

APPEAL NUMBER
2020-00238

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated October 2, 2020, which determined the appellant was not eligible for the affordable child care benefit received June 2019 to April 2020 as per section 1 of the *Child Care Subsidy Act* and sections 2 and 14 of the Child Care Subsidy Regulation, because she was the care provider for her own children.

As a result, an overpayment of \$5,440 was established, which the appellant is required to repay to the ministry.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA), sections 1, 4, 5 and 7

Child Care Subsidy Regulation (CCSR), sections 2 and 14

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

On September 26, 2018, the appellant submitted an affordable child care benefit (ACCB) application indicating she and her spouse required child care for their two youngest children.

Affordable Child Care Benefit Application (September 26, 2018)

Applicant – Appellant's name

Dependent Children – includes appellant's two youngest children

Reason for Needing Child Care – "I own a licensed family daycare and my 2 kids attend too. I have hired someone else at the daycare."

Declaration from the application:

...
I understand I am required to promptly supply information to the Child Care Services Centre if there is a change in my or my family's circumstances affecting my eligibility for the benefit.

I understand it is an offence under the *Child Care Subsidy Act* to supply false or misleading information.

...

On September 26, 2018, the appellant submitted an ACCB child care arrangement form where she indicated MA was the child care provider and the appellant was the licensee for the daycare.

Affordable Child Care Benefit, Child Care Arrangement (September 26, 2018)

"The purpose of this form is to establish eligibility for Affordable Child Care Benefits and indicates the applicant's child care arrangement."

Name and Contact Information - care provider – MA, licensee – Appellant

Children's names – appellant's two youngest children listed

Note: Both children are children of the licensee but care is provided by someone else (MA) care provider.

Other information on the arrangement form:

4. The child care provider must sign and date this form in order for it to be accepted.

As the child care provider, I confirm I am required to notify the Child Care Service Centre immediately if there is a change to any information provided on this form or any subsequently provided information.

7. Declaration:

I understand that I am required to immediately supply information to the Child Care Service Centre if there is a change to any information provided here or any subsequently provided information.

Letter from Ministry to Appellant (October 16, 2018)

"This letter displays your eligibility decision for the Affordable Child Care Benefit. If there are any errors in this information, if you have a change in circumstances that affects your eligibility, or if you have any questions about your eligibility for the Affordable Child Care Benefit, please contact us."

- Benefit period – October 1, 2018 – June 30, 2019
- Children listed are the appellant's youngest children
- Care provider listed is the appellant
- Care type – licensed family

The appellant's ACCB expires on June 30 2019.

Letter from Ministry to Appellant (July 2, 2019)

“This letter displays your eligibility decision for the Affordable Child Care Benefit. If there are any errors in this information, if you have a change in circumstances that affects your eligibility, or if you have any questions about your eligibility for the Affordable Child Care Benefit, please contact us.”

- Benefit period – September 1, 2019 – June 30, 2020
- Children listed are the appellant’s two youngest children
- Care provider listed is the appellant
- Care type – licensed family

The appellant’s ACCB expires on June 30 2020.

On June 9, 2020, the ministry sent the appellant a letter advising that a review was being conducted on her child care subsidy file to determine whether subsidy was issued appropriately. The appellant was asked to provide:

- The name and contact information of the staff person in her facility
- The employee’s T4 from 2018 to 2020
- A form for rental income from 2018 to 2020

Email from Appellant to Ministry (June 24, 2020)

On June 24, 2020, the appellant advised the ministry she was unable to provide the information (except for the information regarding her employee) as she did not have any rental income or a T4 for her employee.

The appellant states when she heard about the subsidy program she was wondering if as a child care provider she would be able to apply for her own children who were attending her daycare. She called the ministry, explained her situation and was told that it had not had this kind of application before but that she could try and apply. So, she applied for the subsidy and was approved. The appellant’s daycare was a family daycare and she was allowed a maximum of seven children. Out of those seven children, two were her own children so she only had income from the other five children.

The appellant stated that as she had been sick for about three years she had to have someone help her. She paid her employee by cheque every two weeks and because she was not a corporation she did not have to provide a T4 to her. Her employee worked full-time three days a week and her older daughter (daughter) would be working in the daycare the other two days with the appellant. The appellant’s employee, MA, stopped working as of May 2019. Since then, the appellant’s daughter had been helping her and was paid the same amount as her previous employee, so she did not have to work anywhere else.

