

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Education and Child Care (the “**Ministry**”) dated October 3, 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 December 1, 2022 and March 31, 2023, resulting in an overpayment of \$1,635.00 (the “**Overpayment**”). As a result, the Appellant is liable to repay the Overpayment.

Part D – Relevant Legislation

- *Child Care Subsidy Act* (the “**Act**”) – sections 4, 5, and 7
- *Child Care Subsidy Regulation* (the “**Regulation**”) – sections 3 and 14

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:

- On April 1, 2022, the Appellant completed an Affordable Child Care Benefit (“**ACCB**”) Application Form in which she declared her (then) “*Marriage or Marriage-Like Relationship Status*” to be “Married”.
- The Appellant separated from her spouse in December 2022. At the time of her separation, the Appellant was receiving an ACCB for her child. The ACCB provided was for 20 full days of care per month at the licensed Group G-2 rate.
- On December 28, 2022, the Appellant communicated with the Child Care Service Centre (“**CCSC**”) regarding the ACCB for December which had been recalculated due to a change in the care provider rates as a result of the Child Care Fee Reduction Initiative. According to the Ministry’s records, the Appellant did not report any change in her marital status at that time.
- On February 20, 2023, the CCSC sent the Appellant a message using her MyFS account. The CCSC advised, “*Our [ministry] records show you have a Benefit Plan ending in approximately 30 days. You may request to continue your benefit by using the link on your dashboard to renew or report changes.*”
- On February 22, 2023, the CCSC received an updated ACCB Application Form from the Appellant in which she updated her “*Marriage or Marriage-Like Relationship Status*” to be “Single”. The Appellant further advised that she shared custody of her child on a 50/50 basis.
- On March 16, 2023, the CCSC contacted the Appellant by telephone to confirm the date she began sharing custody of her child. According to the Ministry’s records, the Appellant advised that she separated from her (then) spouse and began sharing custody of their child on December 15, 2022.
- On August 22, 2023, a Verification and Audit Officer at the Ministry sent the Appellant a notice of overpayment letter advising she had received an overpayment of ACCB for which she was not eligible. Pursuant to the Child Care Subsidy Overpayment Calculation Form that was enclosed with the Verification and Audit Officer’s letter, it was determined that the Appellant had received an overpayment of \$1,635.00 for the period between December 1, 2022 and March 31, 2023. As a result, the Appellant was liable to repay the Overpayment.
- On September 1, 2023, the CCSC contacted the Appellant by telephone. The resulting records indicate that, “... *[the Appellant] states she is very confused. Advised client that during the time frame she was receiving ACCB, she was receiving full-time care while she had*

shared custody. Client states she was told in December telephone call that she didn't need to update her Custody Arrangement with ACCB until March... Advised client of repayment options, onboarding and Reconsideration. Client would like to request reconsideration on the grounds that she was given bad information by the CCSC...."

- On September 15, 2023, the Appellant applied for a reconsideration of the Ministry's decision regarding the Overpayment. In the Appellant's request for reconsideration, she wrote:

"... When I left the family home on December 15th 2022 I was fully unaware I had to change anything to do with my childcare subsidy. When I phoned at some point between mid to late December I was told since I was moving daycare in March that nothing needed to be done until then. I was given this information so I had no idea. In no way would I want to claim anything other than the truth... I was given misinformation by your officers and I wouldn't ever try to over claim anything that I was not entitled to... I am wondering since my ex-husband claim no childcare for the period between dec-march (sic) can we back date and split this childcare..."

- Pursuant to the Reconsideration Decision, the Ministry held:

"...Your eligibility was affected by your shared custody arrangement with your ex-spouse. During the period between December 1, 2022, to March 31, 2023, you were issued the maximum amount of subsidy for your son based on 20 full days per month. However, the ministry finds based on your shared custody arrangement you maintained custody of your son... 50/50, you do not dispute this. Therefore, without additional evidence to determine the days [the child] resided with you, it is reasonable to conclude you required half the number of days of care, specifically 10 full days of care per month. The ministry notes, as per the CCS Act Section 1, the definition of "parent" includes a person with whom a child resides. Subsequently, as per the custody arrangement, your son resided with you 50% of the time. During the period your son resided with your ex-spouse, you did not meet the eligibility criteria in Section 3 (1) of the CCS Regulation and were not eligible to receive the Child Care Subsidy. It is important to note that although you state your ex-spouse did not claim childcare for the period in question however, the ministry is not permitted to backdate and "split" your eligibility for child care.

The ministry acknowledges the financial difficulties you are experiencing however, as per the CCS Act Section 7(1), the ministry

finds you were not eligible to receive full amounts of Child Care Subsidy for the period December 1, 2022, to March 31, 2023. Therefore, you are liable to repay \$1,635.00, which is the amount that was overpaid..."

(b) The Appeal

On October 19, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote:

"...On December 15th 2022 I moved out of my family home... as me and my then husband had decided it was in the best interest of our family to separate. In the chaos of moving and changing my address and dealing with all the tasks that come along with moving and separating from a marriage, I called and spoke to one of the officers regarding my son... daycare subsidy as I had questions about his upcoming switch of care facilities... This was a very stressful and chaotic time for every member of my small family.

When speaking to the officer I explained what was happening and he would be leaving this daycare as soon as we could find alternative care for him. I explained to her what was going on in my situation at home and what was happening in the daycare and she advised me to not change anything regarding my care plan with subsidy until I found new care, which we did in March 2023 and at that time in which you can see everything in my file was correct and updated.

