

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision (the “Reconsideration Decision”) dated March 30, 2023 of the Ministry of Education and Child Care (the “Ministry”). The Ministry found that the Appellant was not eligible for the Affordable Child Care Benefit (the “ACCB”) from February 17, 2020 to December 31, 2021 and that, in the result, the Appellant was liable to repay \$16,098.20, pursuant to section 7 of the *Child Care Subsidy Act* (“CCSA”).

In the Reconsideration Decision, the Ministry determined that it had erred in initially approving the Appellant’s application for the ACCB as the Appellant and her spouse did not meet the citizenship requirements set out in section 5 of the Child Care Subsidy Regulation (“CCSR”). The Ministry determined that, as refugee claimants who had not yet been granted refugee status, neither the Appellant nor her spouse had been “determined under the Immigration and *Refugee Protection Act* (Canada) to be a Convention refugee or a person in need of protection”, as required by section 5 of the CCSR.

Part D – Relevant Legislation

CCSA- section 7
CCSR- Section 5

A full text of the applicable provisions of the legislation is appended to the back of Part F of this decision.

Part E – Summary of Facts

The information before the Ministry at the time of the Reconsideration Decision included the following:

- a Letter to the Appellant, dated May 9, 2022, advising that a Ministry review had determined that the Appellant was not eligible for the ACCB;
- a Letter to the Appellant, dated May 9, 2022, advising that the ACCB had been cancelled;
- Verification and Audit Request for Reconsideration, dated March 14, 2023, in which included:
 - Copies of the Refugee Protection Claimant Document (“RPCD”) for each of the Appellant and the Appellant’s spouse;
 - Decision, dated December 13, 2022 (the “Refugee Board Decision”), from the Immigration and Refugee Board of Canada, confirming that the refugee claims of the Appellant and her husband had been accepted;
 - Copies of the Appellant’s flight itinerary and plane tickets for return flights to Toronto from Abbotsford in August and September 2022;
 - A hand written statement in which the Appellant stated that:
 - She had applied for the ACCB as a refugee;
 - She had received the ACCB based on the documents submitted (namely the RPCD, which clearly indicated that the Appellant was a refugee *claimant*);
 - The Ministry was now telling her that the ACCB had been paid in error;
 - She was a refugee in need of protection and eligible for the ACCB;
- a Letter from the Ministry to the Appellant, dated August 18, 2022, which set out that:
 - on review, the Ministry had determined that the Appellant was ineligible for the ACCB under section 5 of the CCSR and was liable to the government for an overpayment as set out in an enclosed overpayment calculation;
 - the Appellant could pay the repayment in full or the Ministry would send her file to the Ministry of Finance to discuss other payment options, as per the appendix attached to the letter, outlining Section 7 of the Child Care Subsidy Act.

The Appellant filed her Notice of Appeal on April 25, 2023. In the Notice of Appeal, the Appellant wrote “Because it’s not my fault, right? I submitted all the documents and was approved and after two years they tell me I’m not eligible and I owe them money.”

At the hearing of the appeal, the Appellant stated that she had been told that as a refugee, she could apply for a child care subsidy. When she first spoke to someone at the Ministry, this was confirmed. The Appellant stated that she had said she was a refugee but was not asked whether her claim had been accepted. The Appellant subsequently attended at an office to complete the application online. The Appellant confirmed having submitted the RPCD documents as part of her application and her application for the ACCB was initially approved.

The Appellant stated that, after 18 months, the Ministry advised her that she was not eligible for the ACCB and would have to pay back the overpayment. The Appellant stated that it was not her fault that her application had been approved.

At the hearing, the Ministry representative, who is not with the Ministry of Education and Child Care, but rather with the Ministry of Social Development and Poverty Reduction, acknowledged that the error in approving the ACCB lay with the Ministry but that the legislation left no room for discretion, both with respect to eligibility and the requirement to reimburse overpayments. While the Appellant was otherwise eligible for the ACCB, the Appellant did not meet any of the citizenship criteria in section 5 of the CCSR. In the result, she was not eligible for the ACCB. Likewise, section 7 of the CCSA requires repayment of any overpayment of child care subsidies that were paid in error, regardless of who made the error. The Ministry representative was unable to advise how often errors of this nature were made.

The Ministry representative further stated that he was not familiar with the Immigration and Refugee Protection Act, nor with Section 7 of the Child Care Subsidy Act, insofar as negotiated agreements regarding overpayments were concerned, and could not provide information on the process to request a negotiated agreement.

Part F – Reasons for Panel Decision*Issue on Appeal*

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for the ACCB between February 17, 2020 to December 31, 2021 and is liable to reimburse the government for \$16,098.20 paid in respect of the ACCB for which the Appellant was not eligible.

Panel Decision

The Appellant met all of the eligibility requirements for the ACCB other than the citizenship requirements set out in section 5 of the CCSR. Section 5 sets out that an applicant must either be:

- a Canadian citizen;
- a permanent resident of Canada; or
- a convention refugee or a person in need of protection, as determined under the *Immigration and Refugee Protection Act*.

The Appellant was neither a Canadian citizen nor a permanent resident. While the Appellant and her spouse claimed refugee status in Canada at the time of the application for the ACCB, the Appellant confirmed that her claim had not yet been accepted in the time period between February 17, 2020 and December 31, 2021. Their claims were heard on November 15th, 2022 and their refugee status was granted in the Decision. Neither the Appellant nor her spouse had been *determined* to be convention refugees or persons in need of protection under the *Immigration and Refugee Protection Act* for the overpayment period in question.

Because the Appellant and her spouse did not satisfy the requirements of section 5 of the CCSR, the Appellant was not eligible for the ACCB and the panel finds that the Ministry reasonably determined that the Appellant was ineligible for it, notwithstanding that the initial acceptance of the Appellant's application for the ACCB was wholly an error on the part of the Ministry.

With respect to the Appellant's liability to reimburse the Ministry for the overpayment of the ACCB, this is likewise a matter in which the Ministry has little to no legislative discretion. This is despite the fact that the issuance of the ACCB by the Ministry was a product of the Ministry's own failure to identify, from the documents provided to it by the

Appellant (namely, the RPCD documents for the Appellant and her spouse), that the Appellant and her spouse were refugee *claimants* and not persons whose refugee status *had been decided*, as required by section 5 of the CCSR.

Section 7(1) of the CCSA simply requires that where any child care subsidy is paid to a person who is not eligible for it, the person is liable to the government for the overpayment. As such, the panel finds that the Ministry reasonably determined that, despite the overpayment of the ACCB to the Appellant being a result of its own error, the Appellant is nevertheless liable to repay to the government the ACCB amount that had been paid. In that regard, the panel notes that Section 7(2) of the CCSA permits the Ministry to enter into an agreement in respect of overpayments.

In view of all of the foregoing, the Appellant is not successful in this appeal.

Relevant Legislation**Section 7, CCSA****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).

Section 5, CCSR**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.

2023-0117

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/05/30

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2023/05/30

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2023/05/30