As of March this year, because of the pandemic, the daycare closed.

Email from Appellant to Ministry (June 25, 2020)

On June 25, 2020, the appellant provided bank business account statements for the period February 28, 2018 to August 31, 2018 and September 29, 2018 to June 30, 2019 with copies of cheques paid to her employee, MA. The appellant also provided her daughter’s personal bank account statements for the period January 19, 2018 to June 20, 2019.

Attachments: Bank statements and copies of cheques

The appellant states she included her daughter’s bank statements that show a lot of online transfers - most say online banking transfer and some have her name on them. She also paid her daughter in cash a lot of times.

Appellant's Daughter's Bank Statements (for period - May, June, July, 2019)

- entries for online banking transfer, online transfer received and online transfer received (with appellant's name)
- varying amounts, \$5 - \$277

Copies of Cheques (March 29, 2018 – June 28, 2019)

- to MA, from appellant (with name of daycare)
- varying amounts, \$304.50 - \$1,064

On July 21, 2020, the ministry sent a letter advising the appellant it had reviewed her receipt of child care subsidy benefits (CCSB) between June 2019 and April 2020 and as a result determined she received \$5,440 in CCSB for which she was not eligible.

Reason for Request for Reconsideration (August 12, 2020)

The appellant states she was not aware that she was not allowed to provide care for her own children at her daycare. When she applied, the appellant explained her difficult situation and her application was approved. She was not made aware of section 1 of the CCSA or sections 2 and 14 of the CCSR at that time and she had no idea that she was approved because she had an employee at the time. When her employee, MA, stopped working at her daycare, the appellant was caring for her family daycare, including her own children. Also, the appellant's daughter had been helping her out and she would pay her cash or make an e-transfer to her.

If the appellant had been made aware of the reason she was approved for CCSB, she would have stopped the payments as she did when her daycare closed.

Additional Information

Appellant

Notice of Appeal (October 14, 2020)

The appellant states she was not properly informed of the reason she was eligible to receive the ACCB and therefore did not know what change to her situation she had to report.

At the hearing the appellant stated that it was a misunderstanding. When the appellant was approved for the ACCB, there was nothing provided in writing as to why she was approved. She thought she was approved because of her financial situation and so believed it was only necessary to let the ministry know if her financial situation changed. The appellant believed that hiring an employee lowered her income and as the other children in the daycare were receiving a subsidy, she thought it could be the same for her children. On the ACCB child arrangement form (September 26, 2018) the appellant added a note stating that care was being provided by her employee, MA, to show that she had less income.

The appellant also stated that during the period June 2019 to April 2020, her daughter was working at the daycare as much as she was needed, usually five days/week and at different hours. During this time, her daughter was also working at a retail store, but mostly Saturdays. As well, her daughter went to school but took very few courses – maybe two courses/week, for two to three hours/week. Her daughter was always available, but if and when there were times her daughter was not available, the appellant might have cared for her children the odd time. The children required the same hours of care from June 2019 to April 2020.

The appellant paid her daughter from her business account, mostly by cash because it was easier. The appellant did not provide statements from her business account, but she could not remember the reason as to why she was not able to provide them.

In reference to “asking the appellant to contact the ministry if there are any changes” (letter, October 16, 2018), the appellant thought this meant perhaps if her children no longer went to the daycare, or if there was a change in her financial situation.

Ministry

At the hearing, the ministry added that the CCSR states that for a licensed daycare, child care cannot be provided by a parent. The ministry did not believe child care was provided by anyone else besides the appellant as there was not enough evidence that someone else was providing the child care and supervision. The evidence provided does not show a similar record for the appellant’s daughter as for the appellant’s former employee, MA. The legislation is clear. If the appellant’s daughter was paid regularly, like MA, the daughter would be considered a person other than the parent (the appellant), providing such care and supervision.

The panel determines that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which determined that the appellant was not eligible for the ACCB received June 2019 to April 2020, as per section 1 of the CCSA and sections 2 and 14 of the CCSR because she was the care provider for her own children, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

As section 7(5) of the CCSA states, "The minister's decision about the amount a person is liable to repay...is not open to appeal...", the amount of the overpayment is outside the panel's jurisdiction.

