

PART C – Decision under Appeal

APPEAL#

The Child Care Subsidy Reconsideration Decision of January 29, 2010 is the decision under appeal wherein the ministry found that the appellant was ineligible to receive a child care subsidy. The ministry found that the appellant had submitted a Child Care Subsidy Application on October 2, 2009 and that the ministry determined she was not eligible for a child care subsidy as she did not meet the citizenship criteria of the program. Upon reconsideration, the ministry confirmed that the appellant had provided information regarding her interim federal health benefits, a copy of a letter from the federal government requesting additional medical testing and an interim federal health certificate of eligibility. The ministry found at reconsideration that none of these documents adequately confirmed her current citizenship status as conforming with the legislated criteria and that she was thus not eligible for the subsidy. The ministry reasoned that, under section 5(a) of the Child Care Subsidy Regulation (CCSR), the appellant (i) was not a Canadian Citizenship, (ii) though her application for "Permanent Residence from within Canada" had been approved in principle, she was not yet authorized under an enactment of Canada to take up permanent residence in Canada, and (iii) she was not determined under the Immigration and Refugee Protection Act (Canada) to be a Convention refugee or a person in need of protection.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 4
Child Care Subsidy Regulation (CCSR), section 5

PART E – Summary of Facts

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At the Employment and Assistance Appeal Tribunal hearing, the appellant and her advocate provided their evidence that the appellant has lived in Canada for several years. The appellant is not a Canadian citizen. She had obtained a child care subsidy for her son (who was born in Canada) previously when she had been classified as a refugee. However, the appellant and her advocate provided that she no longer has refugee status. Instead, they submitted that her application for "Permanent Residence from within Canada" has been approved in principle on humanitarian grounds pending the results of her final medical appointment scheduled for March 25, 2010.

The appellant and her advocate referred to a letter dated February 3, 2009 from the federal government characterizing her application for "Permanent Residence from within Canada" as approved in principle on humanitarian grounds. This letter was accepted by the panel as admissible under section 22(4) of the Employment and Assistance Act as information in support of information previously before the ministry. The submission had been referred to in the letter from the federal government dated November 17, 2009. The letter of February 3, 2009 made no reference to the appellant's application being approved in principle but instead characterized her request for exemption from some requirements as approved. The later letter of November 17, 2009 was the only reference to her application for permanent residence being approved in principle. The panel accepted from this evidence before it that the appellant had requested some exemptions from some requirements which was approved by the federal government, later characterized as her application for "Permanent Residence from within Canada" having been approved in principle. Given the as-yet unmet conditions to which these letters referred, the panel finds as fact that this does not constitute being authorized to yet take up permanent residence in Canada.

In addition to the letters before the ministry at reconsideration and the letter submitted at the hearing, a letter of February 9, 2010 signed by the appellant's Child Protection Social Worker (who also attended the hearing as her advocate) and the social worker's team leader was submitted with the appellant's Notice of Appeal to the Employment and Assistance Appeal Tribunal confirmed the appellant's position that she required the child care subsidy for her child.

The evidence before the ministry was that the appellant had applied for a child care subsidy on October 2, 2009. The ministry determined that she was not eligible for the subsidy as she had not met the legislated criteria. Though the appellant had received a benefit for a period of time, the ministry stated that it had an obligation to review any new information and make decisions accordingly. The ministry determined from the evidence before it, including information regarding her interim health benefits, a copy of a letter from the federal government requesting additional medical testing and an interim federal health certificate of eligibility, that the appellant was not a Canadian citizen, was not authorized under an enactment of Canada to take up permanent residence or determined to be a convention refugee or person in need of protection. The ministry representative provided at the hearing that applicants who are authorized under an enactment of Canada to take up permanent residence in Canada typically present a Permanent Residence Card which has not been presented by the appellant.

The panel finds that the appellant is not a Canadian citizen, has not been authorized under an enactment of Canada to yet take up permanent residence in Canada as her application was approved in principle only, and she has not been determined under the Immigration and Refugee Protection Act (Canada) to be a convention refugee or a person in need of protection.

PART F – Reasons for Panel Decision

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The issue in this case is the reasonableness of the ministry's decision to deny the appellant's request for a child care subsidy on the basis that she had not met the legislated citizenship requirements.

The legislation provides the following with respect to this case:

Under the CCSA, section 4, subject to the regulations, the minister may pay child care subsidies. Under the CCSR, section 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.

The ministry argues that, though the appellant had submitted information regarding her interim federal health benefits, a copy of a letter from the federal government requesting additional medical testing, and an interim federal health certificate of eligibility, the information she provided had not confirmed that she was a Canadian citizen, authorized as a permanent resident of Canada or a convention refugee or person in need of protection.

The appellant argues, citing the letters from the federal government of February 3, 2009 and November 17, 2009, that her application for Permanent Residence from within Canada has been approved in principle which authorizes her to take up permanent residence in Canada with only an outstanding medical exam to complete. She argues that she had previously received the child care subsidy when she had refugee status (which she confirmed she no longer has) and relies upon it to care for her son. She argues that her application was accepted in principle on humanitarian grounds.

The panel reasons from the evidence before it that the appellant is neither a Canadian citizen nor currently a convention refugee. Neither the ministry nor the appellant argue this. The panel further reasons that, though the appellant's application for permanent residence has been accepted by the federal government in principle, the federal government has laid out conditions that have not yet been met including a final medical exam. The legislated criteria to receive a child care subsidy provides with respect to this issue that an applicant must be authorized under an enactment of Canada to take up permanent residence. The legislated criteria does not provide for any arrangement in principle on this point. Furthermore, though her application for permanent residence has been accepted in principle on humanitarian grounds, there is no information that confirms she is a person in need of protection.

The panel therefore finds that the ministry's decision was reasonably supported by the evidence and confirms the decision.