

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Children and Family Development (“the ministry”) Reconsideration Decision of October 5, 2020 in which the ministry determined that the appellant was ineligible for child care subsidy (CCS) payments received between October 2018 and April 2020 because the appellant and his spouse did not meet the citizenship eligibility requirements set out in Section 5 of the Child Care Subsidy Regulation (CCSR), resulting in an overpayment that the appellant was liable to repay. The ministry also found that the appellant failed to notify the ministry of changes in the family’s circumstances as required by Section 5(2) of the Child Care Subsidy Act (CCSA) and Section 14 of the CCSR.

**PART D – RELEVANT LEGISLATION**

CCSA Sections 5, 7  
CCSR Sections 3, 5, 14

Employment and Assistance Act (EAA) Section 24

## PART E – SUMMARY OF FACTS

### Preliminary Matters

#### Release of Information (ROI)

The appellant participated in the teleconference accompanied by an advocate and a clerical assistant taking notes on his behalf. The appellant stated that a signed ROI had been submitted to the Tribunal; however, the Tribunal had no record of an ROI being submitted on this appeal. The appellant orally confirmed his wish that the advocate act on his behalf at the appeal hearing. With the appellant's verbal confirmation and pursuant to Rule 2.2 (a) of Tribunal Practices and Procedures the appeal panel accepted the advocate as the appellant's representative at the hearing.

#### **Information before the Ministry at Reconsideration**

Information before the ministry at reconsideration included the following:

- appellant's Request for Reconsideration submitted to the ministry on September 18, 2020 with the following enclosures (copies):
  - three Government of Canada Refugee Protection Claimant Documents confirming the eligibility of the appellant, the appellant's spouse and their child D for a decision by the Refugee Protection Division for the period February 2, 2018 – February 2, 2020;
  - three Government of Canada Refugee Protection Claimant Documents confirming the eligibility of the appellant, the appellant's spouse and their child D for a decision by the Refugee Protection Division for the period January 1, 2020 – January 1, 2024;
  - Canadian Passport issued in the name of the appellant's younger child A, valid for the period May 7, 2019 – May 7, 2024;
- ministry's record of telephone conversations with the appellant on the following dates: September 24, 2018, July 23, 2019, July 24, 2019 and July 3, 2020;
- July 14, 2020 letter from the ministry advising the appellant that he had received an overpayment of \$9,444.24 in CCS and notifying the appellant of the obligation to repay this amount to the ministry. The letter contained the following attachments:
  - ministry CCS overpayment calculation form;
  - Appendix A confirming that as of July 3, 2020 the appellant and family's refugee determination hearing had not yet been held;
- CCS application forms completed by the appellant and his spouse, with the following details:
  - September 5, 2018 (for D) – applicant and spouse's annual full-time employment income \$34,560 each;
  - September 26, 2018 (for D) – applicant and spouse's annual employment income \$34,560 each;
  - December 4, 2018 (for D) – applicant's income \$33,600, spouse's annual income \$34,560;
  - August 16, 2019 (for D and A) – appellant's income not reported, spouse with no income due to medical condition;
  - September 9, 2019 (for D and A) – appellant's -income not reported, spouse with no income due to medical condition;
  - February 9, 2020 (for D and A) – appellant and spouse's employment income not included;
  - February 19, 2020 (for D and A) – appellant and spouse's employment income not included;
  - March 17, 2020 (for D and A) – appellant and spouse's employment income not included.

#### **Information Received after Reconsideration**

No additional documentary evidence was submitted. The appellant's Notice of Appeal dated October 11, 2020 consisted of argument which will be addressed in Part F of the appeal decision.

At the hearing the appellant stated that:

- the family has not yet been given a date for their refugee determination hearing;
- because of the COVID pandemic he is unsure what the next step in the immigration process will be;
- he told a ministry worker about his spouse's impending maternity leave. The worker advised him that the family would still be eligible for CCS if the spouse has a medical condition preventing her from working. The worker sent the medical form to the appellant, but the ministry cancelled CCS benefits before the

medical form was completed. The ministry took 3 weeks to process the medical form after the appellant submitted it.

**Admissibility of Additional Information**

The ministry representative did not object to the admissibility of the appellant's oral evidence.

The panel determined that all of the appellant's oral evidence should be admitted under EAA Section 22(4) because it relates directly to the ministry's finding that the appellant failed to advise of a change in circumstances and is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is the reasonableness of the ministry reconsideration decision in which the ministry determined that the appellant was ineligible for CCS payments received between October 2018 and April 2020 because the appellant and his spouse did not meet the citizenship eligibility requirements set out in Section 5 of the Child Care Subsidy Regulation (CCSR), resulting in an overpayment that the appellant was liable to repay. The ministry also found that the appellant failed to notify the ministry of changes in the family's circumstances as required by Section 5(2) of the Child Care Subsidy Act (CCSA) and Section 14 of the CCSR.

Relevant legislation:

**CCSA:****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** (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).

