

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated June 1, 2010 which held that the appellant is liable to repay the sum of \$12,036.00 in child care subsidy (CCS) payments received between February 2008 and June 2009 for which she was not eligible because she did not disclose an adult dependant (person "X"), who is considered to be part of the appellant's family unit, on her CCS application or report the income of the adult dependant.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), sections 4 and 7
Child Care Subsidy Regulation (CCSR), sections 1, 4, and 7

PART E – Summary of Facts

A ministry observer was in attendance at the hearing with the appellant's consent.

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

- A CCS Application signed and dated by the appellant on October 22, 2006
- CCS Renewal forms signed and dated by the appellant on August 2001 [should be 2008], February 21, 2007, September 11, 2007, and October 14, 2009 on which the appellant ticked the box "single, separated, divorced or widowed" not the boxes for "married" or "marriage-like relationship" and has not provided any information respecting dependant adults and children (who do not require care);
- Information respecting the appellant's income for pay periods 09/19/2009 and 10/03/2009;
- An April 3, 2010 letter from the appellant to the ministry in which the appellant writes that person "X" and his daughter resided with the appellant in her home from January 2008 to July 2009 and that person "X's" gross income for 2009 was \$81,867.82;
- A 3-page CCS Overpayment Calculation respecting CCS payments, which the ministry determined were overpayments for the months February 2008 through June 2009 totaling \$12, 036.00;
- Ministry phone call logs for March 29 and April 19, 2010;
- A 1-page ministry history printout with notes respecting September 17, 2008;
- A 4-page Request for Reconsideration submission dated May 17, 2010 in which the appellant writes that she informed the ministry, during a March 29, 2010 telephone conversation, that (a) person "X" did not contribute financially to the support of the appellant or her children or make rent or mortgage payments and that she and person "X" were not married or living in a marriage-like relationship; (b) person "X" resided with the appellant as he was off work for medical reasons (temporary arrangement); and (c) person "X" financially supported himself and his daughter including purchasing groceries and day to day living expenses. The appellant argues that person "X" was not a parent, adult dependant and/or spouse, that his income should not be considered by the ministry, and that he and the appellant did not share each other's income or assets or any necessities of life obtained with the income or assets.

At the hearing, the ministry stated that section 4(1) of the CCSR requires that in order to be eligible for a child care subsidy a parent must supply the social insurance number of any adult dependant. Additionally, as a dependant, that person is considered part of the parent's family under the section 1 definition of "family" and the family's monthly income would be used for the income test under section 7 of the CCSR. The ministry stated that because person "X" resided with the appellant during the period in question, person "X" was a dependant within the meaning of the legislative definition in section 1 of the CCSR as the appellant provided a home which is considered a necessity of life.

At the hearing, the appellant stated that person "X" was not a dependant as he had his own income which he did not give to the appellant. The appellant added that person "X" was not her spouse nor were they in a marriage-like relationship. The appellant did not consider person "X" to be part of her family unit as he was simply someone living in her basement. The appellant stated that she extended the offer to live in her home as an act of kindness until person "X" sorted out personal and work matters and that person "X" had the resources to live somewhere else. The appellant stated that person "X" did not live with her "half of the time" as his work was based out of other cities. She stated that there was no change in her status to be reported to the ministry and that she filled out the CCS Renewal form honestly and clearly.

The panel makes the following findings of fact: (a) person "X", an adult, resided with the appellant in her home during the period from February 2008 through June 2009; (b) no information about person "X" was provided by the appellant on the CCS Renewal application forms respecting the period in question.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision that the appellant is liable to repay CCS payments in the amount of \$12, 036.00 received between February 2008 and June 2009 on the basis that she did not disclose that an adult dependant resided with her during this time period and did not disclose the income of the adult dependant.

Section 4 of the CCSA provides that subject to the regulations, the minister may pay child care subsidies.

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

Section 1 of the CCSR includes the following definitions:

"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 responsibility for the parent's child

"family" means a parent and the parent's dependants

Section 4(1) of the CCSR provides that 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.

Section 7(1) provides that 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.

The appellant's position is that she was eligible for the CCS payments received between February 2008 and June 2009 because person "X" was not her dependant as he was financially self-sufficient and did not contribute financially to the appellant and should not be considered part of the appellant's family unit.

The ministry's position is that person "X" was a "dependant" as he and the appellant were sharing a home, which is a necessity of life, during the period in question and that, as such, as a condition of eligibility the appellant was required to provide the social insurance number of person "X" when applying for a CCS.

The panel finds that the evidence establishes that person "X", an adult, was residing without payment of rent in the appellant's home from February 2008 through June 2009 and that the ministry reasonably determined that, consequently, person "X" was sharing with the appellant, "the parent", assets or necessities of life obtained with the assets and was, as defined in section 1 of the CCSR, a dependant of the appellant. The panel also finds that the ministry reasonably concluded that section 4(1) of the CCSR provides that eligibility for a CCS is contingent upon a parent, the appellant, supplying the ministry with the social insurance number of any adult dependant and that this information respecting person "X" was not provided by the appellant. Therefore, the panel finds that the ministry reasonably determined that the appellant was not eligible for CCS payments received from February 2008 through June 2009 and is liable for repayment under section 7 of the CCSA.

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