

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry for Children and Family Development's ("ministry") reconsideration decision dated June 6, 2019 in which the ministry determined that the appellant is not eligible for the Affordable Child Care Benefit ("ACCB") for the period of January 1 to March 31, 2019.

**PART D – RELEVANT LEGISLATION**

*Child Care Subsidy Act* - section 4  
Child Care Subsidy Regulation - sections 4, 9.1, 13 and 17

**PART E – SUMMARY OF FACTS**

The appellant submitted an application for ACCB on January 8, 2019.

The ministry determined, in a decision dated January 10, 2019, that the appellant was not eligible for ACCB because his family income exceeded the threshold for the benefit.

The appellant did not submit a Request for Reconsideration.

The appellant submitted an Income Declaration on March 8, 2019 for income review.

The ministry determined, in a decision dated March 28, 2019, that the appellant was eligible for ACCB beginning April 1, 2019.

The appellant requested an explanation from the ministry on April 30, 2019 regarding not being issued ACCB from January 1, to March 31, 2019.

The ministry provided an explanation on May 22, 2019 advising the appellant that the ACCB begins the month after the Income Declaration form was signed.

The appellant submitted a Request for Reconsideration dated May 23, 2019. The appellant stated that his income for 2018 was reduced and that he had to wait to file income taxes. He asserted that he should not be penalized for the timing around federal tax submission.

In its reconsideration decision, dated June 6 2019, the ministry determined that the appellant was not eligible for ACCB from January 1 to March 31, 2019. This is the decision that is at issue in the current appeal.

Additional information before the panel on appeal consisted of the following:

**Notice of Appeal**

In the Notice of Appeal dated June 13, 2019, the appellant argued that he has provided concrete evidence of his 2018 earnings to confirm his lower income. He states that this proof was only available once his taxes were filed and that he was not made aware of another source to prove lower income sooner.

**Appeal Submissions**

At the hearing the appellant argued that he was eligible for ACCB from January 1 to March 31, 2019 and provided proof of his eligibility to the ministry as soon as this information was available to him. He argued that he believed that the only acceptable proof of income was his tax information from CRA because this is the information that the ministry's forms request. The appellant asserts that his eligibility for all months of 2019 should be based on his 2018 income rather than his 2017 income.

The ministry relied on the reconsideration decision.

**Admissibility**

The panel finds that the information provided in the appellant's Notice of Appeal and Appeal Submission consisted of argument and do not contain any new information requiring an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry's determination that the appellant is not eligible for the ACCB for the period January 1 to March 31, 2019 under the Child Care Subsidy Regulation is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

**Legislation**

The following section of the *Child Care Subsidy Act* applies to this appeal:

**Child care subsidies**

4 Subject to the regulations, the minister may pay child care subsidies.

The following sections of the Child Care Subsidy Regulation apply to this appeal:

**How to apply for a subsidy**

- 4 (1) To be eligible for a child care subsidy, a parent must
- (a) complete an application in the form required by the minister,
  - (b) supply the minister with the social insurance number of the parent and the parent's spouse, if any, and
  - (c) supply the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy.
- (2) Only one parent in the family may apply for a child care subsidy.
- (3) Repealed. [B.C. Reg. 187/2007, s. (b).]
- (4) Repealed. [B.C. Reg. 84/2016, s. 2.]

**Income review**

9.1 (1) In this section:

"estimated decreased annual income" means the estimated income from all sources except social assistance payments, stated in Canadian dollars, for the applicant or the applicant's spouse, if any, for the 12-month period beginning the month after the month in which the applicant requests an income review under this section;

"estimated increased annual income" means the estimated income from all sources except social assistance payments, stated in Canadian dollars, for the applicant, or the applicant's spouse, if any, for the 12-month period beginning the month after the month in which the income of the applicant or the applicant's spouse, as applicable, increased.

