

**Part C – Decision Under Appeal**

The decision under appeal is the February 5, 2025, Reconsideration Decision of the Ministry of Education and Child Care (the “Ministry”) that found the Appellant ineligible for amounts of the Affordable Child Care Benefit (“ACCB”) received between October 1, 2022 and September 30, 2024, which resulted in an overpayment of \$20,322.56, which needed to be repaid by the Appellant.

The Ministry stated that the Appellant was ineligible for the ACCB received as the Ministry found that the Appellant’s child care facility required a license to operate but did not have a license. Without a license, the child care facility was unauthorized and could not receive ACCB pursuant to section 7 of the Early Learning and Child Care Regulation. The Ministry required the Appellant to repay the overpayment.

## Part D – Relevant Legislation

*Community Care and Assisted Living Act*, SBC 2002, c. 75

- Section 1 [Definitions “community care facility” and “sibling group”]
- Section 2 [Application]
- Section 5 [Operating or advertising without a license]

*Early Learning and Child Care Act*, SBC 2021, c. 22

- Section 4 [Child care benefits]
- Section 10 [Overpayments]

Early Learning and Child Care Regulation, B.C. Reg. 189/2024

- Section 1 [Definitions “licence-not-required child care facility”]
- Section 7 [Qualifying child care]
- Section 18 [Amount of child care benefits]

*Financial Administration Act*, RSBC 1996, c. 138

- Section 87 [Defences to action for recovery of public money]

The noted sections of legislation are set out at the end of this decision in the Schedule of Legislation.

The panel notes that the relevant legislation above is different than that set out in the Ministry’s Reconsideration Decision.

**Part E – Summary of Facts****Format of Hearing**

The Appellant requested a written hearing. The hearing was scheduled for April 28, 2025. Both parties provided written submissions for the panel's consideration. Prior to the hearing, the Tribunal Chair requested further submissions from the parties about the issue of the parents entitled to the ACCB not being included in the original ministry decision process or the reconsideration process. Both parties provided written submissions as requested. The contents of all submissions are discussed below.

**Evidence Before the Ministry at Reconsideration**

The Appellant operated a “license-not-required” child care facility in her home where she provided care to children from other families. Ministry records show that, the Appellant provided child care as follows:

- October 2022 – July 2023 (4 children, from two sibling groups)
- August 2023 (4 children, from two sibling groups)
- September 2023 – May 2024 (5 children, from three sibling groups)
- June 2024 – September 2024 (3 children, from one sibling group)

The Ministry approved payment of ACCB to the Appellant for the children in care on the basis that the Appellant was operating a “license-not-required” child care facility as shown on the ACCB Child Care Arrangement Forms submitted to the Ministry from the Appellant.

Ministry records show that the Appellant had two phone conversation with the Ministry respectively on May 27 and May 28, 2024, where the Ministry noted in its records after the fact that the Appellant was providing transportation to and from school and was not providing daycare. Further Ministry records show that the appellant spoke with a Verification and Audit Officer of the Ministry on October 7, 2024, and advised that care does not take place in her home, but in the community and through transportation to and from school. The Audit Officer made a note in the records that the telephone conversation conducted on October 7, 2024, was in Mandarin.

On October 24, 2024, the Ministry's Verification and Audit Unit reviewed the Appellant's receipt of ACCB and determined that the Appellant exceeded the allowable limit of children in her care and was required to obtain a license. The Verification and Audit Officer found that since the Appellant did not have the necessary license that she did not qualify as a license-not-required care provider or any other approved childcare provider

and was therefore ineligible to receive ACCB and had received an overpayment of \$20,322.56.

The Verification and Audit Officer further found that the Appellant also did not meet the criteria for a “license-not required” caregiver because the care provided occurred outside of the Appellant’s home.

On behalf of the Ministry, the Verification and Audit Officer required the Appellant to pay back the amount of the overpayment.

The Appellant sought reconsideration of the Verification and Audit Officer’s decision.

