

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (“ministry”) dated February 2, 2023. In the decision the ministry decided that the appellant was ineligible for amounts of Affordable Child Care Benefit that they received for the period July 1, 2022 to August 31, 2022, resulting in an overpayment of \$728.75. The ministry also found the appellant liable to repay the amount of the overpayment.

Part D – Relevant Legislation

Child Care Subsidy Act, RSBC 1996, c. 26, sections 5 and 7.

Child Care Subsidy Regulation, B.C. Reg 74/97, sections 8, 14, 15, and 16.

The full text of these sections of legislation is set out in the schedule of legislation after this decision.

Part E – Summary of Facts

The hearing took place by videoconference on April 12, 2023. A representative of the appellant attended the hearing. A ministry representative did not attend. After confirming that the ministry was notified of the time and place of the hearing, the hearing proceeded without a ministry representative as permitted by section 86(b) of the Employment and Assistance Regulation.

Evidence Before the Ministry at Reconsideration

The appellant is a childcare provider. The appellant claimed full amounts of the Affordable Child Care Benefit (the “benefit”) for a child attending full time care during the period of July 1, 2022 to August 31, 2022. On November 22, 2022 the ministry’s Verification and Audit Unit noted a service discrepancy and determined that an overpayment had been made to the appellant in the amount of \$728.75 for the period between July 1, 2022 to August 31, 2022.

The Verification and Audit Unit based its finding on the following information:

- A representative of the appellant advised in a telephone conversation that the child in question attended daycare irregularly during the time period;
- The appellant had asked the parent to find an alternative care provider for the child due to the child’s behaviour;
- Care for the child was supposed to end in July 2022, but the child continued to attend daycare in August 2022;
- The appellant’s records showed that the child attended the daycare for 2 full days on July 4th and 5th and 5 half days on July 6th, 13th, 14th, 15th, and 25th and for full days on August 3rd and 4th. The records also showed that the child was eligible for two full days on July 1st and August 1st for the statutory holidays and for 5 days of vacation in late July; and
- The provider’s fee was \$985.00 per month and the benefit issued per month was \$550.00.

At reconsideration, the ministry had a copy of the attendance records from the appellant for the period July 1, 2022 to August 31, 2022. These records show the dates the child attended for childcare and these dates match those set out by the Verification and Audit Unit.

After learning of the Verification and Audit Unit’s findings, the appellant contacted the unit and spoke with a Verification and Audit Officer (the “officer”) to request clarification about the decision. The appellant advised that the daycare claims the benefit 2 to 3 weeks before the beginning of the month to afford paying bills and therefore was not aware at the time of billing that the child would not attend daycare on the days he was absent. The appellant stated it is not fair to penalize the provider for the parent not bringing their child in. The officer advised that it is the responsibility of the care provider to claim the benefit correctly and to repay the amount of benefit for the days the child was not attending.

The Affordable Child Care Benefit Child Care Arrangement form the appellant signed as part of the application for the benefit for the child included a declaration confirming “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.”

The claim forms submitted by the appellant monthly contained a Licensee Declaration signed by the appellant stating “I hereby make a claim for the Affordable Child Care Benefit and confirm the information I have supplied is true and complete. I acknowledge I may be submitting this claim in advance of child care provided and I am liable to repay any overpayment arising from this claim. This is a true account of the amount of child care expected to be provided and/or provided for the child(ren) named above. I understand that I am required to maintain accurate attendance records of the days of child care provided for each child listed above as supporting documentation for this claim. Note: the Province of British Columbia monitors Affordable Child Care Benefit claims and may audit and verify information and billing through random checks or as a result of information received.”

The appellant submitted a Request for Reconsideration and advised in this request that the child was enrolled in a full-time spot and that whether he attends or not he took up a full-time spot and they should be paid for that spot. Further, the appellant stated that they should not be punished or lose revenue due to parents not bringing their child for childcare and that if they are, they and other centres would lose revenue and close.

