

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Education and Child Care (the "**Ministry**") dated January 24, 2024 (the "**Reconsideration Decision**"), in which the Ministry determined that the Appellant was not eligible for the full day child care subsidy that he received for the period between November 1, 2022 and February 28, 2023, resulting in an overpayment of \$1,481.59. As a result, the Appellant is liable to repay the Ministry \$1,481.59.

Part D – Relevant Legislation

- *Child Care Subsidy Act* (the "**Act**") – sections 5, and 7
- *Child Care Subsidy Regulation* (the "**Regulation**") – sections 1 and 3
- *Financial Administration Act* – section 87

Note: The full text of the applicable legislation is available after the Decision.

Part E – Summary of Facts

The Appellant's hearing was held by on March 13, 2024.

(a) The Reconsideration Decision

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

- The Appellant's family consists of himself, his spouse, and their three (3) children.
- On December 1, 2022, the Child Care Service Centre ("**CCSC**") received the Appellant's Affordable Child Care Benefit ("**ACCB**") Application that was signed and dated by the Appellant and his spouse on November 30, 2022 (the "**Application**").
- Per the Application, the Appellant indicated that only one (1) of his children required child care from 8:00 a.m. to 1:00 p.m. The Appellant explained that he had a medical condition which prevented him from providing child care between 1:00 a.m. and 12:00 p.m. each day. Additionally, the Appellant advised, with supporting documents, that his spouse was attending school, Monday to Friday from 8:00 a.m. until 1:00 p.m.
- As part of the Application, the Appellant submitted an Affordable Child Care Benefit Child Care Arrangement Form (the "**Form**"). Per the Form, the Appellant's child would receive child care Monday to Friday, from 8:00 a.m. to 1:00 p.m., by a licensed family child care provider.
- On December 23, 2022, the CCSC found the Appellant eligible for the ACCB and issued a benefit plan for 20 full days per month at the Licensed Group Care – G2 rate for the period of November 1, 2022, to December 31, 2022. The Appellant was advised via his My Family Service ("**MFS**") message portal that, if he required child care for beyond January 2023, he would need to provide school registration for his spouse that included her name, and the start/end dates of her courses.
- On January 25, 2023, the Appellant submitted course information for his spouse and requested approval for continued ACCB. In doing so, the Appellant confirmed that his spouse was enrolled in further courses from January 9, 2023, through to February 22, 2023. The courses ran Monday to Friday from 9:00 a.m. until 11:30 a.m.
- On February 17, 2023, the CCSC found the Appellant eligible for the ACCB and issued a benefit plan for 20 full days per month at the Licensed Group Care – G2 rate for the period of January 1, 2023, to February 28, 2023.
- On November 28, 2023, the Verification and Audit Officer ("**VAO**") concluded a review of the Appellant's ACCB file and found him ineligible for \$1,481.59 of the ACCB that he received between November 1, 2022, and February 28, 2023 (the "**Overpayment**"). On that same day, a Debt Notification Package letter was sent to the Appellant advising him of the Overpayment.
- The Appellant applied for a reconsideration of the Ministry's decision regarding the Overpayment. In the Appellant's request for reconsideration, he explained the basis for his request for ACCB, that his child received between 4.5 to 5 hours of child care per day at the

material time, and that he was shocked by the Overpayment allegation.

- Pursuant to the Reconsideration Decision, the Ministry held:

"...The ministry acknowledges that in assessing your eligibility for the Affordable Child Care Benefit (ACCB), the CCSC made an administrative error in approving your application for the ACCB and issuing you a benefit plan for your child for 20 full days of care.

Upon review, the ministry finds you met the requirements for eligibility under section 3(2)(b)(iii) of the CCS Regulation because you had a confirmed medical condition that interfered with your ability to care for your child and your spouse was attending an educational institution.

As per Section 1(1) of the CCS regulation, "half day", in relation to child care, means 4 hours or less of child care provided in a day, unless the child care is provided before and after school in a day. Based on the evidence, the ministry finds that you were not eligible to receive the ACCB for 20 full days per month because the amount of childcare you required was not more than 4 hours per day (8:30am to 12:30pm).