**CCSR:****Definitions**

- 1** (1) In this regulation:  
"applicant" means a parent who applies under section 4 for a child care subsidy;

**Circumstances in which subsidy may be provided**

- 3** (1) The minister may pay a child care subsidy only if
- (a) the minister is satisfied that the child care is needed for one of the reasons set out in subsection (2),
  - (b) the child care is arranged or recommended under the *Child, Family and Community Service Act*, or

(c) the child care is recommended under the *Community Living Authority Act* in respect of a child who has a parent approved for or receiving community living support under the *Community Living Authority Act* and the minister is satisfied that the child care is needed.

(2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:

- (b) in a two parent family, because
  - (i) each parent is employed or self-employed, attends an educational institution or participates in an employment-related program,
  - (ii) one parent is engaged in an activity listed in subparagraph (i) and the other is seeking employment,
  - (iii) one parent is engaged in an activity listed in subparagraph (i) and the other parent has a medical condition that interferes with that parent's ability to care for his or her child, or
  - (iv) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]
  - (v) each parent has a medical condition that interferes with their ability to care for their child.

### **Citizenship requirements**

**5** An applicant is eligible for a child care subsidy only if

- (a) the applicant
  - (i) is a Canadian citizen,
  - (ii) is authorized under an enactment of Canada to take up permanent residence in Canada, or
  - (iii) is determined under the *Immigration and Refugee Protection Act* (Canada) to be a Convention refugee or a person in need of protection.

### **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.

**EAA:**

### **Decision of panel**

**24** (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

### **Appellant's Argument**

The appellant raised several arguments, which will be discussed separately:

1. Ministry's failure to sign Section 2 of the Appellant's Request for Reconsideration
2. Eligibility of the Family under CCSA
3. Failure to Notify Ministry of Change in Circumstances
4. CCS Overpayment and Liability to Repay

### **Ministry's Position**

The Ministry relied on the reconsideration decision.

### **PANEL DECISION**

#### **1. Request for Reconsideration Not Signed by Ministry Worker**

The appellant argues that the Reconsideration Decision is invalid because Section 2 of the appellant's Request for Reconsideration was not signed.

The appellant signed the Request for Reconsideration and forwarded it to the ministry, signifying that he did not accept the original decision of the ministry and wanted reconsideration by the ministry. Without reconsideration

there is no right of appeal and the appellant is deemed to have accepted the original decision. The signed and filed Notice of Appeal further supports the view that the appellant disagreed with the Reconsideration Decision and wished to appeal it. The panel therefore finds that the omission of the ministry worker's signature at the bottom of Section 2 does not invalidate the appellant's Request for Reconsideration or right to appeal the Reconsideration Decision under EAA Section 24.

## 2. The Family's Eligibility for a CCS

The appellant argues that on two occasions – September 20, 2018 and September 6, 2019 – he and his spouse were determined by the ministry to be eligible for CCS. He supplied all requested information concerning the family's Canadian residency, relied on the ministry's determination of eligibility and enrolled their children in child care. As a result the appellant received \$9,444.24 in CCS payable to the children's child care operators.

The ministry's position is that the appellant was not eligible for CCS for the periods October 2018 – August 2019 and September 2019 – April 2020 because he and his spouse failed to meet any of the citizenship requirements set out in CCSR Section 5. To be eligible under this section an applicant must be:

- i. a Canadian citizen, or
- ii. a person authorized to take up permanent residence in Canada under a Canadian law;
- iii. a person who has been determined to be a Convention refugee or a person in need of protection.

The appellant argues that this section must be interpreted in the broadest possible context to include persons who reside in Canada lawfully. He points out that the Refugee Protection Claimant Documents issued by Information, Refugees and Citizenship Canada (Immigration Canada) recognize that the appellant's claim for refugee status contains sufficient information to warrant referral to the Refugee Protection Division of the Immigration Refugee Board and to entitle the claimants to health care coverage and attendance at primary or secondary schools.

The panel agrees that the purpose of CCSR Section 5 is to establish CCS eligibility for new residents of Canada as well as for Canadian citizens. It is also clear that the appellant cannot speed up the procedural time frame set by Immigration Canada to determine refugee status. For these reasons the panel sympathizes with the appellant's position. However, a plain reading of Section 5 results in the following conclusions:

- the appellant and his spouse are not Canadian citizens;
- the appellant and his spouse are not *permanent* residents of Canada. Their Social Insurance Numbers begin with the number "9". A Government of Canada information bulletin explains: "SINs that begin with a "9" are issued to temporary workers who are neither Canadian citizens nor permanent residents. The use of these SINs is temporary and are valid only until the expiry date indicated on the immigration document authorizing them to work in Canada".
- Immigration Canada has not yet determined that the appellant and his spouse are Convention refugees;
- no evidence was submitted to establish that the appellant and his spouse have been designated "persons in need of protection" by Immigration Canada.