New Evidence Provided on Appeal

A representative of the appellant provided oral evidence at the hearing. She stated as follows:

- The appellant does not know who will be sick or away on any given day;
- The appellant has a form they submit to the ministry where they select names off the list and the amount claimed for children attending care and receiving the benefit. This form is submitted before the start of each month;
- The appellant’s staff take attendance daily and to the best of their ability note when a child is absent and if they are sick or on vacation, they also note the reason for the absence. These forms are not submitted to the ministry.
- The child was asked to leave the centre due to behavioural issues. However, she knew the appellant’s parent was having a difficult time finding alternate care for him and she permitted the child to attend the centre on days when other care was not available to help the family. The child would attend for a few days, try out a new centre and then be back for a day or two when that did not work out;
- She assumed any new centre the child was attending would likely also claim the benefit as the family could not afford child care;
- The child had attended the centre for several years and attendance had always been somewhat sporadic;
- She called the ministry in July 2022 and spoke with someone when it became apparent that the child was only sporadically attending daycare and was informed to claim the

benefit for the child and they would “look at things afterwards”. She was not sure exactly what this statement meant;

- The appellant’s contract for services requires families to provide 30 days written notice if they are withdrawing their children from care;
- The appellant did not hear from the child’s family after August 5th and accordingly, unenrolled him at the end of August, 2022;
- The appellant often did not charge the child’s family for the non-benefit portion of the provider’s fee for childcare as the family was facing difficult circumstances; and
- The appellant must provide adequate staffing daily based on enrollment levels and must pay for staff regardless of whether all students attend each day.

In answer to a question from the panel, the representative stated that the appellant never adjusts the amounts claimed for benefit at the end of a month, even when children have been absent from the centre for unknown reasons, because they must keep the children’s spots available for the children should they attend as they remain enrolled and the spots are not free for other children to attend.

The panel finds that this additional evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision on appeal and is therefore 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 reasonably determined in its reconsideration decision that the appellant was ineligible for amounts of Affordable Child Care Benefit received for the period July 1, 2022 to August 31, 2022, resulting in an overpayment of \$728.75, and is therefore required to repay the amount of the overpayment.

Position of the Appellant

The appellant does not disagree with the ministry's findings about the dates the child attended for childcare or the amount of benefit the appellant received during the period in question. However, the appellant submits that it is fundamentally unfair that they would be deemed ineligible for the benefit for the period July 1, 2022 to August 31, 2022 when the child was attending childcare sporadically, they had to have staff to ensure adequate coverage, and the spot could not be filled by anyone else in case the child did attend.

In support of this position, the appellant submitted that there was no easy way to update the benefit claimed, attendance records were not required to be submitted to the ministry, and they had been advised to claim the benefit for the child when they notified the ministry in July that the child's attendance was sporadic.

Position of the Ministry

As stated above, the ministry was not represented at the hearing. In the reconsideration decision, the ministry based its decision on the fact that benefit was received by the appellant for the child for the months of July and August 2022 while the child was absent from daycare on several dates during this period. The ministry relies on section 16(1) of the Child Care Subsidy Regulation (the Regulation) and states that the benefit may only be paid for days when a child is absent in certain circumstances, namely if a child is on vacation or if a child or parent is ill. The ministry submits that the appellant's attendance records do not indicate that these permitted reasons for absence were present in the case of the child and accordingly the appellant was ineligible for the total benefit claimed. The ministry stated that the appellant received an overpayment in the amount of \$728.75.

With respect to the overpayment, the ministry stated that the appellant must repay this amount as required by section 7(1) of the *Child Care Subsidy Act* (the Act), 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."

Panel Decision

The ministry's reconsideration decision is comprised of two parts: 1) that there was an overpayment; and 2) that the appellant must repay the amount of the overpayment pursuant to section 7(1) of the Act. Each of these parts is dealt with in turn below.

