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PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (the ministry) dated 01 March 2019 that denied the Appellant her request for the Affordable Child Care Benefit (the “subsidy”) because the Appellant’s child was not being cared for in a type of child care setting which is authorized by section 2 of the *Child Care Subsidy Regulation* (CCSR) to be subsidized.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA), section 4
Child Care Subsidy Regulation (CCSR), section 2

[Redacted]

PART E – SUMMARY OF FACTS

A. Information before the Ministry at Reconsideration

The information before the ministry at reconsideration included the following:

- (i) An Affordable Child Care Benefit Application dated November 5, 2018, in which the Appellant provides
 - her name, address and contact information,
 - the name and birthdate of the dependent child for whom the Child Care Subsidy is sought, and
 - the reasons why the Appellant needs childcare, which are stated to be while she is at work, and
 - particulars of her employment.

- (ii) An Affordable Child Care Benefit Child Care Arrangement form dated November 5, 2018 in which the Appellant provides
 - the name, address and contact information of the child care provider,
 - the details of the type of child care provided, for which she seeks a subsidy,
 - details of the child and the child's birthdate, and
 - the days and hours during those days for which child care is required.

- (iii) The Birth Certificate of the child for whom a day care subsidy is sought.

- (iv) A letter from the ministry dated November 15, 2018 advising the Appellant that her current child care arrangement is not eligible for a subsidy.

- (v) The Appellant's Request for Reconsideration dated February 13, 2019 in which the Appellant states as the Reasons for her Request for Reconsideration that
 - she was refused the child care benefits and does not understand why,
 - she went back to work on September 3, 2018 after having a baby who is now 3,
 - she works part time the 3 to 4 hours a day and is still on income assistance,
 - her rent is \$600 per month,
 - her mother watches her child for her,
 - she and the child live downstairs and have their own entrance, and have two bedrooms
 - she has her own fridge, microwave, 2 burner stove and bathroom,
 - she wants to keep her child home rather than in daycare.

B. Notice of Appeal

In her Notice of Appeal, the Appellant says she disagrees with the Reconsideration Decision because she does not want to keep her child in daycare and would like to keep him in his own environment.

There was no new evidence submitted at the Appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the reconsideration decision of the Ministry of Children and Family Development (the ministry) dated 01 March 2019 that denied the Appellant her request for the Affordable Child Care Benefit (the “subsidy”) because the Appellant’s child was not being cared for in a type of child care setting which is authorized by section 2 of the *Child Care Subsidy Regulation* (CCSR) to be subsidized was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. The Ministry determined that the child care setting was not one for which the Minister may provide a subsidy.

Relevant Legislation

Child Care Subsidy Act (CCSA)

Child care subsidies

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

Child Care Subsidy Regulation (CCSR)

What types of child care may be subsidized?

2 The minister may pay a child care subsidy if a type of child care set out in Column 2 of a table in the Schedule is provided

- (a) in a licensed child care setting,
- (b) in a licence-not-required child care setting,
 - (b.1) in a registered licence-not-required child care setting, or
- (c) in the child's own home, but only if the child care is provided by someone other than a person who
 - (i) is a relative of the child or a dependant of the parent, and
 - (ii) resides in the child's home.

Section 4 of the CCSA allows the Minister to pay child care subsidy if the requirements of section 2 CCSR are met.

Parties’ Submissions

Appellant’s Submissions

The Appellant submitted that she has just returned to work, has lived in her current accommodation for nine years, as have her parents, who live upstairs, and that she thinks her mother is the best child-care resource for her son who has just turned three years old. She reiterated that although her mother and father live at the same address, they live upstairs and she lives downstairs and has her own kitchen with a two burner stove, fridge, microwave, two bedrooms, a bathroom and a separate entrance. She said that her mother and father and she share the laundry. She said that there is a door separating the upstairs and downstairs. She said that the downstairs suite in which she and her son live is self-sufficient such that it could be rented out to a stranger. The appellant further submitted that the grandmother sometimes provides childcare downstairs and sometimes upstairs.

Ministry Submissions

The ministry reiterated the Reconsideration Decision that the Appellant is not entitled to the subsidy because childcare is provided by a relative (the child’s grandmother) who resides in the child’s home. The ministry submitted that it is difficult to determine whether or not the Appellant’s suite is an independent suite and pointed out that in the child care provider’s information, in answer to the question of whether or not “*Child care is provided in the child’s own home*”, the grandmother said that she was a relative of the child, specifically the grandmother, and said that she lived in the same home as the child. To the question of whether or not the subsidy would be provided if the care provider was not related but did live in the same home as the child, as would be the case if a friend or roommate lived in that home and provided childcare, the ministry said that the Appellant would then be eligible for the subsidy.

Panel Finding

The panel notes that under section 4 *CCSA*, the ministry may pay child care subsidies, subject to the regulations, and that the applicable regulation for determining what type of child care may be subsidized is section 2 *CCSR*. The only applicable subsection of section 2 *CCSR* is section 2 (c), because the child care is being provided in the child's own home, and is not being provided in one of the settings referred to in subsections (a), (b) or (b.1).

Under section 2 (c) a person is not eligible for a subsidy if two conditions are met; the first is that the child-care provider is a relative of the child or a dependent of the parent and the second is that child-care provider resides in the child's home.

The panel finds that in order to be disqualified for a subsidy, both of those conditions must be satisfied, and that if either is not satisfied, then the applicant for the subsidy is entitled to it.

In this case, the evidence before the Reconsideration Officer was clear that although the Appellant and her child as well as her parents reside at the same address, the Appellant resides in a suite with its own entrance, two bedrooms, and a kitchen consisting of a fridge, microwave, and two burner stove and bathroom. The evidence showed that there is a door between the upstairs and downstairs that can be secured, as would be the case if the downstairs was rented to a stranger.

The panel finds that it is immaterial whether or not the Appellant, her child and the Appellant's parents frequently see each other in the upstairs or downstairs. The panel finds that although the care-provider, the grandmother, said in her questionnaire that she did reside in the same home as the child, it was clear that it was only at the same address.

The Panel finds that the street address at which the Appellant resides contains two suites, and that those two suites comprise two homes. The upstairs is the home of the Appellant's parents and the downstairs is the home of the Appellant.

The panel finds that the child's grandmother, the child-care provider, resides in her own home and not that of the child, and therefore the child care being provided by the child's grandmother is not being provided by a relative of the child who resides in the child's home.

The panel finds that both conditions required by section 2 (c) which would disqualify the Appellant from being eligible for the subsidy have not been satisfied because although the child care is provided by the child's relative, the child's relative does not reside in the child's home.

Conclusion

The panel finds that the ministry's determination, which denied the Appellant her request for the Affordable Child Care Benefit because the Appellant's child was not being cared for in a type of child care setting which is authorized by section 2 of the *Child Care Subsidy Regulation (CCSR)* to be subsidized, was neither reasonably supported by the evidence nor a reasonable application of the applicable enactment, namely section 2 of the *Child Care Subsidy Regulation*, in the circumstances of the Appellant.

The panel rescinds the ministry's reconsideration decision. The appellant is successful on her appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME DONALD R. (DAN) McLEOD	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/APR/03

PRINT NAME ROBERT (BOB) FENSKE	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/APR/03

PRINT NAME MARGARITA PAPENBROCK	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/APR/04