

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 27, 2011 which held that the appellant is liable to repay the sum of \$3004.02 in child care subsidy (ccs) payments received between February 14, 2009 and December 31, 2009 for which she was not eligible due to undeclared income as per section 7 of the Child Care Subsidy Act.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 7
Child Care Subsidy Regulation (CCSR), sections 7,8,9 and 10

PART E – Summary of Facts

The evidence before the ministry at reconsideration was comprised of: (a) Request for Reconsideration dated October 12, 2011 which included Reasons for the Request, (b) Child Care Subsidy Application dated January 8, 2009, (c) Pay Stubs for the period of April 1, 2009 until December 4, 2009, (d) Child Care Subsidy Renewal dated January 1, 2010, (e) Child Care Subsidy Overpayment Calculation dated September 8, 2011, and (f) Notice of Assessment by the Canada Revenue Agency for Year 2009.

The Request for Reconsideration dated October 12, 2011 included 3 reasons by the appellant for reconsideration:

1. The appellant states that had she known about the option to have her subsidy reviewed every 3 months because of her fluctuating income, she would have done so. As a single mom with 3 children, she has a difficult time to put food on the table and would not have put her family in this position. She adds that she has "zero means" to pay this large bill and finds herself deeper in debt as the months go by.
2. The appellant indicates that she was just returning from maternity leave to a new job beginning on February 14, 2009 and was unsure of the hours of work and shift rotations when she applied for the subsidy. She states that she did highlight this and it should have been pointed out to her "that there would be a more optimal way of dealing with this subsidy". She indicates that she never considered that her income or situation was changing because she provided her pay stubs as required.
3. The appellant writes that her job stayed the same until January 2011 when she started a new full time job. She feels that it is the ministry's job to see these situations and point out to the client that there may be "a better way to handle the review/renewal". She was told much too late that it should have been every 3 months.

The Child Care Subsidy Application dated January 8, 2009 indicated that the appellant was returning from maternity leave, didn't yet have pay stubs and was to start work on Feb 14, 2009 to work 12 hours per day and 4 days per week. The appellant's 3 children would require care between 6:00 am and 9:00 pm daily depending on the appellant's hours of work for the maximum allowed of 20 days per month. The same care provider was named for each child. Two of the three children attend school.

On April 6, 2009, the appellant submitted new pay stubs in order to have her continuing eligibility assessed for the child care subsidy. The ministry's calculation was based on a yearly average of the appellant's pay stubs.

The Child Care Subsidy Renewal dated January 1, 2010 indicated that the appellant was working between 8-12 hours per day and between 4-6 days per week. The appellant's 3 children would require care between 6:00 am and 10:00 pm daily depending on the appellant's hours of work for the maximum allowed of 20 days per month. The same care provider was named for each child. Two of the three children attend school.

On January 4, 2010, regarding the renewal for subsidy, the ministry used a yearly average of the appellant's pay stubs to calculate the child care subsidy, which resulted in a reduction.

The Child Care Subsidy Overpayment Calculation was for the period of March 2009 through December 2009 and indicated that there was undeclared income. Three times per month a child care subsidy was issued which exceeded the amount eligible totaling an overpayment of \$3,004.02.

The ministry's verification and audit of the appellant's file was completed on October 7, 2011 which determined the overpayment of child care subsidy from February 14 to December 31, 2009. The appellant was then informed of the ministry's findings and decision.

The Notice of Appeal dated November 2, 2011 included the following reasons; the appellant was new to using the child subsidy program after not having used it for several years, her documentation "clearly showed a fluctuating income", and she had not been informed of the proper process for reporting fluctuating income which if she had, she would have taken the necessary steps to avoid this situation. The appellant adds that she has not had an income since October 6, until the time of writing due to medical reasons and has no resources to pay this debt back.

At the hearing, the appellant testified that she did everything that she was required to do and would never do anything intentionally to put her family in this situation. She stated that there was no change to the information that she had provided to the ministry and that she understood that the ministry would base the child care subsidy on an average of her annual income. She does not dispute the ministry's assessment of overpayment and added that she can't afford to it pay back.