The appellant also argued that the child A is eligible for CCS benefits because A was born in Canada and is a Canadian citizen. The panel does not dispute that A is a Canadian citizen. However an applicant for CCS is defined in Section 1 of the CCSR as "a *parent* who applies under Section 4 for a child care subsidy". The child A is not a parent and therefore cannot apply for CCS.

In conclusion the panel finds that the ministry reasonably determined that the appellant was ineligible for CCS during the period October 2018 – April 2020 because the citizenship requirements set out in CCSR Section 5 were not met and because the child A is not an applicant for CCS.

## 3. Failure to Notify the Ministry of a Change in Circumstances

The appellant argues that he informed the ministry of two changes in circumstances: on September 24, 2018 he informed the ministry that his spouse would soon be going on maternity leave, and on July 12, 2019 he informed the ministry that he was no longer employed.

The ministry's position is that the appellant did not inform the ministry of these changes in circumstances as soon

as possible as required by CCSA Section 5 (2) and CCSR Section 14.

The facts set out in the reconsideration decision establish that on September 24, 2018, when the appellant advised the ministry of his spouse's impending maternity leave, he was informed by the ministry worker that maternity leave did not meet the eligibility requirements for CCS. The appellant did not notify the ministry that his spouse had ceased employment in December 2018 until July 12, 2019. At that time the appellant also informed the ministry that he had quit his job. On July 23, 2019 the appellant notified the ministry that he was awaiting information related to a self-employment business. At that time the ministry worker again told the appellant that pursuant to CCSR Section 3 (2) (b) a two-parent family is not eligible for CCS unless both parents are employed or self-employed or at least one parent has a medical condition.

On August 15, 2019 the appellant submitted a medical benefit application indicating that for medical reasons his spouse was unable to work until April 2020. Although on July 23, 2019 the ministry had determined that the appellant and his spouse were ineligible for CCS because they failed to meet the citizenship requirements, on September 24, 2019 the ministry again determined that the appellant and his spouse were eligible for CCS for the period September 1, 2019 – July 31, 2020.

It is understandable that once the ministry again determined that the appellant and his spouse were eligible for CCS the appellant assumed that he had submitted all required information within a reasonable time frame. However, he did not inform the ministry that his spouse had left her job in December 2018 until July 12, 2019. No explanation was given for the appellant's failure to report this change in circumstances as soon as possible, as required under CCSR Section 14. The panel therefore finds that the ministry reasonably determined that the appellant failed to notify the ministry of a change in circumstances during the period January 1 – July 12, 2019.

#### 4. CCS Overpayment and Liability to Repay

The appellant argues that because the ministry committed two errors in declaring him and his spouse eligible for CCS a declaration of overpayment should not have been made and he should not be liable to repay.

The ministry's position is that during the period October 2018 – April 30, 2020 the appellant received CCS benefits that he was not eligible to receive, resulting in a total overpayment of \$9,444.24 which he is liable to repay.

For the reasons set out in this appeal decision the panel has determined that the appellant was not eligible for CCS totaling \$9,444.24 received during the period October 2018 – April 2020. CCSA Section 7 (1) states that if a person receives CCS who is not entitled to it, that person is liable to repay to the government the amount of overpayment. The appellant has not disputed the calculation of this amount.

The panel therefore finds that the ministry reasonably determined that the appellant received an overpayment of CCS in the amount of \$9,444.24 constituting a debt which the appellant is liable to repay.

The panel does not have the jurisdiction to forgive the debt for which the appellant is liable. However the panel notes that the accumulation of this debt is based on the ministry's erroneous determination that the appellant and his spouse met all legislative eligibility criteria for CCS. The appellant supplied all requested documentation on 8 separate applications. There is no allegation of error or attempt to mislead on the appellant's part.

Canadian citizenship, permanent residency or refugee determination is a threshold criterion of eligibility, but the CCS application form does not ask for a declaration of citizenship or immigration status. The only "flag" indicating temporary residency in Canada is found in Social Security Numbers beginning with the number 9, which were listed in all of the appellant's CCS applications. The appellant also provided the necessary consents to enable the ministry to verify eligibility. The ministry missed the Social Security Number "flag" on every application and determined that the appellant and his spouse were eligible for CCS not once, but twice. The appellant relied on the ministry's determination of eligibility and utilized the CCS appropriately at approved child care facilities. As a result of the ministry's errors the appellant is liable for repayment of a debt that will cause significant hardship to him and his family. The panel suggests that the ministry consider all of these factors in collection of this debt and any available discretion be applied in the appellant's favour.

**Conclusion**

Having reviewed the evidence and applicable legislation the panel finds that the ministry's determination that the appellant received an overpayment of CCS in the amount of \$9,444.24 which he is liable to repay is a reasonable application of the applicable legislation in the appellant's circumstances, and confirms the decision. The appellant is not successful in this appeal.



APPEAL NUMBER 2020-00236

**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

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Nov/02

PRINT NAME

Patrick Cooper

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Nov/02

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Nov/02