



BERMUDA

CHILD DAY CARE ALLOWANCE ACT 2008

2008 : 38

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WHEREAS it is desirable to make provision for day care allowances to be paid to assist the parents and guardians of eligible children to meet the cost of day care;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

CHILD DAY CARE ALLOWANCE ACT 2008

Short title

1 This Act may be cited as the Child Day Care Allowance Act 2008.

Interpretation

2 In this Act, unless the context otherwise requires—

“award” means an award of a day care allowance;

“Bermudian status” means Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956;

“day care allowance” means an amount paid under this Act for day care in respect of an eligible child;

“day care centre” has the meaning given in section 65 of the Children Act 1998;

“day care” has the meaning given in section 65 of the Children Act 1998;

“day care provider” has the meaning given in section 65 of the Children Act 1998;

“Director” means the Director of Financial Assistance whose office is continued under section 3 of the Financial Assistance Act 2001;

“eligible child” means a child in respect of whom an award may be granted under section 5(1);

“Financial Assistance Review Board” means the Board established under section 15 of the Financial Assistance Act 2001;

“gross annual household income” means the total gross annual income of both—

(a) the person who is qualified under section 4 to apply for a day care allowance; and

(b) the supporting parent or spouse, if any;

“gross annual income” means income derived from salary or wages before any statutory or other deductions;

“guardian” means a person who has the charge of and who is otherwise responsible for the care and well-being of a child, whether or not they have parental responsibility within the meaning of section 4(1) of the Children Act 1998;

“home day care facility” means a private residence in which day care is offered on a regular basis to less than 4 children, who are not of common parentage, by a registered day care provider;

“licensed day care centre” means a day care centre in respect of which the operator holds a licence or a provisional licence to provide day care, issued under section 68 of the Children Act 1998;

“Minister” means the Minister charged with responsibility for financial assistance;

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“operator”, in respect of a day care provider that is a corporation or a partnership, means the corporation or the partners, as the case may be, and in any other case, it means the person in charge of a licensed day care centre or home day care facility;

“parent” means the mother or father of a child, whether biological or adoptive;

“prescribed” means prescribed by regulations made under this Act;

“recipient” means a person who is in receipt of an award; and

“registered day care provider” means a day care provider who holds a certificate of registration issued under section 76 of the Children Act 1998.

“supporting parent or spouse” means—

- (a) the parent of a child for whom an application for a day care allowance is made, who resides with the child but is not the applicant; or
- (b) the spouse of the applicant, who resides with the child for whom an application for a day care allowance is made but is not the child’s parent or guardian;

[Section 2 definitions "gross annual household income" and "supporting parent or spouse" inserted by 2023 : 22 s. 2 effective 1 October 2023]

Application for day care allowance

3 (1) A person who is qualified under section 4 may apply to the Director for a day care allowance in such manner as may be prescribed.

(2) The applicant shall provide to the Director such information and produce such documents as the Director may reasonably require for determining the eligibility of the applicant for the award, including proof of the applicant’s gross annual income and the name and gross annual income of any supporting parent or spouse, in such form as may be prescribed.

(3) *[Repealed by 2023 : 22 s. 3]*

(4) An application made under this section may be withdrawn by the applicant by giving the Director notice in writing of the withdrawal at any time before the applicant is informed of the Director’s decision to approve or refuse the application.

[Section 3 amended by 2023 : 22 s. 3 effective 1 October 2023]

Qualified persons

4 (1) A person is qualified to apply for a day care allowance if, and only if, on the date of the application that person—

- (a) is the parent or guardian of an eligible child;
- (b) resides with, and has care and control of, the child;
- (c) has a gross annual household income not exceeding the maximum prescribed amount; and

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(d) possesses Bermudian status or is the spouse of a person who possesses Bermudian status.

(2) *[Repealed by 2023 : 22 s. 4]*

[Section 4 amended by 2023 : 22 s. 4 effective 1 October 2023]

Eligibility of child

5 (1) An award may only be granted in respect of a child if the child possesses Bermudian status and—

- (a) is under four years of age; or
- (b) if four years of age or over, has not yet commenced public or private pre-school.

(1A) In the case of child referred to in subsection (1)(b), an award may only be granted if the Department of Education confirms in writing that there is no available space for that child in a public pre-school.

(2) An applicant for a day care allowance must provide the Director with the birth certificate of the child in respect of whom the application is made, and the Director shall consult with the Department of Immigration to confirm that the child possesses Bermudian status.