### **New Evidence on Appeal**

In support of her Appeal, the Appellant provided the following:

- Email from the Appellant to the Verification and Audit Officer dated January 15, 2025, seeking clarification of the Officer’s findings. The Appellant also noted that she had tried to communicate with the Ministry but faced difficulties due to a language barrier.
- Email from the Verification and Audit Officer to the Appellant dated January 15, 2025, responding to the Appellant’s earlier email and stating that the Appellant could repay the overpayment amount to the Ministry with 12 post-dated cheques and providing instructions on how to do so.
- Email from the Appellant to the Verification and Audit Officer dated February 18, 2025, requesting further reconsideration of the Reconsideration Decision and setting out her areas of agreement and disagreement with the decision. The Appellant attached a letter from a local health authority and three statements from parents who had children in care with the Appellant:
  - Letter from the local Health Authority’s licensing officer dated July 25, 2024, summarizing its investigation into the licensing of the Appellant’s child care facility. The health authority stated that the Health Authority had received information from the Ministry that the Appellant was operating a child care facility without the required license, and they had investigated the matter, including speaking with the Appellant. The Health Authority stated that based on the information provided from the Appellant that the Appellant was found

to be caring for more children than permitted in a license-not-required child care facility and was in contravention of the *Community Care and Assisted Living Act*. Further, the Appellant stated that she understood the requirements and did not want to apply for a license at this time. The Health Authority stated they had contacted the parents for the children in care and confirmed that the Appellant had come into compliance with the legislation.

- Three statements dated January 24, 2025, signed by parents with children in the Appellant's care summarizing the nature of the Appellant's care of their children and stating that they were happy with the care provided.
- Email from the Audit Officer to the Appellant dated February 19, 2025, in response to the Appellant's email of the same date, advising the appellant to read the Ministry's Reconsideration Decision carefully and advising how to appeal that decision to this Tribunal.
- Written submissions stating:
  - The Appellant exceeded the number of children allowed under the License-Not-Required category of childcare and accepts responsibility for any overpayment directly related to that issue.
  - The Appellant submits that the Verification and Audit unit's decision was made based on a phone conversation with her despite knowing she had limited proficiency with spoken English. She states that she requested written communication to ensure clarity, but this request was not accommodated and likely led to the Ministry's misunderstanding regarding the nature of the care being provided. She asked to have the decision reviewed based on documentary evidence rather than a verbal conversation.
  - The Ministry initially approved the ACCB applications, despite the noted eligibility issues and according to section 10(3) of the *Early Learning and Child Care Act*, caregivers should not be held liable for overpayments resulting from errors made by the Ministry.
  - The Appellant requests the Tribunal:
    - rescind the decision requiring repayment of the overpayment of \$20,322.56;

- confirm that the Appellant provided legitimate License-Not-Required services;
- consider the principle of estoppel given the Ministry's administrative approval and delay in identifying the issue; and
- allow continued access to child care programs under compliance with all applicable regulations.

The Ministry provided a brief written submission stating that it would rely on the Reconsideration Decision as its submission in this appeal.

### **Admission of Evidence**

Section 24(4) of the *Employment and Assistance Act* permits the panel to admit any evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds the written submissions of the Appellant to largely be the Appellant's argument in support of the appeal. However, the panel admits the Appellant's admission regarding the nature of the care provided and her difficulties communicating with the Ministry. The panel also admits the other documentary evidence submitted by the Appellant in support of her appeal.

**Part F – Reasons for Panel Decision****Preliminary Issue**

Upon review of the Appeal Record and submissions of the parties, the Tribunal Chair determined that there was a possibility that the appeal could affect the rights of the parents whose ACCB was at issue in the appeal. The Tribunal Chair wrote to the parties seeking their submissions as to whether the parties, who had not been notified at any step of the Ministry's proceedings leading to this appeal, needed to be notified of the appeal and/or added as parties to the appeal and whether the appeal could affect the financial interests of the parents in question.