- (2) Despite section 9 (3), if the income of the applicant or of the applicant's spouse, if any, has decreased,
- (a) the applicant may request the minister to conduct an income review by giving to the minister a statement, in the form required by the minister, attesting to the estimated decreased annual income of the applicant or the applicant's spouse, as applicable, and
  - (b) the minister may determine the annual income of the person based on that information.

(3) Despite section 9 (2), on receiving a request for an income review under this section, if the minister is satisfied that the income decrease may result in an increase in the amount of child care subsidy, the minister must calculate the family's adjusted annual income as follows:

- (a) by adding, for the applicant and the applicant's spouse, if any,
  - (i) the lesser of
    - (A) the annual income of the person referred to in subsection (2) whose income decreased as determined in accordance with subsection (2) (b), or
    - (B) the annual income of that person as determined in accordance with section 9 (3) or (4), as applicable, and

- (ii) the annual income of the applicant or the applicant's spouse, if any, determined in accordance with section 9 (3) or (4), if applicable;
- (b) by deducting from the amount calculated under paragraph (a) the applicable amounts under section 9 (5).
- (4) If the minister is satisfied that the family's adjusted annual income calculated under subsection (3) will result in an increase in the amount of child care subsidy, the minister must redetermine the amount of child care subsidy using the family's adjusted annual income calculated under subsection (3) as the basis for the calculation under section 8 [amount of subsidy].
- (5) If an applicant is eligible for an increased amount of child care subsidy determined in accordance with subsection (4), the increased amount of child care subsidy may be paid from the first day of the month after the month in which the applicant requests an income review under this section.
- (6) Despite section 9 (3),
- (a) an applicant to or for whom an increased amount of child care subsidy is paid in accordance with this section must give to the minister a statement, in the form required by the minister, attesting to the estimated increased annual income of the person referred to in subsection (2) whose income decreased if
- (i) the income of that person increases, and
- (ii) the family's adjusted annual income was calculated under subsection (3) using the annual income of that person referred to in paragraph (a) (i) (A) of that subsection, and
- (b) the minister may determine the annual income of the person based on that information.
- (7) Despite section 9 (2), on receiving a statement referred to in subsection (6) of this section, if the minister is satisfied that the income increase may result in a decrease in the amount of child care subsidy, the minister must calculate the family's adjusted annual income as follows:
- (a) by adding, for the applicant and the applicant's spouse, if any,
- (i) the lesser of
- (A) the annual income of the person referred to in subsection (6) whose income increased determined in accordance with subsection (6) (b), or
- (B) the annual income of that person determined in accordance with section 9 (3) or (4), as applicable, and
- (ii) the annual income of the applicant or the applicant's spouse, if any, determined in accordance with section 9 (3) or (4), if applicable;
- (b) by deducting from the amount calculated under paragraph (a), the applicable amounts under section 9 (5).
- (8) If the minister is satisfied that the family's adjusted annual income calculated under subsection (7) will result in a decrease in the amount of child care subsidy, the minister must redetermine the amount of child care subsidy using the family's adjusted annual income calculated under subsection (7) as the basis for the calculation under section 8.

**Will a subsidy be paid for child care provided before completion of the application?**

- 13** (1) A child care subsidy may be paid from the first day of the month in which the parent completes an application under section 4.
- (2) If an administrative error has been made, a child care subsidy may be paid for child care provided in the 30 days before the parent completes an application under section 4.

**Reconsideration of decisions**

- 17** (1) A person who wishes the minister to reconsider a decision made under the Act must deliver to the Child Care Service Centre a request for reconsideration that
- (a) is in the form specified by the minister, and
- (b) is delivered within 20 business days after the person is notified of that decision.
- (2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Service Centre.
- (3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.
- (4) If a request for reconsideration is not delivered in the time required by subsection (1),
- (a) the person is deemed to have accepted the decision, and
- (b) the decision is not open to review in a court or subject to appeal to a tribunal or other body.
- (5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must
- (a) reconsider the decision, and

- (b) provide the person who delivered the request with a written decision on the request.
- (6) If a request for reconsideration is delivered under this section about a decision that results in a discontinuation or reduction of a child care subsidy, that decision is set aside until the minister
- (a) reconsiders the decision, and
- (b) provides the person who delivered the request with a written decision on the request.
- (7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister
- (a) reconsiders the decision, and
- (b) provides the person who delivered the request with a written decision on the request.

