

PART C – DECISION UNDER APPEAL

The issue under appeal is the ministry's reconsideration decision dated February 16, 2011 which held that the appellant was living in a dependent relationship with person X and is liable for the repayment \$2,688.24 of child care subsidy claimed for the period August 1, 2010 to October 31, 2010 for which she was not eligible under sections 4 and 7 of the Child Care Subsidy Act.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA), sections 4 and 7
Child Care Subsidy Regulations (CCSR), section 1: definitions: "dependant", "spouse" and "family", sections 4 and 7.

PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration consisted of:

1. 30 July 2010, Child Care Subsidy Application from the appellant indicating that she was separated, employed 5 days a week for 7 1/2 hours a day and attending school. She identified 2 dependent children requiring child care.
2. 28 October 2010, a 2 page note to file (history) by the ministry wherein it was noted that the appellant advised that she and her spouse are still living together but are trying to separate. It further indicates that the spouse is refusing to leave the house and is currently living in the downstairs bedroom.
3. 29 November, 2010, a Child Care Subsidy Overpayment Calculation of \$2,688.24.
4. 20 December 2010, Request for Repayment Letter from the ministry.
5. 26 January 2011, a Letter requesting a reconsideration of repayment of child care subsidy by the appellant. She writes that after her relationship with her "common law spouse" had "broken down beyond repair" on July 1, 2010; she advised him "to split living expenses 50/50 for the children". She further states that they continued "to live in the same dwelling"; however he had moved to the basement. This was done for the best interests of the children and for financial reasons. The appellant states that they would not be able to sell their home without causing financial hardship for either of them. She further indicates that person X changed his bank account and had his pay checks redirected so she would no longer have access. The appellant states that person X never gave her funds to pay for child care.
6. 31 January 2011, Response to an Information Request by the ministry which lists the father of the appellant's children.
7. 4 February 2011, a Request for Reconsideration with a Letter supporting the request from the appellant wherein she writes she has applied for subsidized housing. She states that person X refuses to leave the home and she can not afford to move out. She reiterates that she does not have access to his account and he does not give her money for child care or living expenses. She further states that person X has received a benefit since she has applied for the child care subsidy "however, he did not offer to pay any portion of the difference from what the subsidy paid and the monthly amount owed to the daycare". The appellant indicates that person X works out of town and leaves Tuesdays and Thursdays at 12:30 and returns late at night. He also works Saturdays. The appellant suggests that person X "could look after the children on Monday, Wednesday and Friday, to reduce the need for child care, however he chooses not to".

The Ministry in its reconsideration decision noted that the appellant and the children's father both reside in the home they jointly own for both financial reasons and the best interests of the children. By the appellant's disclosure the ministry has determined that the appellant and person X share the assets required of owning a home. Based on the legislated definition of "dependant", the ministry would have expected that person X be disclosed on the Child Care Subsidy application and that his income be included in the calculation of the family's monthly income, which was not done. The ministry reports that the appellant and person X live as a two parent family in a dependant relationship as defined by the CCSR. The ministry further states that it "has no discretion to amend these requirements based on individual circumstances".

At the hearing, the Appellant stated that she has lived with person X for 7 years in the home they jointly own and that they had shared a joint bank account until last July when the relationship broke down and he had his pay checks redirected to an account that she can not access. She added that the mortgage continues to be taken bi-weekly out of the joint account which contains only the appellant's income and that person X has only paid the mortgage once since last July and isn't paying his portion of child care. She further indicates that person X has his bedroom down stairs as well as a separate bathroom and he cooks for himself in the family kitchen. The appellant reported that person X indicates he is separated on an on-line-dating system. She also reported that on Wednesdays he takes their son to hockey practice.

The appellant states she is waiting for a subsidized 3 bedroom unit but has no idea when one may come available. She has consulted a lawyer about a legal separation from person X but can not afford it. She indicated that person X told the day care agency in October that there was no change in their relationship and for that reason the agency would not process the child care subsidy. As a result, the appellant contacted the ministry to determine if she would be entitled to continuance of the child care subsidy and at that time disclosed the information about person X.

At the hearing the Ministry stood by the record.

Also accepted by the panel into evidence under Section 22(4) of the Employment and Assistance Act. was the following document from the appellant:

25 February 2011, an Appeal Notice wherein the appellant writes that she is not in a dependant relationship. "Dependant would mean I'm being supported" by person X which she states; she is not and they "are not living in a marriage like relationship".

FINDINGS OF FACT

- Person X is also the father of the two children who require child care.
- The appellant and person X jointly own the home in which they both live.
- Person X earns approximately \$70,000 annually.
- The appellant is employed.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision that the appellant was living in a dependent relationship and is liable for the repayment \$2,688.24 of child care subsidy claimed for the period August 1, 2010 to October 31, 2010 for which she was not eligible under sections 4 and 7 of the Child Care Subsidy Act was a reasonable application of the legislation or reasonably supported by the evidence.

The following sections of the Child Care Subsidy Act apply to this decision.

Child care subsidies

4 Subject to the regulations, the minister may pay child care subsidies.

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. (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 following section of the Child Care Subsidy Regulation applies to this decision.

Definitions

1 "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.

"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.

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

How to apply for a subsidy

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.

Income test

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.

The Ministry's position is that both the appellant and person X reside in a home that is jointly owned. It appears to the ministry that the appellant is "living as a two parent family in a dependant relationship". The ministry asserts that the appellant should have included person X and his income in the child care subsidy application.

The Appellant's position is that she didn't apply for child care benefits fraudulently and she doesn't have money to make the repayment or obtain a legal separation. She further insists that person X is not paying his portion of child care or living expenses.

The panel notes that section 1 of the CCSR defines "dependant" in relation to a parent, to mean anyone who resides with the parent and who shares with the parent income or assets or any necessities of life obtained with the income or assets. Although the appellant insists that she is not being supported by or living in a marriage like relationship with person X; she does admit that they are joint owners of the home in which they reside. As the ministry must use the relevant definitions when determining eligibility and has no discretion to amend these requirements to individual circumstances, the panel finds that the ministry's decision was reasonably supported by the evidence and met the definition for "dependant" under the Act.

In regards to the disclosure of person X on the application for child care subsidy, the Ministry argues that the appellant "is living as a two parent family in a dependant relationship" whereas the appellant noted on the application for child care subsidy that that she was separated. The panel finds that the appellant continues to pay the mortgage for both herself and person X and that the ministry was reasonable to expect that the minister be supplied with the social insurance number of the parent and each adult dependant in accordance with section 4 (1)(b) of the CCSR.

In regards to the repayment of \$2,688.24 of child care subsidy, the ministry indicates that parents are typically responsible for paying part of the whole cost of child care depending on their eligibility and had the appellant disclosed the information about person X's annual earnings of \$70,000 when filling out the application for the child care subsidy, she would not have been assessed ineligible for support. The panel finds that the ministry's reconsideration decision to hold the appellant liable for the repayment, as the family's income exceeds the children's threshold was reasonably supported by the evidence and a reasonable application under section 7(1) of the CCSA.

In applying the legislation to the facts of the case, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and thus confirms the ministry's decision.