In Section 3 of your Request for Reconsideration you explain your spouse's school schedule started at 9:00am and because of the commute time, she would drop your daughter off between 8:00 and 8:30 am. Additionally, you stated your daughter would be picked up between 12:30 and 1:30pm which allowed for time to commute plus additional time for extra study. The ministry notes that study time is not considered when determining the amount of time required for childcare.

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 November 1, 2022, and February 28, 2023. Therefore, you are liable to repay \$1,481.59, which is the amount that was overpaid.

Please Note:

The above decision is based on the information we have received at this time and the legislated authority. Your case may meet the criteria for an estoppel defense because your overpayment is a result of a

ministry administrative error, and you relied on the subsidy to your detriment. Should you decide to proceed to an appeal with the Employment and Assistance Appeal Tribunal, you may provide additional information then..."

(b) The Appeal

On February 21, 2024, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote:

"...I disagree with the decision based on the following facts:

- 1. The form I filled on Nov 9th, 2022 clearly indicated that we only require daycare for 4 hours a day Mon-Fri and this is what we have used.*
- 2. The subsidy was paid directly by the Ministry to the daycare and not to me.*
- 3. If there was an administrative error by the ministry that resulted in an overpayment, the receiving party (daycare) should be the one liable not me.*
- 4. It would be grossly unjust to collect the overpayment from me when I was not the one that received the overpayment and I have accurately filled the form on November 9th, 2022..."*

On March 13, 2024, the Appeal was heard.

During oral submissions, the Appellant generally restated that which was found in the Appeal Notice. Of note, the Appellant stated he received 4 hours of child care per day.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. In response to questions from the Appellant and the Panel, the Ministry noted:

- when the Appellant was provided with his benefit plan, it stated that he was to receive ACCB for full days, not half days;
- the Ministry should have approved ACCB for half days, not full days;
- the Overpayment is not the Appellant's fault;
- the Overpayment arises from an administrative error on the sole part of the Ministry; and
- the Ministry cannot claim the Overpayment from the Appellant's child care provider as the debt lies with the Appellant pursuant to section 7(1) of the *Act*.

(c) New Evidence

The Ministry verbally advised that the Appellant sent messages to the Ministry via the MFS message portal wherein the Appellant allegedly wrote:

- January 25, 2023: "*please pay full subsidy as I need full support. Yes, she is going to school time and we need help*"; and
- February 15, 2023: "*please help me more... please pay full time*".

The Appellant did not object to the Ministry's new evidence but disputes writing these messages in the MFS message portal. Rather, he believes that his child care provider may have written such messages given their access to the portal.

The Panel determined that the Ministry's new evidence was 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. However, the Panel will assign little weight to the Ministry's new evidence given that the Ministry did not submit copies of the alleged MFS portal messages as part of the Appeal Record; as a result, there is no way for the Panel to confirm the completeness or accuracy of the MFS portal messages.

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 full day ACCB that he received for the period between November 1, 2022, and February 28, 2023, resulting in an Overpayment of \$1,481.59.

Appellant's Position

The Appellant argues that he should not be liable for the Overpayment as it resulted from the Ministry's error. As a result, the Overpayment should be collected from the party that received it which, in this case, was the Appellant's child care provider.

Ministry's Position

The Ministry maintains that the Appellant was ineligible for full day ACCB's benefits received for the period between November 1, 2022, and February 28, 2023 for the reasons stated in the Reconsideration Decision.

Panel Decision**(a) ACCB Entitlement and Liability for the Overpayment**

Section 1 of the *Act* defines an ACCB, or "child care subsidy", as a payment made under the *Act* to or for a parent to subsidize the costs of child care. In other words, an ACCB is paid to or for a parent only if they are entitled to receive it. Put differently, if the Ministry pays an ACCB to a child care provider on behalf of a parent, it is only because that parent is entitled to receive an ACCB. As a result, the Panel finds that the Ministry could only pay an ACCB to or for the Appellant if he was entitled to receive one.

Further, section 1 of the *Regulation* defines "full day" in relation to child care as more than 4 hours of child care provided in a day. Conversely, a "half day" in relation to child care means 4 hours or less of child care provided in a day. In the case of the Appellant, both the Appellant and the Ministry acknowledge that the Appellant applied for "half day" ACCB given that he required child care for 4 hour or less per day. As a result, and because neither party refutes the Appellant's eligibility for "half day" ACCB, the Panel finds that the Ministry reasonably applied the applicable legislation when it determined that the Appellant was entitled to receive "half day" ACCB.