Overpayment

Section 5(1) of the Act clearly gives the ministry the ability to audit the amounts claimed for benefits claimed by the appellant. The legislation gives the ministry the authority to seek verification of information related to a claim for a benefit. There is no dispute as to the dates the child attended the appellant for child care nor the amount of benefit the appellant received during the period of July 1, 2022 to August 31, 2022.

Section 5(2) of the Act states that “a person to...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...” The ministry draws attention to this requirement by including similar language in the Affordable Child Care Benefit Care Arrangement Form declaration signed by the care provider as part of the benefit application process and again on the monthly claim forms submitted to the ministry when claiming benefit for a child in care. The panel finds that, while it was not the appellant’s practice to notify the ministry of changes in care, such notification is required by the legislation.

The legislation also deals directly with payment of benefit in circumstances where a child is absent or is withdrawn from child care.

Section 16(1) states:

- (1) The minister may continue to pay a child care subsidy for child care provided....as follows:
 - (a) For a period of up to 2 weeks in one month but not for more than 4 weeks total in one calendar year if a child is absent because the child is on vacation;
 - (b) For a period of up to 2 weeks in one month if the child is absent because the child or parent is ill.

The panel notes that the ministry paid a prorated benefit for the child for the days the child attended care and when the child was noted to be absent due to vacation in compliance with this section of legislation. The ministry states that an overpayment was made when it paid benefit for the child for the days the child was otherwise absent.

Section 16(1.1) and 16(4) make special provisions for child care provided through a Young Parent Program. There is no evidence before the panel that the child care in question was provided through this program. Accordingly, the panel finds that these provisions do not apply to the circumstances in this appeal.

Section 16(2) requires that child care providers record the reasons for absences from care. The panel finds that the appellant made its best efforts to do so and that the attendance records in the appeal record show instances where the appellant was absent due to vacation. However, there are many other absences where no reason is provided as the appellant did not always know what the reason was.

Section 16(3) governs what benefit may be paid when a child for whom a child care subsidy is paid is withdrawn from a child care setting. While the child in question ultimately quit attending the appellant’s daycare, at no time was the child withdrawn from the child care setting. The evidence before the panel shows that the appellant asked the child to leave the daycare due to behavioural issues, yet the child continued to attend sporadically until alternate care arrangements were made for the child. At no time did the child’s family notify the appellant that the child would no longer be needing care even though the contract for services with the appellant required families to provide 30 days written notice of any withdrawal from care. As stated by the appellant’s representative, they unenrolled the child when they lost contact with his family after close to a month of non-attendance, having assumed that the family had finally

found another suitable childcare provider. The child was never formally withdrawn from care. Accordingly, the panel finds that the provisions of this section of legislation do not apply to the circumstances of the appellant.

The benefit applied for was for full time care. Full time child care is defined in section 8 of the Regulations as child care for which the minister may pay a child care subsidy that is provided for the equivalent of at least 20 full days per month. Section 8 also sets out the income tests to determine the amount of child care subsidy for a particular child.

The ministry determined that the appellant had been overpaid when it conducted the verification audit and saw from the attendance record required to be kept by section 16(2) that benefit for full time child care had been paid when the child was absent and it was not for vacation or illness. The panel has reviewed the attendance record and agrees with the ministry's decision. The Act requires a person to whom a benefit is paid to notify the ministry if there is a change in circumstances. Further, section 16 of the Regulation sets out when benefit can be paid if a child is absent, and the panel finds that the ministry's calculations accurately applied the legislation to the evidence found in the attendance records provided by the appellant.

To summarize, the panel finds that the legislation requires the appellant to keep attendance records noting the reasons why a child is absent from care and requires the appellant to notify of any changes affecting eligibility of a child in care. The legislation also sets out specific instances when the benefit may be paid when a child is absent or has been withdrawn from care. The panel finds the ministry's finding that an overpayment was made with respect to child care benefit for the child to be a reasonable interpretation of the legislation. There is no legislated authority for child care subsidy to be paid for child care when a child is absent for reasons not described in section 16 of the regulation.

