

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development ("ministry") reconsideration decision dated January 28, 2021 in which the ministry determined that the appellant is not eligible for amounts of Affordable Child Care Benefit that they received from January 2019 to November 2019 and are liable for repayment of these amounts.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act - Sections 5 & 7

Child Care Subsidy Regulation - Sections 3 & 14

PART E – SUMMARY OF FACTS

The appellant is a married adult with two children.

In January 2019 they applied for a Child Care Subsidy for their older child to attend daycare. The appellant was found to be eligible for the subsidy.

In June 2019, the appellant submitted a renewal application for continued receipt of a Child Care Subsidy. The appellant was found to be eligible for the subsidy.

In January 2020, the appellant's spouse informed the ministry, during a telephone call, that they and the appellant had both been on leave (maternity and parental) in 2019 when the younger child was born.

In December 2020, the ministry sent a notice to the appellant advising that it had determined that the appellant had received a Child Care Subsidy overpayment for the period January 2019 to November 2019 because they did not have an eligible reason for needing child care.

In their request for reconsideration, dated January 21, 2021, the appellant argued against the ministry's ineligibility finding because both they and their spouse had remained "employed" during the period they were on leave and were, therefore, eligible for the subsidy.

On January 28, 2021 the ministry issued its reconsideration decision.

With the consent of both parties under section 22(b) of the EAA, this appeal was determined by way of a written hearing. Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated February 3, 2021, the appellant stated that they disagree with the reconsideration decision. The appellant argued that they and their spouse were employed when the appellant applied for the subsidy. They argue that they did not understand that being on maternity leave or parental leave would deem them "unemployed". They argue that the Child Care Subsidy Act does not define the term "employed". The appellant argues that maternity and parental leaves are job protected leaves and, as such, they were eligible for the subsidy because they were taking job protected leaves. The appellant argues that they were not trying to "scam the system", the wording provided by the government is confusing and the fault should not be placed on them.

Appeal Submissions

The appellant did not make appeal submissions.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal consisted of argument and does not contain any new information requiring an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination, that the appellant is not eligible for amounts of Affordable Child Care Benefit that they received from January 2019 to November 2019 and are liable for repayment of these amounts, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Legislation

The following legislative provisions are applicable in this appeal:

Child Care Subsidy Act - Sections 5 & 7

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).

Child Care Subsidy Regulation - Sections 3 & 14

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:

- (a) in a single parent family, because the parent
 - (i) is employed or self-employed,
 - (ii) attends an educational institution,
 - (iii) is seeking employment or participating in an employment-related program, or
 - (iv) has a medical condition that interferes with the parent's ability to care for his or her child;
- (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.

(3) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]

(4) The restriction in subsection (1) (a) does not apply in respect of child care provided in a licensed preschool unless the child care is provided to a child of school age.

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.

Analysis

There are two issues in this appeal. The first issue is whether the appellant received Affordable Child Care Benefit (the subsidy) from January 2019 to November 2019 for which they were not eligible. The second issue is whether the appellant is liable for repayment of these amounts.

On appeal, the panel must, in accordance with section 24 of the EAA, determine whether the decision under appeal is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

On the first issue, the ministry determined at reconsideration that the appellant was not eligible for the subsidy received. The ministry referenced the fact that the appellant received the subsidy 20 full days per month for the elder child, while they and their spouse were on leave from work. The Ministry went on to note that in order to be eligible for the subsidy in a two-parent family, "child care must be needed because each parent is employed or self-employed, attends an educational institution or participates in an employment-related program." The Ministry observed that the appellant, in their application and renewal, reported specific work days and hours for themselves and their spouse but did not advise the Ministry that either was on leave from work. The Ministry went on to find that the neither the appellant or their spouse were attending work and being paid to work during the relevant period, rather both were receiving benefits intended to allow them to take a leave from work to care for a child. The Ministry determined that the information provided by the appellant did not accurately reflect their circumstances and resulted in an inaccurate eligibility assessment. The Ministry concluded that the appellant did not require child care due to the appellant and their spouse both being on leave during the relevant period.

On this issue, the appellant argues that the wording used by the ministry in relation to "employment" is confusing. They argue that the *Child Care Subsidy Act* does not define the term "employed". They argue that they did not understand that being on maternity leave or parental leave would deem them "unemployed". Further, they argue that both they and their spouse were employed, as defined by Employment Standards legislation, since maternity and parental leaves are "job-protected leaves" under that legislative scheme. The appellant argues that because maternity and parental leaves are "job-protected leaves", they were eligible for the subsidy.

The panel finds that the Ministry's decision on this issue is both reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. The panel finds that the appellant has misunderstood a central aspect of the legislated benefits scheme, that aspect being the issuance of subsidies based on demonstrated need. The subsidy **must be needed** due to one of the enumerated circumstances in section 3 of the regulation. In other words, one is not eligible for the subsidy upon demonstration to the Ministry that they are employed. It is not enough that one of those circumstances exists, there must also be a **need** for childcare resulting from the qualifying circumstance. The Ministry has not, as the appellant argues, found that they are ineligible because they and their spouse were unemployed. Rather the Ministry found that the appellant did not **need** the subsidy because they and their spouse were on leave from their employment and that the relevant leaves were for the purpose of caring for a child. The panel finds this conclusion to be reasonably supported by the evidence. Further, the panel finds that the information provided by the appellant, both at reconsideration and on appeal, does not address the question of need. The appellant has not argued that there are circumstances associated with employment, or other enumerated circumstance, that caused them to need child care. The panel finds that the Ministry's application of the legislation in the circumstances of the appellant is reasonable.

On the second issue, the ministry determined at reconsideration that the appellant was liable for repayment of the subsidy amounts for which they were ineligible. In reaching this conclusion, the Ministry noted the appellant's non-compliance with the requirements of section 5(2) of the *Child Care Subsidy Act*, which include a requirement to notify the Minister of any change of circumstances. The Ministry

found that the eligibility decision was not due to administrative error, rather it was due to the appellant's provision of inaccurate information in their failure to advise the Ministry of the birth of the second child (in January 2019) and the appellant and spouse's maternity and parental leaves until January 2020.

On this issue, the appellant argues that they were not trying to "scam the system". Instead, they urge the panel to find that the wording provided by the government is confusing and the fault should not be placed on them. With some sympathy for the appellant's circumstances, the panel disagrees and finds the legislation, specifically section 7 of the *Child Care Subsidy Act*, provides no allowance for the exercise of discretion with respect to repayment of amounts for which one is not eligible. Upon a finding that a person has received a subsidy for which they were not eligible, liability for repayment is automatic. The panel has found that the Ministry's decision that the appellant received a subsidy for which they were not eligible to be reasonable. Flowing from this, the panel also finds the Ministry's conclusion that the appellant is liable to repay these amounts to be a reasonable application of the legislation in the appellant's circumstances.

Conclusion

The panel finds that the ministry's reconsideration decision, determining that the appellant was not eligible for child care subsidy amounts received and is liable for repayment, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

APPEAL NUMBER
2021-00028

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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

12 March 2021

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

12 March 2021

PRINT NAME

Charles Schellinck

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

12 March 2021