Relevant sections of the legislation can be found in the Schedule of Legislation.

Appellant Argument

The appellant argues when she applied, she explained her difficult situation and her application was approved but she had no idea that she was approved because she had an employee at the time. There was nothing provided in writing as to why she was approved and she thought she was approved because of her financial situation and so she would let the ministry know if her financial situation changed. Other children in the daycare were receiving a subsidy, so the appellant thought it could be the same for her.

The appellant also argues she was not aware that she was not allowed to provide care for her own children at her daycare and if she had been made aware, she would have stopped the payments as she did when her daycare closed. As she was not properly informed of the reason she was eligible to receive the ACCB, she did not know what change to her situation she had to report.

Ministry Argument

The ministry argues it has the authority to provide a child care subsidy to the appellant as the parent of her children in a licenced family child care setting, as long as she is not the person providing the care and supervision of her own children.

The ministry also argues that on the ACCB child care arrangement form (September 26, 2018) the appellant indicated that although she was the licensee of the daycare, MA was the care provider of the appellants two children, and this led the ministry to conclude that the appellant was not providing the care and supervision directly to her two children.

The ministry argues further that the appellant signed the declaration on both the affordable child care application and the affordable child care arrangement form indicating she understood that she was required to supply information to the ministry if there was a change that would affect eligibility for the benefit or if there were any changes in the information provided on the form, but that the appellant failed to notify the ministry when the employee, MA, was no longer providing the care for her two children.

In addition, the ministry argues that although the appellant's daughter helped the appellant since May 2019, and was paid the same amount as the former employee, MA, by cash or e-transfer, the appellant has not provided evidence to show she paid her daughter as an employee. She has not provided copies of cheques from her business account as she had provided for MA.

Panel Decision

Section 1, CCSA – definitions

Section 1 defines child care as, “the care and supervision of a child in a child care setting, other than...by the child's parent...”

The appellant does not dispute that she is the children’s parent. She also stated in her Request for Reconsideration (August 12, 2020) that when her employee, MA, stopped working, she was caring for her family daycare, including her children.

The ministry argues if a parent is providing care and supervision of her own children in a licenced family child care setting, the appellant does not qualify to receive the ACCB.

In her email to the ministry (June 24, 2020), the appellant stated as of May 2019 her daughter had been helping the appellant. She was paid the same amount as the former employee, MA, so her daughter did not have to work anywhere else. The daughter’s bank statements (January 19, 2018 – July 19, 2019), show that the appellant sent a lot of online transfers, most say online banking transfer and some had her name on them. The appellant also told the panel that she paid her daughter in cash a lot.

At the hearing, the appellant also stated that during the period June 2019 to April 2020, her daughter was working at the daycare as much as she was needed, usually five days/week and at different hours. During this time, her daughter was also working at a retail store, but mostly Saturdays. As well, her daughter went to school but took very few courses – maybe two courses/week, for two to three hours/week. Her daughter was always available, but if and when there were times her daughter was not available, the appellant might have cared for her children the odd time. The children required the same hours of care from June 2019 to April 2020. The appellant paid her daughter from her business account, mostly by cash because it was easier. She couldn’t provide statements from her business account, but couldn’t remember the reason.

The panel finds that although the appellant’s daughter may have occasionally helped out at the daycare, there is insufficient evidence (as outlined below) to demonstrate, when she was helping out, that she was doing so as an employee, and that she was the only one providing care and supervision of the appellant’s children between June 2019 and April 2020.

There is a large discrepancy between the amounts paid to the former employee, MA and the amounts paid to the appellant’s daughter. The bank statements for May, June and July, 2019 that show online banking transfer, online transfer received and online transfer received (with appellant’s name) range from \$5 to \$277 while the cheques (March 29, 2018 – June 28, 2019), from the daycare account, to MA range from \$304.50 to \$1,064. As well, for the period in question, June 2019 to April 2020, the only bank statements provided for the daughter were for May, June and July 2019. In addition, these statements do not demonstrate that monies were paid from the appellant to her daughter as an employee of the daycare.