The Appellant provided written submissions and stated that she did not support adding the parents as parties to the appeal. She stated that the core issue was whether she was eligible to receive ACCB payments and whether any overpayments were due to administrative error by the Ministry. Further, the parents are not making any legal claim and are not being asked to make any repayment to the Ministry. With respect to the issue of financial interest, the Appellant reiterated that the Ministry is not seeking repayment from the parents and the outcome of the appeal will not affect the financial interest of the parents. The Appellant also noted that she had spoken with the parents, and they expressed a preference to not be involved in the legal process and had provided letters of support only as witnesses.

In its written submission, the Ministry stated that it communicates notifications of overpayment to the party it is seeking repayment from but that that party may share the communication as it sees fit. The Ministry also stated that it was unable to advise whether the outcome of the appeal could impact the financial interests of the parents. The Ministry further stated that any child care costs owing after the ACCB is applied are a matter between the care provider and parents and are outside the scope of the ACCB program.

The panel began its deliberations by addressing this issue. *Cardinal v. Director of Kent Institution*, [1985] 2 SCR 643 has affirmed that there is a general common law principle and duty of procedural fairness that rests with every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual. Such procedural fairness can include putting persons concerned on notice and giving them an opportunity to address the issues before making an administrative decision.

While the ACCB is clearly a benefit of the parents of the child being cared for by the Appellant, the panel finds that after reviewing the evidence on appeal that the issues to be

determined do not directly impact the parents in question and they do not need to be further notified or added as parties to the appeal. The Ministry is not seeking repayment from the parents of the ACCB and is seeking repayment from the Appellant. Further, the issues to be determined do not require input from the parents via the appeal process to resolve. The panel agrees with the Appellant's submission that the primary issues to be determined in this appeal are whether the Appellant was eligible to receive ACCB payments and whether any overpayment was due to the Ministry's administrative error. The panel finds the parents' involvement in the appeal will in no way alter the outcome of the appeal. In addition, any possible impact on the parents would be from the potential claim the Appellant could have against the parents for reimbursement of the ACCB amount. However, the Appellant has not indicated that she will seek such reimbursement, and the panel finds that if the Appellant did make such a claim, that reimbursement would be a contractual dispute between the Appellant and parents. The panel finds any such claim would be fully outside of the Tribunal's jurisdiction.

For the above reasons, the hearing proceeded without notice to the parents whose ACCB is at issue in this appeal.

For clarity, the panel notes that the issue of whether parents should be joined as parties to an appeal is based on the facts of each case. There may be cases where the interests of the parents are directly affected by the ministry's decision such that they ought to be provided with an opportunity to be heard before a decision is made.

### **Issue on Appeal**

The issue that the panel must decide is whether the Ministry's Reconsideration Decision, that the Appellant was ineligible to receive ACCB because she was not running an approved form of child care facility and received an overpayment of \$20,322.56 that the Ministry said needed to be repaid, was a reasonable application of the legislation in the circumstances of the Appellant.

### **The Appellant's Position**

As noted in the Appellant's written submissions, the Appellant admits that she cared for more than the allowable number of children permitted as a License-Not-Required care provider and acknowledges the overpayment. However, the Appellant submits that she was in non-compliance with licensing requirements due to an administrative error of the Ministry as they approved payment to her for the ACCB she received. She submits that due to this administrative error she should not have to repay the overpayment due to the

principle of estoppel and should be allowed to continue to provide child care programs in compliance with the applicable legislation.

### **The Ministry's Position**

The Ministry relied on the Reconsideration Decision and submits that unlicensed child care providers may care for only three children or one sibling group at a time and the Appellant regularly cared for more than three children or more than one sibling group between October 1, 2022 and September 30, 2024. The Ministry states that the Appellant therefore required a license to operate legally. The Ministry submits that the Appellant admits this and that it is a contravention of section 5 of the *Community Care and Assisted Living Act*, which prohibits the operation of a community care facility without a license. In the Reconsideration Decision the Ministry held that because the Appellant's child care facility was not in compliance with the applicable legislation that any care provided was ineligible for funding through the ACCB. The Ministry acknowledges that it initially approved payment of the ACCB to the Appellant for child care for more than the legally allowed number of children in an unlicensed child care facility. However, they continue to request that the overpayment of \$20,322.56 be repaid by the Appellant to the Ministry.

