request for reconsideration that
- (a) is in the form specified by the minister, and
  - (b) is delivered within 20 business days after the person is notified of that decision.
- (2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Subsidy Service Centre.
- (3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.
- (4) If a request for reconsideration is not delivered in the time required by subsection (1),
- (a) the person is deemed to have accepted the decision, and
  - (b) the decision is not open to review in a court or subject to appeal to a tribunal or other body.
- (5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must
- (a) reconsider the decision, and
  - (b) provide the person who delivered the request with a written decision on the request.
- (6) If a request for reconsideration is delivered under this section about a decision that results in a discontinuation or reduction of a child care subsidy, that decision is set aside until the minister
- (a) reconsiders the decision, and
  - (b) provides the person who delivered the request with a written decision on the request.
- (7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister
- (a) reconsiders the decision, and
  - (b) provides the person who delivered the request with a written decision on the request.

The EAAT provides:

- 19 (1) The Employment and Assistance Appeal Tribunal is established to determine appeals of decisions that are appealable under
- (a) section 17 (3) [*reconsideration and appeal rights*] of this Act,
  - (b) section 16 (3) [*reconsideration and appeal rights*] of the *Employment and Assistance for Persons with Disabilities Act*, and
  - (c) section 6 (3) [*reconsideration and appeal rights*] of the *Child Care Subsidy Act*.

### Ministry's position

The ministry argued that the CCSR section 7 sets out that an applicant is not eligible for a child care subsidy if the family's monthly net income exceeds the child's income threshold as calculated under section 8. The appellant told the Child Care Service Centre on November 28, 2013 by telephone that her boyfriend had been residing with her since December 2012, and a subsequent audit established that this was an unreported marriage-like relationship. At reconsideration the ministry accepted that this was a roommate arrangement until March 2013 when the relationship transitioned from roommates to a couple; at this point, the cohabitants were considered in a marriage-like relationship. The Ministry determined that Section 7(1) of the CCSA applies, and the appellant is liable to repay \$2,166.25 of child care subsidies received from March 2013 to November 2013 that she was not

entitled to.

### **Appellant's position**

The appellant's notice of appeal was received by the ministry on July 18, 2014. She argued that the ministry failed to respond to the reconsideration request within the legislated timeframe set out in section 17 of the CCSR – namely, a completed reconsideration decision within 10 days after receiving the request for reconsideration.

The appellant further argued that the evidence she provided, regarding factors to be considered in determining whether a marriage-like relationship exists, was not addressed, and the ministry failed to provide supporting evidence for their conclusion that she was in a marriage-like relationship in March 2013. She argued that if it is found that the transition date from that of roommates to a couple is an appropriate measure, this should be considered as June 2013.

A final submission was received from the appellant on July 27, 2014. She reiterated her previous arguments, and added that it wasn't until June 2013 that she and her boyfriend decided they would not date other people and that this would be the reasonable date to establish that they became a couple. The appellant maintains that throughout the entirety of the relationship however, there remained no financial interdependence and the appellant maintains that a marriage-like relationship did not exist. The appellant also argued that it was not reasonable to expect her to report a change in her eligibility status (CCSR section 14) when the definition of a marriage-like relationship is not publically available, nor available upon request, and is applied in a manner inconsistent with other ministries.

### **Panel Decision**

The appellant has argued that because the reconsideration decision was not provided within the 10 business days required within section 17 of the CCSR, she has been treated unfairly. The panel notes however that there are no legislated consequences arising from this delay.

The appellant writes that her argument and submissions concerning factors to be considered in determining whether she was part of a marriage-like relationship were not addressed in the reconsideration decision. There is no evidence identified or presented to support this however. As the reconsideration decision modified the original decision following input from the appellant, and the reconsideration decision specifically indicates that the documents submitted by the appellant were considered in the making of the decision, the panel finds that evidence was not overlooked during the reconsideration process.

The appellant argues that the Employment and Assistance Regulation (EAR) provides a detailed definition of a marriage-like relationship, and the 3 part test used under this legislation should have been applied to her circumstances. The panel finds that the EAR definition of a marriage-like relationship is applicable for decisions made under the Employment and Assistance Act (EAA); there is no legislative requirement that it be applied to decisions made under the CCSR.

The appellant argues that although she started dating her boyfriend (then room-mate) in March, 2013, they did not become a couple until June 2013 when they both decided not to date other people.

No new evidence has been provided to support why the June 2013 date instead of the March 2013 date should mark the transition of the relationship of the appellant and her boyfriend from roommates to a couple in a marriage-like relationship. The evidence available at reconsideration was a lengthy period of cohabitation and a change in the nature of the relationship reported by the appellant around the end of March 2013; the panel finds the ministry's decision was reasonably supported by this evidence.

### **Conclusion**

The CCSR definition of 'spouse' includes anyone who is living with the parent in a marriage-like relationship, and the definition of 'dependant' includes the spouse of the parent. Section 4 of the CCSR requires that to be eligible for a child care subsidy, the parent must provide the social insurance number of any adult dependant to the ministry, and establish proof of eligibility for a child care subsidy. Section 7 of the CCSR references the income test to be applied to the family's net income, and the basis for ineligibility if the family's monthly net income exceeds the child's threshold for entitlement purposes.

The panel finds that the ministry's decision that determined that the appellant was ineligible for amounts of Child Care Subsidy received from March 2013 to November 2013 under Section 7 of CCSR was reasonable because she lived in an unreported marriage-like relationship beginning in March 2013 and the subsidy was calculated on the basis of a single parent and not as a couple. The application of CCSR section 4 and 7 established the family net income then exceeded the child's income threshold as outlined in the CCSR section 10, resulting in an overpayment in child care subsidies that the appellant was not entitled to and pursuant to Section 7 CCSA is liable to repay. The panel determined the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant.

Therefore the panel confirms the ministry's decision.