However, the main issue in this Appeal is not whether the Appellant was entitled to receive "half day" ACCB; rather, it is whether the Appellant should be held liable for the Ministry's administrative error which saw him receive "full day" ACCB and which, ultimately, resulted in the Overpayment. The Panel notes that, pursuant to section 7(1) of the *Act*, if an ACCB 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 the case of the Appellant, the Panel finds that the Appellant was not entitled to "full day" ACCB given that he received child care for 4 hours or less per day; as a result, he was only entitled to receive "half day" ACCB for the period between November 1, 2022, and

February 28, 2023. Further, the Panel finds that, because the ACCB was paid for the Appellant given his entitlement to it, section 7(1) of the *Act* makes him liable for the resulting Overpayment.

In sum, the Panel finds the Appellant liable for the Overpayment given that an ACCB of \$1,481.59 was paid for him for which he was not entitled.

(b) Recovery of the Overpayment

To the extent that the Appellant argues that the Ministry should pursue his child care provider for the Overpayment, the Panel finds that section 7(1) of the *Act* requires the Ministry to pursue the Appellant for the Overpayment given that he was the person entitled to it. Again, section 1 of the *Act* defines an ACCB, or “child care subsidy”, as a payment made under the *Act* to or for a parent to subsidize the costs of child care. As an ACCB could only be paid to or for the Appellant only if he was entitled to receive one, section 7(1) of the *Act* holds him liable.

As it relates to the Ministry’s administrative error, neither the *Act* nor the Regulation shield the Appellant from having to repay the Overpayment. However, the Ministry referred the Appellant to a potential estoppel defence in the Reconsideration Decision. To that end, the Panel notes that section 87 of the *Financial Administration Act* provides that, if the government seeks to recover an overpayment of money paid to a person contrary to an enactment, the person may rely on a defence of estoppel. In the circumstances, neither the Appellant nor the Ministry raised or argued the issue of estoppel. Without fulsome submissions on the issue of estoppel, the Panel is unable to consider if it applies in the Appellant’s circumstances as a bar to the Ministry’s recovery of 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, the Panel notes that 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 which suggests that the Ministry has discretion in the collections process. Given the circumstances, the Ministry is encouraged to find a repayment plan or schedule that meets the needs of the Appellant which could include an abeyance period in the event the Appellant undertakes efforts to recover the Overpayment from his child care provider.

Conclusion

The Panel finds that the Ministry’s decision determining that the Appellant was ineligible for “full day” ACCB between November 1, 2022, and February 28, 2023 was a reasonable application of the applicable legislation in the circumstances. 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*****Information and verification****Definitions**

1 (1) In this regulation...

"child care subsidy" means a payment made under this Act to or for a parent to subsidize the costs of child care;

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, BC Reg 74/97

Definitions

1 (1)In this regulation...

"full day", in relation to child care, means

(a)more than 4 hours of child care provided in a day, or

(b)child care provided before and after school in a day;

"half day", in relation to child care, means 4 hours or less of child care provided in a day, unless the child care is provided before and after school in a day;

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;

...

Financial Administration Act, RSBC 1996, c 138

Defences to action for recovery of public money

87 (1)If public money is paid to a person by the government

- (a)in excess of the authority conferred by an enactment,
- (b)without the authority of an enactment, or
- (c)contrary to an enactment,

and a right is asserted by the government to recover the payment or part of it, or to retain other money in full or partial satisfaction of a claim arising out of the payment, the person against whom the right is asserted may, subject to subsection (2), rely on any matter of fact or law, including estoppel, that would

constitute a defence in a proceeding brought to recover the payment as if it had been made under a mistake.

(2) Subsection (1) does not enable a person to rely on a defence that a payment made by the government was made under a mistake of law, and the right of the government to recover the money paid by it is not impaired merely because the payment was made under a mistake of law.

2024-0071

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)
2024/03/13

Print Name
Edward Wong

Signature of Member



Date (Year/Month/Day)
2024/03/13

Print Name
Bill Farr

Signature of Member

Date (Year/Month/Day)
2024/03/13