### **Panel Decision**

#### Was there an overpayment?

The number of children the Appellant provided child care for at any given time during the period in question in this appeal is not in dispute. To her credit, the Appellant admits that she was not in compliance with the licensing requirements. Accordingly, the panel finds as fact that the Appellant provided child care as follows:

- October 2022 – July 2023 (4 children, from two sibling groups)
- August 2023 (4 children, from two sibling groups)
- September 2023 – May 2024 (5 children, from three sibling groups)
- June 2024 – September 2024 (3 children, from one sibling group)

Further, the panel finds that at all material times the Appellant's child care facility was unlicensed.

Section 4 of the *Early Learning and Child Care Act* authorizes the Ministry to pay the ACCB to or for the benefit of one eligible for the ACCB. Accordingly, the Ministry had authority to

provide the ACCB to the Appellant provided the care provided was eligible and qualified for receipt of the ACCB.

In this regard, section 7 of the Early Learning and Child Care Regulation states that the ACCB can be paid for a child if child care is provided in certain classes of child care facilities. The approved facilities are:

1. Eligible licensed child care facilities
2. License-not-required child care facilities
3. Registered license-not-required child care facilities
4. The child's home (in certain circumstances set out in section 7(2) of the Early Learning and Child Care Regulation)

As it is uncontested that the Appellant's child care facility was not licensed and the children in care were not receiving care in their own home, the only possible category of facility eligible for the ACCB would be one of the two license-not-required child care facilities categories listed. Accordingly, the panel must determine whether the Appellant's child care facility was a license-not-required child care facility.

A license-not-required child care facility is defined in section 1 of the Early Learning and Child Care Regulation as follows:

**"licence-not-required child care facility"** means a child care facility

- (a) the setting of which is the home of the child care provider, unless the home is the home of the child receiving child care in the setting,
- (b) that is not registered under the Child Care Resource and Referral Program, established by the government, and
- (c) that is not required to be licensed under the *Community Care and Assisted Living Act*;

While there is some confusion as to whether the child care provided included only transportation to and from school, the panel's review of all the evidence clearly shows that the child care was based in the Appellant's home. There is no evidence suggested that the child care facility was registered under the Child Care Resource Referral Program. Accordingly, the panel finds parts a) and b) of the above definition are satisfied. The panel must therefore determine whether the child care facility was not required to be licensed under the *Community Care and Assisted Living Act*.

Section 5 of the *Community Care and Assisted Living Act* states that a person without a license must not operate a community care facility.

"Community care facility" is defined in section 1 of the *Community Care and Assisted Living Act* as follows:

**"community care facility"** means a premises or part of a premises

- (a) in which a person provides care to 3 or more persons who are not related by blood or marriage to the person and includes any other premises or part of a premises that, in the opinion of the medical health officer, is used in conjunction with the community care facility for the purpose of providing care, or
- (b) designated by the Lieutenant Governor in Council to be a community care facility;

Accordingly, the panel finds that the legislation states that a person without a license must not provide care to 3 or more persons who are not related by blood or marriage to the person. It is uncontested that the Appellant provided child care to more than three people at all material times at issue in this appeal. However, the panel notes that section 2 of the *Community Care and Assisted Living Act* states that the Act does not apply to "a home providing day care for a sibling group only."

