

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Education and Child Care (the "**Ministry**") dated April 13, 2023 (the "**Reconsideration Decision**"), in which the Ministry determined that the Appellant was ineligible for a child care subsidy that she received for the period between May 1, 2021, and May 31, 2022, resulting in an overpayment of \$12,600.00. As a result, the Appellant has been asked to repay the overpayment.

**Part D – Relevant Legislation**

- *Child Care Subsidy Act* (the "**Act**") – sections 4 and 7
- *Child Care Subsidy Regulation* (the "**Regulation**") – section 5

**Note:** The full text is available after the Decision.

**Part E – Summary of Facts****(a) The Reconsideration Decision**

The evidence before the Ministry at the Reconsideration Decision consisted of:

- Since February 11, 2021, the Appellant has been a temporary foreign resident in Canada with status pursuant a work permit issued by Immigration, Refugee and Citizenship Canada (the “**Work Permit**”).
- On March 4, 2021, the Appellant submitted a signed and dated Affordable Child Care Benefit (“**ACCB**”) application form. With her application, the Appellant submitted a Child Care Arrangement Form indicating she required child care for her child at a licensed family child care provider. The Appellant also submitted a copy of the Work Permit, her child’s identification, copies of passports for herself and her spouse, and her temporary Social Insurance Number (“**SIN**”).
- On March 10, 2021, the Child Care Service Centre (“**CCSC**”) sent the Appellant a letter requesting additional information to determine her eligibility for the ACCB. Specifically, the Ministry asked the Appellant:
  - to complete the Consent to Collect CRA Records form; and
  - to contact her social worker at the Ministry of Children and Family Development to request a referral form be submitted by them to the CCSC.
- On May 10, 2021, the Appellant contacted the CCSC and clarified that she was not referred by a social worker. The Appellant was advised that the Consent to Collect CRA Records form was required.
- Due to an administrative error, on June 1, 2021, the CCSC found the Appellant eligible for the ACCB from May 1, 2021, to October 31, 2021. The Appellant was approved at the J1 rate for 16 full days per month with an expiry date of June 30, 2022.
- On May 23, 2022, the Appellant applied for a renewal of her ACCB. Upon review of her case, the CCSC noted she had a temporary SIN number and that her Work Permit did not meet the citizenship requirements for eligibility for the ACCB.
- On May 24, 2022, the CCSC sent the Appellant a letter explaining that her eligibility for the ACCB had been denied because she did not meet the citizenship requirements for eligibility.
- On February 21, 2023, a Verification and Audit Officer at the Ministry sent the Appellant a notice of overpayment letter advising she had received a total of \$12,600.00 for child care benefits for which she was not eligible. As a result, she is required repay the overpayment.
- On March 24, 2023, the Appellant applied for a reconsideration of the Ministry’s decision regarding her eligibility for the ACCB. In the Appellant’s Request for Reconsideration, she wrote:

*"... I want reconsideration on my file because am disagree with your decision..."*

*According to Immigration and Refugee Act (Canada) to be a convention refugee and a person in need of protection are eligible for subsidy. I had submitted my work permit at time of application I applied for it because am eligible for it, so other thing, if am not eligible for it, you paid food whole year, so this is administrative error, then why do I suffer it.*

*Right now my income is just \$2,000 per month and am paying \$1,000 to daycare, that's why I can't pay that amount of repayment..."*

- Pursuant to the Reconsideration Decision, the Ministry held:

*"... The ministry acknowledges that in assessing your eligibility for the Affordable Child Care Benefit (ACCB), the ministry made an administrative error in approving your application for the ACCB and issuing you a benefit plan for your child, despite not meeting the citizenship criteria of the CCS Regulation.*

*The ministry finds you are not eligible for the Affordable Child Care Benefit because you do not meet the eligibility criteria for Citizenship Requirements in accordance with Section 5 of the CCS Regulation. To be eligible for the Child Care Subsidy you must either be a Canadian citizen, be authorized under an enactment of Canada to take up permanent residence in Canada or be determined under the Immigration and Refugee Protection Act (Canada) to be a Convention refugee or a person in need of protection.*

*The ministry finds you are not a Canadian citizen or a permanent resident of Canada. You are currently residing in Canada on a temporary work visa. Further, you have not been determined under the Immigration and Refugee Protection Act (Canada) to be a Convention refugee or a person in need of protection. As you do not meet the criteria under Section 5 of the CCS Regulation, the ministry has determined that you were not eligible for the Affordable Child Care Benefit between May 1, 2021, and May 31, 2022.*