The ministry testified that it recognizes it was a mistake to provide the appellant with too much subsidy and a better job could be done with the application form as it is "buried in the back"; the obligation by the appellant to provide any change of information contained in the application. The application form also indicates that the information contained in the document may be reviewed, audited and verified as provided by Section 5 of the CCSA and acknowledges the consent of the applicant to do so, for the purpose of determining or auditing the appellant's eligibility for subsidy. The ministry advised that the purpose of the monthly average estimate of the yearly income is to insure that child care would be covered over the year when income fluctuates and that the ministry is aware that some times the income may exceed the average, while at other times, it may be lower than the average, but that generally it balances out at the end of the year. The ministry also testified that the appellant did not do anything wrong.

The panel admitted the appellant's reasons contained in the Notice of Appeal as well as her oral testimony as evidence under section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration.

The ministry did not object to the admission of this evidence.

Findings of Fact

The overpayment amount determined by the ministry's audit branch of \$3004.02 was not in dispute by either party.

The appellant's compliance in terms of applying for and receiving a child care subsidy were confirmed by the ministry.

The appellant and the ministry agree that the appellant's declaration of having a fluctuating income on her original application form dated January 8, 2009 was evident and that her fluctuating income continued for the remainder of the year.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant is liable to repay the sum of \$3004.02 in child care subsidy payments received between February 14, 2009 and December 31, 2009 for which she was not eligible due to undeclared income as per section 7 of the Child Care Subsidy Act.

Applicable Legislation

Child Care Subsidy 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.(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).

Child Care Subsidy Regulation

Amount of subsidy

8 (1) If a family's monthly net income does not exceed a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care. (1.1) If a parent is eligible for a subsidy for more than one type of child care set out in Schedule A, the minister may determine which subsidy rate applies. (2) If a family's monthly net income exceeds a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is $A - B$ where

A = the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care;

B = the amount of A for the child, divided by the sum of the amounts of A for all children in the family receiving child care described in section 2, multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold.

How monthly net income is calculated

9 (3) If the monthly net income of the family varies during a calendar year, the minister may calculate their monthly net income by (a) estimating the annual net income that everyone in the family, other than a dependent child, will receive in the calendar year, and (b) dividing the estimated annual net income by 12.

The ministry argues that although it elected to apply section 9(3) of the CCSR, which is a standard practice when an applicant's income fluctuates, it remains the applicant's responsibility to inform the ministry of changes to her circumstances, including changes to her income, and that because her income was higher than the average that had been estimated, according to the audit and to section 7(1) of the CCSA, she was liable to repay \$3004.02 of subsidy that she was not entitled, due to undeclared income.

The appellant argues that she informed the ministry that her income was fluctuating during the year 2009 and as a result, the ministry chose to estimate her monthly income and set her eligibility to ccs based on that estimation for that year. She produced pay stubs as required and was aware of the requirement to "promptly supply information to the Child Care Subsidy Program if there was a change to any of the information [she had] provided in [the] application" as required on the last page of the application form. The appellant complied with the obligation as there was no change to the information that she had provided, as her income was still fluctuating throughout that year. She argued that she had complied with all legal requirements and should not have to repay the overpayment.

With respect for section 9 (3) of the CCSR, the panel finds that the ministry confirmed that as a result of the appellant's fluctuating income, it chose to calculate a monthly net income by estimating the annual net income to be received in 2009 and dividing it by 12. The panel also finds that the appellant initially, at the time of application for ccs disclosed that her income would fluctuate because she was returning to work after maternity leave and would be on rotating shifts. This was confirmed by her request for child care which was indicated for any day of the week between 6:00 am and 9:00 pm. The appellant also submitted her new pay stubs on April 6, 2009, less than 2 months after her application for ccs.

The evidence indicates that the appellant did report all the information about her income as requested and that the ministry's determination that the overpayment was a result of undeclared income was due to the uncertainty associated with a fluctuating income. When the ministry applies section 9(3) of the CCSR, it is aware that this is an average and that the income may be higher or lower than the estimate which can result in an underpayment or overpayment of ccs. Therefore, the panel finds that the ministry was reasonable in their application to calculate a monthly net income by estimating the annual net income to be received in 2009 by the appellant and dividing it by 12 pursuant to section 9(3) of the CCSR.

Thus, the panel finds the ministry's decision to apply section 7(1) of the CCSA, which states 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 to the government the amount to which the person was not entitled, even though it is recognized that through no fault of her own, the appellant was in receipt of an overpayment of ccs, was a reasonable application of the applicable enactment in the circumstances of the appellant.

For those reasons, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.