"Sibling group" is defined in section 1 of the *Community Care and Assisted Living Act* as follows:

**"sibling group"** means a group of 3 or more children

- (a) who reside in the same household if they are in the care of a person who is, with respect to each child,
  - (i) a parent of the child,
  - (ii) a person with whom the child is placed under the *Child, Family and Community Service Act*,
  - (iii) a person who has custody or guardianship of the child under an order of a court, or
  - (iv) the spouse of a person referred to in subparagraph (i) or (iii) if that person resides in the household, or
- (b) who are recognized by the director of licensing as a sibling group;

As stated above, the legislation states that a person must have a license to provide care for “3 or more persons who were not related by blood or marriage” to the caregiver. This means that under section 5 of the *Community Care and Assisted Living Act* the Appellant was at all times required to have a license unless the exception under section 2 for day care for a sibling group only applies. A review of the evidence shows that during the following periods it is uncontested that the Appellant provided child care for more than 3 people and one sibling group:

- October 2022 – July 2023 (4 children, from two sibling groups)
- August 2023 (4 children, from two sibling groups)
- September 2023 – May 2024 (5 children, from three sibling groups)

However, for the period of June 2024 to September 2024 the evidence shows that the Appellant provided care for 3 children from one sibling group. The number and relationship of the children is uncontested. Further, in the July 25, 2024 letter from the Health Authority the licensing officer states that the Appellant had come into compliance with the legislation and as of June 1, 2024 was only caring for one sibling group of three in addition to her own children.

Accordingly, as a license was required to care for more than 3 persons unless they were a sibling group and the Appellant admits to not having a license, the panel finds the Ministry reasonably determined that the Appellant did not have the required license for the period from October 2022 through May 2024. As a license was required but was not obtained for the period between October 2022 and May 2024, the panel finds section 7 of the Early Learning and Child Care Regulation states that the care provided by the Appellant was not eligible for the ACCB during that period of time. The panel finds the amounts of ACCB the Appellant received for the period between October 2022 and May 2024 were an overpayment of ACCB.

However, the panel finds the Ministry was unreasonable with respect to the period between June 1, 2024 and September 2024. During that time, while the Appellant was providing child care for 3 persons or more, the panel finds they were a sibling group and the *Community Care and Assisted Living Act* did not apply, meaning that no license was required to provide the care in question. As a license was not required under the Act, the panel finds that for the period between June 1, 2024 and September 2024 the Appellant’s child care was eligible for the ACCB under section 7 of the Early Learning and Child Care Regulation. The panel finds that as the child care provided by the Appellant between June

1, 2024 and September 2024 was eligible for ACCB that there was no overpayment to the Appellant during this period of time.

### Repayment of Overpayment

Section 10(2) of the *Early Learning and Child Care Act* states that if a child care subsidy has been paid to or for a person that is ineligible to receive it, the person must repay the amount to the government.

As the panel has found that the Appellant received ACCB for the period between October 2022 and May 2024 that she was ineligible for, the panel finds the Appellant is required by the legislation to repay the amount of the overpayment received for that period of time.

However, in her written submissions, the Appellant raises the defence of estoppel and submits that she should not have to repay any overpayment as the Ministry provided the ACCB in circumstances where it shouldn't have been paid. The Appellant states that this is an administrative error that should estop the Ministry from seeking repayment.

Under section 87 of the *Financial Administration Act*, 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.

The estoppel defence protects a recipient who, through no fault of their own, receives a payment they were not eligible to receive. The Supreme Court of Canada set out the principles of promissory estoppel in *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50 ("Maracle"):

The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position".

In other words, to successfully establish an estoppel defence, the Appellant must show that:

1. She received funds that she was not eligible to receive.
2. The Ministry represented to her that she was eligible for the assistance.
3. She relied on the representation.

In the case of the Appellant, she states that she received ACCB she was ineligible for due to an administrative error of the Ministry. While the Appellant received funds that she was not eligible for and appears to have relied on receipt of the funds, the panel finds that upon review of the evidence, the Ministry did not solely represent that she was eligible for the ACCB. The ACCB Child Care Arrangement Forms submitted by the Appellant clearly show that the Appellant identified the care being provided as license-not-required child care. The Ministry relied on this information and approved the issuance of the ACCB.