[Section 5 subsection (1) repealed and replaced by 2009:48 s.2 effective 15 December 2009]

Grant and refusal of applications

6 (1) The Director may, after receiving an application for a day care allowance made in accordance with section 3 and after reviewing all such information and documents as the Director may reasonably require, grant or refuse the application.

(2) The Director shall not grant an award unless satisfied that the criteria for eligibility in sections 4 and 5 are fulfilled.

(3) Where the Director approves an application, the Director shall inform the applicant in writing of—

- (a) the amount and duration of the award;
- (b) the conditions attached to the award; and
- (c) the date of commencement of, and the manner and procedure for, payment of the award.

(4) Where the Director refuses an application for an award, the Director shall inform the applicant in writing of the decision and shall specify the reasons for the refusal.

Conditions applicable to award

7 (1) An award granted under this Act shall be subject to the following conditions—

- (a) the recipient shall notify the Director in writing forthwith—

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- (i) of any change in circumstances that would cause the recipient to cease to be qualified under section 4 to apply for an award;
 - (ii) of any change in the circumstances which would affect the eligibility under section 5 of the child in respect of whom the award was granted;
 - (iii) of any change in his or her address or the address of a supporting parent or spouse; and
 - (iv) of any change in the registration of the child in respect of whom the award was granted with the licensed day care provider; and
- (b) the recipient shall provide such information and produce such documents, as the Director may reasonably require from time to time, as proof of the recipient's gross annual income or the gross annual income of a supporting parent or spouse.

(2) The recipient of an award may not transfer it to another person unless the Director approves the transfer.

(3) Without prejudice to the conditions specified in subsection (1), the Director may, based on a report by a financial assistance manager or caseworker in any particular case, impose a special condition requiring a recipient to attend parenting classes or courses provided under the Child Development Programme of the Ministry of Education.

(4) A recipient who, without reasonable cause, refuses or fails to—

- (a) comply with a special condition imposed by the Director under subsection (3); or
- (b) complete the requirements of any class or course to be attended under the special condition,

is in breach of the special condition.

[Section 7 subsections (3) and (4) inserted by 2013 : 21 s. 2 effective 17 July 2013; Section 7 subsection (1) amended by 2023 : 22 s. 5 effective 1 October 2023]

Payment of award

8 (1) The Director may only approve payment of an award made in respect of an eligible child if the Director receives written confirmation from the operator of a licensed day care centre or a home day care facility of the child's registration at the centre or facility.

(2) If the Director does not receive written confirmation under subsection (1) within 30 days after giving notice of the award to the recipient, the award shall cease to have effect.

(3) Payment shall be made to the operator of the licensed day care centre or home day care facility in which the child is registered and shall continue for only so long as the award remains valid and the child continues to be registered at that centre or facility.

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Functions and Duties of the Director

9 (1) The Director shall administer and control, in accordance with this Act, all money appropriated by the Legislature for day care allowances and shall advise the Minister generally on the management and administration of such money.

(2) The Director shall as soon as practicable after the end of the Government's financial year make to the Minister and publish in such manner as the Director thinks appropriate a report of the Director's activities under this Act.

Powers of Director

10 (1) In the exercise of the Director's functions under this Act, the Director may—

- (a) require an applicant for a day care allowance or a recipient to provide the Director with such information and produce such documents as the Director may specify;
- (b) require such applicant or recipient to attend at such time and place as the Director may require to be examined as to his or her gross annual income or the gross annual income of a supporting parent or spouse and circumstances; and
- (c) enter premises occupied by an applicant for a day care allowance or by a recipient to make such examination and enquiry as the Director may deem to be necessary for investigating the circumstances of the applicant or recipient.

(2) In the exercise of the Director's functions, the Director may, during normal business hours, enter premises operated as a licensed day care centre or a home day care facility to make such examination and enquiry as the Director may deem to be necessary to verify the registration of eligible children at that place and the provision of day care to such children.

(3) The Director may authorise an officer of his or her department to exercise the Director's powers under this section.

(4) An officer exercising powers under subsection (3) shall, if so required, produce evidence of his or her authorisation.

[Section 10 subsection (1)(b) amended by 2023 : 22 s. 6 effective 1 October 2023]

Review of award

11 The Director may, on new facts being brought to his or her notice, or if satisfied that an award was granted in ignorance of, or was based on a misrepresentation of a material fact, review the granting of any award.