There is insufficient evidence to show the amount of cash given to the appellant’s daughter and insufficient evidence to show payment transactions from the appellant’s business account to her daughter from June 2019 to April 2020.

In addition, in her Request for Reconsideration (August 12, 2020) the appellant stated that when her former employee, MA, stopped working, she was caring for her family daycare, including her own children.

The panel therefore finds the appellant was providing care and supervision of her children between June 2019 and April 2020.

As the panel finds that the appellant (as the children's parent) was providing care and supervision to her own children between June 2019 and April 2020, the ministry reasonably determined that the appellant was not entitled to ACCB from June 2019 to April, 2020 as per section 1 of the CCSA.

Section 4 and 5, CCSA – child care subsidies and information and verification

Section 4 states the ministry may pay child care subsidies, subject to the regulations, and section 5 outlines the ministry's authority for auditing eligibility for child care subsidies and also states a person receiving child care subsidy must notify the minister of any change in circumstances affecting their eligibility.

Section 2, CCSR – types of child care that may be subsidized

Although section 2(a) states the minister may pay a child care subsidy in a licensed child care setting, the panel notes, section 1 of the CCSA excludes parents from providing child care (care and supervision of a child) for the purposes of this legislation.

Section 14, CCSR - notifying the minister of change in circumstances

Section 14 states the appellant must notify the ministry as soon as possible after any change in circumstances affecting her eligibility. The ACCB application (September 26, 2018) and ACCB Child Care Arrangement (September 26, 2018), both include a declaration that states the appellant is required to immediately supply information to the ministry if there is a change to any information provided on the application or subsequently.

The ministry argues that the appellant signed the declaration on both the affordable child care application and the affordable child care arrangement forms indicating she understood that she was required to supply information to the ministry if there was a change that would affect eligibility for the benefit or if there were any changes in the information provided on the form, but failed to notify the ministry when her former employee, MA, was no longer providing the care and supervision for her two children at the daycare.

The appellant argues she was not properly informed of the reason she was eligible to receive the ACCB and therefore did not know what change to her situation she had to report. At hearing, the appellant stated she thought this meant perhaps if her children no longer went to the daycare, or if there was a change in her financial situation.

The panel finds that as the appellant signed declarations (September 26, 2018) indicating she understood that she was required to supply information to the ministry if there was a change that would affect eligibility for the benefit or if there were any changes in the information, but failed to notify the ministry when her former employee, MA, was no longer providing the care and supervision for her own two children at the daycare, the ministry reasonably determined the appellant did not comply with section 14 of the CCSR.

The panel acknowledges that the appellant may not have been fully aware of the reasons why her ACCB was approved. However, as stated above, the panel finds the ministry reasonably determined that the appellant was not entitled to ACCB from June 2019 to April, 2020 as per section 1 of the CCSA and sections 2 and 14 of the CCSR.

Conclusion

In conclusion, the panel finds the ministry decision that the appellant was not eligible for the affordable child care benefit received for the period June 2019 to April 2020, as per section 1 of the CCSA and sections 2 and 14 of the CCSR because she provided the care and supervision for her own children, was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

Schedule of Legislation

Child Care Subsidy Act

Definitions

1 In this Act:

"child care" means the care and supervision of a child in a child care setting, other than
(a) by the child's parent ...

"child care setting" means any setting in which child care is provided...

"child care subsidy" means a payment made under this Act to or for a parent to subsidize the costs of child care;

"parent" includes a person with whom a child resides and who stands in place of a parent of the child.

Child care subsidies

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

Information and verification

5 (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

(a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;

(b) seek verification of any information supplied by a person referred to in paragraph (a);

(c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;

(d) collect from a person information about another person if

(i) the information relates to the application for or payment of a child care subsidy, and

(ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

- (3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may
- (a) declare the person ineligible for a child care subsidy until the person complies, or
 - (b) reduce the person's child care subsidy.
- (4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

Overpayments, repayments and assignments

7

...

- (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

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.

Notifying the minister of change in circumstances

- 14** The notification required by section 5 (2) of the Act must be given in writing or by telephone,
- (a) as soon as possible after any change in circumstances affecting the eligibility of the parent, and
 - (b) to an employee in the Child Care Service Centre.

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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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/11/02

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/11/02

PRINT NAME

Nancy Eidsvik

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/11/02