Eventually, when multiple ACCB Child Care Arrangement Forms were filed, the Ministry had the information necessary to determine that more children were being cared for by the Appellant than is permitted in a license not required setting. However, the panel finds that the Appellant is not blameless in the situation as she indicated on each of the various ACCB Child Care Arrangement Forms that she was providing license-not-required care. While it is regrettable that the error was not caught sooner by the Ministry, the panel finds that as the number of children on each ACCB Child Care Arrangement Form were within the allowable limits for license-not-required care it cannot be said that the Ministry made an inaccurate representation to the Appellant. Rather, the Ministry relied on the information provided to it on the form from the Appellant. As the Appellant is at least partially to blame for the error, the panel finds that the defence of estoppel does not prevent repayment of the overpayment in this case.

In written submissions the appellant submitted that section 10(3) of the *Early Learning and Child Care Act* prevented her being liable for any overpayment. She stated that this section applied because the Ministry initially approved the ACCB applications despite the noted eligibility issues. The panel finds section 10(3) of the *Early Learning and Child Care Act* provides that if an amount has been paid because of an error, omission or misrepresentation made by a child care provider, then it is the provider who is liable to repay the amount to the Ministry rather than any other individual. The panel finds that this section does not assist the Appellant's case.

Accordingly, the panel finds the Ministry's determination that the overpayment must be repaid for the period of October 2022 to May 2024 reasonable.

### Comment

In setting out its analysis of the applicable legislation necessary to determine this appeal, the panel notes that the legislation referred to in the Reconsideration Decision is inadequate to fully explain the decision reached by the Ministry. In other words, not all of

the applicable legislation is referred to and in some cases, incorrect legislation is referred to. However, the panel finds that when the applicable legislation is fully addressed the same conclusion is reached. Accordingly, the panel finds that the appeal process cures the defect in the Ministry's analysis of the legislation.

### **Conclusion**

The panel finds the Ministry's Reconsideration Decision reasonable as it applies to the period between October 2022 and May 2024 and confirms that portion of the Reconsideration Decision. However, the panel rescinds the Ministry's Reconsideration Decision as it applies to the period between June 1, 2024 and September 2024. The Appellant is partially successful on appeal.

## Schedule of Legislation

### ***Community Care and Assisted Living Act:***

#### **Definitions**

**1** In this Act:

....

**"community care facility"** means a premises or part of a premises

- (a) in which a person provides care to 3 or more persons who are not related by blood or marriage to the person and includes any other premises or part of a premises that, in the opinion of the medical health officer, is used in conjunction with the community care facility for the purpose of providing care, or
- (b) designated by the Lieutenant Governor in Council to be a community care facility;

....

**"sibling group"** means a group of 3 or more children

- (a) who reside in the same household if they are in the care of a person who is, with respect to each child,
  - (i) a parent of the child,
  - (ii) a person with whom the child is placed under the *Child, Family and Community Service Act*,
  - (iii) a person who has custody or guardianship of the child under an order of a court, or
  - (iv) the spouse of a person referred to in subparagraph (i) or (iii) if that person resides in the household, or
- (b) who are recognized by the director of licensing as a sibling group;

## Application

**2** This Act does not apply to any of the following:

- (a) a school under the [School Act](#), other than the facilities of the school that are used for the provision of a child care program as defined in that Act;
- (b) a school under the [Independent School Act](#);
- (c) a francophone school under the [School Act](#), other than the facilities of the francophone school that are used for the provision of a child care program as defined in that Act;
- (d) a hospital or portion of a hospital as defined in the [Hospital Act](#);
- (e) a home approved as a foster home under the [Child, Family and Community Service Act](#);
- (f) a correctional centre or youth custody centre;
- (g) a school primarily providing, in the opinion of the director of licensing, educational training for children 6 years of age or older;
- (h) a designated facility under the [Mental Health Act](#);
- (i) a home providing day care for a sibling group only;
- (j) a community care facility that is exempted, or is within a class exempted, under section 34 (5) (d);
- (k) an assisted living residence that is exempted, or is within a class exempted, under section 34 (5) (d).