Revocation or variance of award

12 (1) After reviewing the granting an award under section 11, the Director may revoke or vary the award if—

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- (a) the Director is satisfied that the recipient has breached any condition of the award;
- (b) circumstances arise that cause the recipient of the award to cease to be qualified under section 4 to apply for a day care allowance;
- (c) circumstances arise that cause the child in respect of whom the award was granted to cease to be an eligible child; or
- (d) the recipient, in connection with an application for a day care allowance or otherwise, has provided false, misleading or inaccurate information.

Application after revocation of award

12A (1) A recipient whose award has been revoked by the Director under section 12(1) (a) may only apply for another award if—

- (a) in the case of the first revocation of an award, not less than 3 months have elapsed from the date the award was revoked;
- (b) in the case of the second revocation of an award, not less than 6 months have elapsed from the date of the second revocation of the award; or
- (c) in the case of the third or subsequent revocation of an award, not less than 1 year has elapsed from the date of the latest revocation of the award.

(2) Where an applicant has had an award revoked under section 12(1)(a) and applies for a subsequent award in accordance with subsection (1), any subsequent award granted by the Director shall not include arrears for child day care incurred before the date that the subsequent award is granted.

[Section 12A inserted by 2013 : 21 s. 3 effective 17 July 2013]

Recovery of overpayment

13 (1) The Director may require a recipient to repay any sum of money improperly paid under an award (“overpayment”) as a result of non-disclosure of facts, misrepresentation, false declaration or for any other cause and may suspend further payments under the award until such sum has been paid.

(2) The Director may waive the overpayment or may require the recipient to pay a reduced amount if satisfied that a recipient has exercised due care and diligence to avoid the overpayment.

(3) Where the Director determines that the recovery of an overpayment from a recipient or, in the event of death, from the recipient’s estate, would cause undue hardship to the recipient or to a member of his or her household benefiting directly or indirectly from the award, the Director may waive the overpayment or may require the recipient or the estate, as the case may be, to pay a reduced amount.

(4) Where any sum is required to be repaid by a recipient under subsection (1), the Director may recover such sum as a debt owing to Government in any court of competent jurisdiction.

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Rights of appeal

14 (1) An aggrieved person may appeal to the Financial Assistance Review Board against a decision of the Director—

- (a) to refuse an application for a day care allowance; or
- (b) to vary or revoke payment of an award.

(2) Sections 16 and 17 of the Financial Assistance Act 2001 apply in respect of appeals to the Board under this Act, with such changes as are necessary in the circumstances.

Offence by applicant or recipient

15 An applicant for a day care allowance or a recipient is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment not exceeding six months, or to both, if that person—

- (a) makes a declaration that he or she knows to be false with respect to any matter under this Act; or
- (b) transfers an award contrary to section 7(2).

Offence by day care provider

16 (1) A day care provider is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment not exceeding six months, or to both, if that person accepts payment of an award in respect of a child that the person knows—

- (a) is not registered at the licensed day care centre or home day care facility operated by that person;
- (b) is not an eligible child; or
- (c) is not the child in respect of whom the award was granted.

(2) A court that convicts a day care provider of an offence under subsection (1) may, in addition to any penalty imposed under that subsection, order that an additional fine be paid in an amount equal to the total award paid in respect of the child from the date that the person first knew of any matter referred to in subsection (1)(a) to (c).

Regulations

17 (1) The Minister may make regulations respecting—

- (a) the maximum award payable and the duration of the award;
- (b) the procedure for application for a day care allowance;
- (c) the maximum gross annual household income, for the purposes of section 4;
- (ca) categories of maximum gross annual household incomes within which maximum awards may be payable;

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- (d) the proof required for gross annual income;
- (e) the procedure for payment of an award;
- (f) recovery of overpayments under section 13;
- (g) the investigation of matters pertaining to eligibility for day care allowances and the granting, review and payment of awards; and
- (h) any matter required to be regulated or prescribed for the purposes of this Act.

(2) Regulations made under this section are subject to the negative resolution procedure.

[Section 17 subsection (1) amended by 2023 : 22 s. 7 effective 1 October 2023]

Amendment of Financial Assistance Regulations

18 The schedule to the Financial Assistance Regulations 2004 is amended in the Table of Allowable Expenses by deleting the items of expenditure “Child day care” and “Child day care arrears”.

Commencement

19 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

[Assent Date: 8 August 2008]

[Operative Date: 31 October 2008]

[Amended by:

2009 : 48

2013 : 21

2023 : 22]