The panel recognizes that the legislative scheme does not match the appellant's experience of how child care centres generally operate and recognizes many care providers may act similarly to the appellant in keeping a spot available for a child despite failure to attend regularly. However, the panel and the ministry are both bound by the legislation. The panel finds the ministry's decision that an overpayment was made was reasonable.

The appellant has submitted that such a finding will render it impossible for child care providers to stay in business or to accept families receiving subsidy. The panel notes that the legislative subsidy program offsets the cost of childcare and does not pay the full amount required for childcare in many cases. When subsidy is not available the parents are then responsible for the full cost required by the provider. While the child was not entitled to a subsidy for the days he was absent for reasons other than vacation or illness, nothing prevents the appellant from seeking payment from the child's family for holding the spot open. That said, the panel recognizes that in the circumstances before us that the appellant was very generous, often not charging the child's family for the non-subsidy cost of care, knowing that the family was facing difficult circumstances. While admirable, this is the appellant's choice, not a requirement and does not change the requirements and limits set by the legislation.

Repayment

Section 7(1) of the Act states that if a child care subsidy is paid to or for a person that is not entitled to it, that person is liable to repay the government the amount to which the person was not entitled.

The child care benefit is provided for the child. However, in most cases it is paid directly to the care provider, not the child or their parent. This is set out in section 15(2) of the Regulation which states that child care subsidies are to be paid to the child care provider for child care provided by licensed child care settings, license-not-required child care settings, and registered licence-not required child care settings. Only certain care provided in the child's own home is to be paid to a parent.

The panel finds this direction important because although subsidy is for a child and benefits the family, the subsidy is paid to the appellant. Accordingly, having found that there was an overpayment made to the appellant, the panel finds the ministry's decision that the appellant must repay the amount they were ineligible to receive is also reasonable.

Conclusion

The panel finds that the ministry reasonably decided that an overpayment was made. The panel also finds the ministry reasonably decided that the appellant was liable to repay this amount. Accordingly, the panel confirms the ministry's reconsideration decision. The appellant's appeal is not successful.

Schedule of Legislation

Child Care Subsidy Act

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

Amount of subsidy

8 (1) In this section:

"full time child care" means child care for which the minister may pay a child care subsidy that is provided for the equivalent of at least 20 full days per month;

"full time subsidy amount", in relation to a child receiving part time child care, means the monthly child care subsidy determined in accordance with subsection (3), (4) or (5), as applicable, that would apply if the child were receiving full time child care;

"number of full days" means the number of full days per month for which the minister may pay a child care subsidy;

"number of half days" means the number of half days per month for which the minister may pay a child care subsidy;

"parent fee" in relation to a parent, means the fee the parent is charged by the applicable child care provider for child care for which the minister may pay a child care subsidy;

"part time child care" means child care for which the minister may pay a child care subsidy that is provided for less than the equivalent of 20 full days per month.

(2) For the purposes of applying the definitions of "full time child care" and "part time child care" in subsection (1), 2 half days are the equivalent of one full day.

(3) If a family's adjusted annual income is less than or equal to the following, the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving:

- (a) \$45 000 for a child receiving child care in a licensed child care setting;
- (b) \$39 000 for a child receiving child care in a registered licence-not-required child care setting;
- (c) \$24 000 for a child receiving child care
 - (i) in a licence-not-required child care setting, or
 - (ii) in the child's own home as described in section 2 (c).

(4) If a family's adjusted annual income exceeds the applicable amount under subsection (3) (a), (b) or (c), the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount determined in accordance with the applicable formula in Schedule A, whichever is less, for the type of child care the child is receiving.

(5) Despite subsections (3) and (4), the monthly child care subsidy for a child described in section 7 (2) who is receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving.