*During this period, you were wrongfully issued amounts of subsidy by the Child Care Service Centre, that you were not eligible to receive. Subsequently, you are liable to repay amounts of Child Care Subsidy that you received and were not entitled to.*

*The Child Care Subsidy (CCS) Act Section 7(1) sets out 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. Therefore, in accordance with the CCS Act Section 7(1), the CCS Act Section 5(2) and the CCS Regulation Section 3, the ministry finds you were not eligible to receive amounts of Affordable Child Care Benefit that you received for the period between May 1, 2021, and May 31, 2022. Therefore, you are liable to repay \$12,600.00, which is the amount that was overpaid..."*

**(b) The Appeal**

On May 11, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote:

*"... I am disagree because I was single mom when I applied for benefits. According to Immigration Act (Canada) person in need can apply for benefits. Still I have valid permit..."*

The Appellant's written Appeal hearing was held on June 12, 2023.

The Appellant did not provide any further written submissions or evidence other than that which was written in the Appeal Notice.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision.

To the extent that the Appellant provided additional evidence in the Appeal Notice, the Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was 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 Reconsideration Decision in which the Ministry determined that the Appellant was ineligible for the ACCB that she received for the period between May 1, 2021, and May 31, 2022, resulting in an overpayment of \$12,600.00.

**Appellant's Position**

The Appellant argues that she should be eligible for the ACCB she received.

**Ministry's Position**

The Ministry maintains that the Appellant is ineligible for the ACCB for the reasons stated in the Reconsideration Decision.

**Panel Decision**

Section 4 of the *Act* provides that, subject to the *Regulation*, the Minister may pay child care subsidies.

Section 5 of the *Regulation* provides that an applicant is eligible for a child care subsidy only if the applicant is either:

1. a Canadian citizen,
2. authorized under an enactment of Canada to take up permanent residence in Canada, or
3. determined under the *Immigration and Refugee Protection Act* to be a convention refugee or a person in need of protection.

Section 7(1) of the *Act* provide 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. In cases where repayment is required, section 7(2) of the *Act* provides that the Minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy. Section 7(3) of the *Act* further provides that the Minister may enter into a repayment agreement.

On review of the available evidence and submissions, the Panel finds that the Appellant is neither a Canadian citizen, a person authorized under an enactment of Canada to take up permanent residence in Canada, nor a person determined under the *Immigration and Refugee Protection Act* to be a convention refugee or a person in need of protection. While the Appellant writes that she may have applied for or may need refugee protection, there is nothing before the Panel to suggest that such an application or determination has been made. Rather, the only information before the Panel is a copy of the Appellant's Work Permit which indicates that she is a temporary resident who must leave Canada by the end of her authorized period of stay, February 11, 2024. As a result, the Panel finds that the Appellant does not fall with the prescribed classes of persons who may be eligible for a child care subsidy as particularized by section 5 of the *Regulation*.

As it has been determined that the Appellant is not eligible for a child care subsidy, the next question the Panel must consider is if she is required to repay any child care subsidy benefits

received from the Minister which arose from an administrative error. The Panel finds that, on its face, section 7 of the *Act*, and section 7(1) in particular, is broadly written such that it can be interpreted to include instances of administrative errors such as the one which now confronts the Appellant. As a result, the Panel finds that the Appellant is statutorily liable to repay the overpayment of \$12,600.00.

The Panel notes that the circumstances that have befallen the Appellant are regrettable given that they solely arise from the Ministry's administrative error. While section 7(1) of the *Act* makes a person liable to repay the Ministry, it does not say that the Ministry must collect repayment. Put differently, section 7(1) of the *Act* suggests that the Ministry has discretion in its collections process. Further, section 7(3) of the *Act* allows for a repayment plan which also suggest that the Ministry has discretion in the collections process. Given the circumstances, and the Appellant's financial position, the Ministry is encouraged to find a repayment plan or schedule that meets the needs of the Appellant.

### **Conclusion**

The Panel finds that the Ministry's decision to find that the Appellant was ineligible for a child care subsidy pursuant to section 5 of the *Regulation* was a reasonable application of the legislation in the circumstance.

The Appellant is not successful on appeal.

### **Legislation**

#### **Child Care Subsidy Act, SBC 1996, c 26**

#### **Child care subsidies**

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

#### **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, BC Reg 74/97****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.



**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)

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

**Part H – Signatures**

Print Name

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/06/12

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/06/12

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2023/06/12