



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The reconsideration decision dated July 17, 2009, specified that the appellant received a subsidy of \$2,400.00 that the ministry determined that the appellant was not entitled to, for child care that was not provided, under Child Care Subsidy Act, section 1, 4 and 7(1) and Child Care Subsidy Regulation, section 2,15(1), and 16(1)(2).

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Child Care Subsidy Act (CCSA), section 1, 4 and 7(1)
Child Care Subsidy Regulation (CCSR), section 2, 15(1), and 16(1)(2).

PART E – SUMMARY OF FACTS

In this written hearing, the evidence before the ministry at the time of the reconsideration decision included: (a) Request for Reconsideration, dated June 25, 2009; (b) Letter from lawyer, dated July 2, 2009; (c) Daycare agreement template from appellant's business, 5 pages; (d) Letter and documents from Verification and Audit Officer, 28 pages, dated June 2, 2009.

The ministry, from their submission in the Appeal Record, provided that the appellant claimed that she provided child care for the child in question to the full allowable amount for each month – January to the end of June 2008 at which time the day care was closed by the appellant. The ministry provided that the appellant signed the Child Care Subsidy Claim Licensed Facilities document that states that the appellant, "acknowledges that I am submitting this claim in advance and that I am liable to repay any overpayment arising from this claim and this is a true account of the amount owed for the case of the child(ren) named below" which all licensed day care providers must use to maintain their records to receive child care subsidy payments. The child in question was in care for less than the number of days claimed resulting in an overpayment. The child was in care in 2008 for the following amount of days: January, 11 days (including 1 statutory holiday and 2 recorded sick days) overpayment of \$270.00; February, 7 days, overpayment of \$390.00; March 7 days (including 2 statutory holidays, overpayment of \$390.00; April, 4 days (4 recorded sick days), overpayment of \$480.00; May, 7 days (including 1 statutory holiday), overpayment of \$390.00; June, 4 days, overpayment of \$480.00, the total of overpayment is \$2,400.00.

The ministry submitted that the appellant recorded that the child in question was sick on 6 days during the period of January to June 2008.

The appellant, from their submission in the Appeal Record, provided that she had a contract with the parent of the child in question to provide full time care for the child and that the parents would pay for space reserved for their child regardless if the child attended or not. The appellant advised that the day care was closed for 5 days in January, 2008 for her family vacation. The appellant advised that she received many different reasons from the parents why the child in question did not show up at the day care such as, "we are dropping her off later, we slept in, we missed the bus, and the police came to the house". Despite the non-attendance of the child in question, the appellant did not give away that child's spot in her daycare at the request of the parents. The appellant provided that she was ready, willing and able to look after the child and therefore she should not be penalized.

The panel finds: (a) the appellant was an at home licensed day care facility which was closed end of June 2008; (b) the appellant signed the Child Care Subsidy Claim, Licensed Facilities form acknowledging that she is liable to repay any overpayment arising from a claim and this is a true account of the amount owed for the case of the child; (c) With all statutory and sick days recorded, the amount of the overpayment is \$2,400.00; (d) the appellant kept the child care spot available for the child in question, even though the child missed many days, at the request of the child's parent; (e) there were many reasons given as to why the child in question did not attend the child care, but the appellant was ready, willing and able each day to look after the child with the exception of the 5 days in January that the day care was closed; (f) the appellant had a contract with the parents of the child - that the parents must pay for full time care, even if the child does not attend every day.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the ministry decision that an overpayment occurred in the amount of \$2,400.00 for child care that was not provided for under Child Care Subsidy Act, 7(1) and Child Care Subsidy Regulation, section 15(1), and 16(1)(2)

CCSR, section 15, Accounts and payment, provides that (1) Child care providers must submit billing for child care subsidies to the minister in the manner and form specified by the minister.

CCSR, section 16(1)(2) If a child is absent or is withdrawn without notice (1) the minister may continue to pay a child care subsidy for a period of up to 2 weeks for child care provided in a licensed child care setting, if a child is absent because (a) the child is on vacation, or (b) the child or parent is ill. (2) the child care provider must record the reason for the absence in an attendance register.

CCSA, section 7, Overpayments, repayments and assignments provides that (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.

The ministry's position is that the appellant filled in and signed the proper form for billing the ministry. That same form advises that the appellant can only receive subsidy funds for a true accounting of how many days the child is in care and that any overpayment created by filling in the form in advance will create an overpayment which the appellant is liable for.

The appellant's position is that she had a contract with the parents of the child in question which stated that the appellant would charge the parents for full time care, regardless of whether or not the child actually attends the day care. The appellant argues that the ministry should seek any repayment from the parents as the appellant was ready and willing to care for the child as a full time attending child.

Respecting CCSR, section 15, the panel finds that the appellant was aware of, and did use, the manner and form specified by the minister to submit the billing for child care subsidies. The panel determined that in filling out and signing of the prescribed form that the appellant was acknowledging that she knew that she was submitting her claim in advance and that she was liable to repay any overpayment arising from this claim. The panel determined that the fact that the appellant had a separate contract with the parents of the child which stated that the parents must pay for full time care regardless of whether or not the child attended, has no bearing in this matter as it is a contract separate from the ministry and between the appellant and the child's parents only. As such, the panel finds that required manner and form specified was used, and the appellant did acknowledge the possibility of an overpayment which she would be liable for as only a true account owed for the child in question would be paid by the child care subsidy. Documentary evidence confirms that the child in question was not in attendance for 80 days from January - June 2008. Therefore, the panel finds that the ministry was reasonable in its determination an overpayment exists.

Respecting CCSR, section 16(1)(a)(b), (2)(a), the panel finds that there was no confirmation that the child was absent or withdrawn from the daycare without notice, rather, documentary evidence supports that the parents of the child requested that the child stay with the daycare, and that the appellant did hold a spot open for the child in question until her daycare was closed by her at the end of June 2008. CCSR, section 16(b) and (2), the panel determined that documentary evidence confirms that the child was sick on 6 days that were recorded by the appellant (2 days in January, 4 days in April) and that the appellant recorded the child's sick absences in the attendance register. Therefore, in the absence of any documentary evidence that would identify any additional sick days, or, as vacation was not identified as a reason that the child was away for the 80 days in question, the panel finds that the overpayment still exists in accordance with the legislation.

Respecting CCSA, section 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, the panel finds that an overpayment has been made in the amount of \$2,400.00 as confirmed by the documentary evidence of the Child Care Subsidy Claim with its signed acknowledgement that the appellant is liable for any overpayment, Licensed Facilities form, the daycare's attendance register, reasons recorded on the attendance register and the appellant is liable for the overpayment as per this legislation.

The panel finds that the ministry's decision was reasonably supported by the evidence confirms the decision.