If I had known and was advised correctly by the officer, I would have updated my file immediately.... I am not very familiar how back dating works but I am aware that my ex husband did not claim subsidy for our son between December 2022-March 2023 separately as we were not advised we had to and with everything happening and all the changes that were being made to our living situation and marriage we had no idea we had to update anything. I am hoping this can be back dated and sorted between [my ex husband] and myself so there would not be a debt owing. I never received this money in my bank and I was not aware that a mistake was being as I had been advised incorrectly on what to do..."

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

On November 14, 2022, the Ministry advised of its intention to rely on the Appeal Record which largely consisted of the Reconsideration Decision, and which contained the above noted written statement from the Appellant. The Ministry did not object to the Appellant's statement, or any new evidence contained within it.

The Appellant's written Appeal hearing was held on November 20, 2023.

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 December 1, 2022 and March 31, 2023, resulting in an Overpayment of \$1,635.00.

Appellant's Position

The Appellant argues that she did not intend to collect any ACCB for which she was ineligible to receive. Rather, she argues that she would have properly updated her file with the CCSC had she been properly advised in December 2022 when she called in to report a proposed change to her child's daycare. Instead of repaying the Overpayment, the Appellant queries if the ACCB calculation can be back dated so that she may split it with her former spouse who did not apply for the ACCB.

Ministry's Position

The Ministry maintains that the Appellant is ineligible for the ACCB received during the time the Appellant's child was not in her custody for the reasons stated in the Reconsideration Decision.

Panel Decision

Section 1 of the *Act* provides that a "*parent*" includes a person with whom a child resides. Further, sections 3(1) and (2) of the *Regulation* provide that an ACCB can be provided to a "*single parent family*" provided that 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 the parent's child.

Section 4 of the *Act* provides that, subject to the *Regulation*, the Minister may pay an ACCB.

Section 5(2) of the *Act* requires a person who receives an ACCB to notify the Minister, within the time and in the manner, of any change in circumstances affecting their eligibility under the *Act*. Section 14 of the *Regulation* requires the person who receives the ACCB to report any changes in their circumstances that may affect their eligibility for the ACCB to the CCSC in writing or by telephone as soon as possible.

Section 7(1) of the *Act* provides that, if an ACCB is paid to 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 the ACCB. Section 7(3) of the *Act* further provides that the Minister may enter into a repayment agreement.

The Panel finds, and the Appellant does not dispute, that beginning on or about December 15, 2022, she began sharing custody of her child with her (now) former spouse on a 50/50 basis. For the purposes of section 1 of the *Act*, a parent is a person with whom a child resides. Given the Appellant's admission, the Panel finds that she did not qualify as a parent as defined by section 1 of the *Act* during those times her child resided with her former spouse. Put differently, the Appellant would only qualify as a "*single parent family*" during those times her child resided with her as contemplated by sections 3(1) and (2) of the *Regulation*. As a result, the Panel finds that the Ministry reasonably determined that the Appellant did not meet the eligibility criteria to receive the ACCB provided when the child was not in the Appellant's custody pursuant to sections 3(1) and (2) of the *Regulation*.

Further, the Panel finds that the Appellant did not report her separation from her (then) spouse to the CCSC in December 2022. Rather, she called the CCSC in December 2022 to report a proposed change to her child's day care given some of the issues they were experiencing with their (then) day care. Moreover, the Panel finds that the Appellant did not report her change in circumstances until February 20, 2023 when she submitted an updated ACCB Application Form to the CCSC which reflected her "Single" status and noted that her and her former spouse shared custody of their child on a 50/50 basis. As a result, the Panel finds that the Appellant did not comply with section 5 of the *Act* and section 14 of the *Regulation*.

As it has been determined that the Appellant did not report her change in circumstances as it related to her eligibility for the ACCB, the next question the Panel must consider is if she is required to repay the ACCB received from the Minister under s. 7(1) of the *Act*. As the Panel finds that the Ministry's Reconsideration Decision regarding the Appellant's ineligibility for the ACCB is reasonably supported by the evidence, the Panel further finds that such evidence also reasonably supports the Ministry's Reconsideration Decision which holds the Appellant liable to repay to the government the amount to which she was not entitled under s.7(1) of the *Act*.

The Panel finds that, even if the Appellant did report her change in circumstances in December 2022 and the Overpayment resulted from the CCSC's error in recording the Appellant's relay of information, this administrative error on the part of the CCSC would not shield her from having to repay the Overpayment.

The Panel notes that the circumstances that have befallen the Appellant are regrettable. While section 7(1) of the *Act* makes a person liable to repay the Ministry, section 7(3) of the *Act* allows for a repayment plan which suggests that the Ministry has discretion in the collections process. Given the circumstances, and the Appellant's stated financial position, the Ministry is encouraged to find a repayment plan or schedule that meets the needs of the Appellant.

As it relates to the Appellant's request for the Overpayment to be back dated so that it can be split with her former spouse, the Panel finds that it has no such authority to consider this request. In the alternative, even if the Panel did have such authority, which it does not, the Panel finds that it would be procedurally unfair to decide this issue given that the Appellant's former spouse is not a party to these proceedings.

Conclusion

The Panel finds that the Ministry's decision finding that the Appellant was ineligible for the ACCB between December 1, 2022 and March 1, 2023 was reasonably supported by the evidence. Therefore, the Panel finds that the Appellant is liable to repay the Overpayment pursuant to section 7(1) of the *Act*.

The Appellant is not successful on appeal.

Legislation

Child Care Subsidy Act, SBC 1996, c 26

Definitions

1 In this Act:

...

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

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.

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

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 the parent's child;
- ...

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)

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

Part H – Signatures

Print Name

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/11/20

Print Name

Kim Louie

Signature of Member

Date (Year/Month/Day)

2023/11/20

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2023/11/20