(6) If child care is provided through a Young Parent Program and the child care provider operating the Young Parent Program confirms, in the form specified by the minister, that the parent is participating in the Young Parent Program,

- (a) despite subsections (3) and (4), the monthly child care subsidy for a child who is receiving full time child care provided through the Young Parent Program is \$1 500, and

- (b) despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided through the Young Parent Program is the amount determined in accordance with the following formula:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times 1\,500$$

(7) The monthly child care subsidy for a child receiving part time child care is the parent fee or the amount determined in accordance with the following formula, whichever is less, for the type of child care the child is receiving:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(8) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided in a licensed preschool is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$\text{number of half days} \times \text{full time subsidy amount}$$

$$\left[\frac{\quad}{20} \right]$$

(9) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care that is care surrounding school day is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$\left[\frac{(\text{number of half days} \times 0.83333) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(10) If the child care is arranged or recommended by staff delegated under the *Child, Family and Community Service Act*, after staff have

- (a) offered support services or agreements to the child and family under section 16 (2) (a) of that Act,
- (b) begun an assessment under section 16 (2) (b.1) of that Act, or
- (c) begun an investigation under section 16 (2) (c) of that Act,

the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.

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.

[am. B.C. Regs. 337/2008, s. 5; 148/2018, App. 1, s. 10.]

Accounts and payment

15 (1) Child care providers must submit billing for child care subsidies to the minister in the manner and form specified by the minister.

(2) The minister must pay

- (a) child care subsidies for child care described in section 2 (c) directly to the parent, and
- (b) child care subsidies for child care described in section 2 (a), (b) or (b.1) directly to the child care provider.

(3) Despite subsections (1) and (2), a non-profit agency providing child care support services may pay the caregiver and submit accounts to the ministry for reimbursement.

(4) If a licence issued for a child care setting under the *Community Care and Assisted Living Act* is cancelled, the minister may accept, for up to 30 days after the date the licence is cancelled, billing for subsidized child care provided in that setting.

(5) No child care subsidy will be paid to a child care provider under subsection (2) (b) for a day on which the child care setting is closed, unless the day is a statutory holiday.

(6) In subsection (5), "**statutory holiday**" means any day, except Sunday, that is listed as a holiday in the *Interpretation Act*.

[am. B.C. Regs. 387/2004, s. 3; 281/2005, s. 10.]

If a child is absent or is withdrawn

16 (1) The minister may continue to pay a child care subsidy for child care provided in a licensed child care setting, a registered licence-not-required child care setting or a licence-not-required child care setting as follows:

(a) for a period of up to 2 weeks in one month but not for more than 4 weeks in total in one calendar year if a child is absent because the child is on vacation;

(b) for a period of up to 2 weeks in one month if the child is absent because the child or parent is ill.

(1.1) Despite subsection (1), if a child is absent for any reason, the minister may continue to pay a child care subsidy for any length of time for child care provided through a Young Parent Program as long as the parent is participating in the Young Parent Program.

(2) Unless the child care is provided through a Young Parent Program, the child care provider must record the reason for the absence in an attendance register.

(3) If a child for whom a child care subsidy is paid is withdrawn from a child care setting, other than the child's own home, at any time before the end of a month and the vacancy

(a) is filled before the end of the month, the minister may pay to the child care provider operating the child care setting the monthly child care subsidy prorated based on the number of days the child received child care, or

(b) is not filled before the end of the month, the minister may pay the following to the child care provider operating the child care setting:

(i) the monthly child care subsidy, if the child is withdrawn after the 15th of the month;

(ii) 1/2 of the monthly child care subsidy, if the child is withdrawn on or before the 15th of the month.

(4) Despite subsection (3) (b), if

- (a) a child care subsidy is paid in relation to a child who is receiving child care through a Young Parent Program,
- (b) the child is withdrawn from the child care setting at any time before the end of a month, and
- (c) the vacancy is not filled before the end of the month,

the minister may pay the monthly child care subsidy to the child care provider operating the child care setting.

APPEAL NUMBER 2023-0063

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

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Emily C. Drown

Signature of Chair

Date (Year/Month/Day)

2023 / April / 27

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2023/April/27

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2023/04/27