**2** This Act does not apply to any of the following:

(a) a school under the [School Act](#), other than the facilities of the school that are used for the provision of a child care program as defined in that Act;

(b) a school under the [Independent School Act](#);

(c) a francophone school under the [School Act](#), other than the facilities of the francophone school that are used for the provision of a child care program as defined in that Act;

(d) a hospital or portion of a hospital as defined in the [\*Hospital Act\*](#);

(e) a home approved as a foster home under the [\*Child, Family and Community Service Act\*](#);

(f) a correctional centre or youth custody centre;

(g) a school primarily providing, in the opinion of the director of licensing, educational training for children 6 years of age or older;

(h) a designated facility under the [\*Mental Health Act\*](#);

(i) a home providing day care for a sibling group only;

(j) a community care facility that is exempted, or is within a class exempted, under section 34 (5) (d);

(k) an assisted living residence that is exempted, or is within a class exempted, under section 34 (5) (d).

### **Operating or advertising without a licence**

**5** A person who does not hold a licence must not

- (a) operate, or hold themselves out as operating, a community care facility,
- (b) provide, or hold themselves out as providing, care in a community care facility, or
- (c) accommodate, or hold themselves out as accommodating, a person who, in the opinion of a medical health officer, requires care in a community care facility.

### ***Early Learning and Child Care Act:***

### **Child care benefits**

**4** On application by a parent and subject to the regulations, the minister may pay a benefit to or for the parent if the parent is eligible for the benefit, for the purpose of reducing or eliminating the cost of child care to the parent.

### Overpayments

**10** (1) If the minister determines that an amount of a child care grant has been paid to a person who is not eligible for the amount under the grant agreement governing the child care grant or the regulations, the person is liable to repay that amount to the government.

(2) If the minister determines that an amount of a child care benefit has been paid to or for a person who is not eligible for the amount, the person is liable to repay that amount to the government.

(3) If the amount referred to in subsection (2) has been paid because of an error, omission or misrepresentation made by a child care provider, despite that subsection, the child care provider, and not the person, is liable to repay the amount to the government.

### Early Learning and Child Care Regulation:

#### Definitions

**1** In this regulation:

....

**"licence-not-required child care facility"** means a child care facility

- (a) the setting of which is the home of the child care provider, unless the home is the home of the child receiving child care in the setting,
- (b) that is not registered under the Child Care Resource and Referral Program, established by the government, and
- (c) that is not required to be licensed under the *Community Care and Assisted Living Act*;

### Qualifying child care

**7** (1)The minister may pay a child care benefit for a child, in accordance with this regulation, if a class of child care set out in column 1 of the applicable table in the Schedule is provided to the child in the following classes of child care facilities:

- (a)eligible licensed child care facilities;
- (b)licence-not-required child care facilities;
- (c)registered licence-not-required child care facilities;
- (d)subject to subsection (2), the child's home.

(2)A child care benefit may be paid for child care provided in a child's home if the child care is provided by one of the following:

- (a)a person who does not reside in the child's home;
- (b)a person who resides in the child's home other than a person who is a relative of the child or a dependant of the parent.

(3)Subject to section 8 (2), if a child is receiving child care in 2 or more child care facilities that are in different classes of child care facility for which the minister may pay a child care benefit, the minister may pay a child care benefit for child care provided to the child in each of those child care facilities.

### **Amount of child care benefits**

**18** Subject to section 19, the minister may pay to or on behalf of an applicant the amount of a child care benefit determined in accordance with the Schedule.

### ***Financial Administration Act:***

### **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.

APPEAL NUMBER 2025-0071

**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

Emily C. Drown

Signature of Chair

Date (Year/Month/Day)

May 15, 2025

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

May 18, 2025

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

May 19, 2025