### **Affordable Child Care Benefit**

Section 4 of the *Child Care Subsidy Act*, authorizes the minister to pay child care subsidies where the requirements set out in the Child Care Subsidy Regulation (the "Regulation") are met. Section 4(1) of the Regulation sets out a number of eligibility requirements, including a requirement to complete an application in the form prescribed by the minister and supply identity and other documents.

Section 9.1 of the Regulation permits an applicant to request an income review, where their income or spouse's income, has decreased, by submitting the required paperwork to the ministry. Section 9.1(5) specifies that where an applicant is eligible for increased ACCB following an income review, payment of that increased amount may be paid in the first month after the month in which the income review was requested.

Section 13 of the Regulation stipulates timing for the payment of ACCB subsidies. Section 13(1), states that the subsidy may be paid from the first day of the month in which the parent completes the application and Section 13(2) provides an exception, which allows for the payment of the subsidy for child care in the 30 days prior to the application, where the ministry has made an administrative error.

Section 17 of the Regulation governs the timing of reconsideration requests and issuance of reconsideration decisions. This section specifies that a request for reconsideration must be delivered to the ministry within 20 business days of the receipt of the ministry's decision for which reconsideration is sought. This section also specifies that a failure to request reconsideration within the time prescribed means that a person is deemed to have accepted the ministry's decision.

Initially, the ministry determined that the appellant was not eligible for ACCB because his family income exceeded the eligibility threshold for the subsidy. This determination was made on January 8, 2019. The appellant does not dispute the ministry's finding that he was ineligible for the ACCB based on that application using his 2017 tax return information to prove his income. However, the appellant does argue that ministry's application forms and his denial letter led him to believe that a request for reconsideration would be senseless until he had filed his 2018 taxes because he believed that tax returns were the only way to prove his income. For this reason, he stated that he did not submit a request for reconsideration in accordance with the timing requirements of section 17. Instead, the appellant argued that he filed his taxes as soon as he was able to do so and submitted proof of his income to the ministry on March 8, 2019. The appellant argued that these documents proved his eligibility for the subsidy for the period at issue in this appeal (January 1 to March 31, 2019). In contrast the ministry argues that, because the appellant's income information was received in March 2019, the soonest a subsidy could be paid by the ministry is April 2019 in accordance with section 9.1(5) of the Regulation. The ministry's position is that, unless there is evidence of an administrative error on the part of the ministry, it has no discretion to issue "back payments" under this provision.

Section 13(2) sets out an exception authorizing the ministry to pay a subsidy for child care in the 30 days before the parent completes an application, if an administrative error has been made. The ministry concluded in its reconsideration decision that this exception did not apply as there was no evidence of an administrative error. The appellant made no submission regarding the existence of an administrative error on the part of the ministry. The panel finds that there is not sufficient evidence to establish that the ministry made an administrative error. The

panel notes that ministry did not follow up with the appellant following the denial of his application nor when he did not file a request for reconsideration within the legislated 20 business days but there is no legislative requirement for the ministry to conduct such follow-up. Section 12 of the Regulation requires the ministry to notify an applicant as to whether or not their application is approved and the appellant was notified in the ministry's letter of January 10, 2019.

The crux of this appeal, therefore, is the interpretation and application of section 9.1(5). The ministry's position is that it has no discretion to issue payments, even to qualified applicants, sooner than the month following the income review. The ministry determined an eligibility start date of April 2019 for the appellant on this basis. The ministry argued at the hearing that the appellant could or should have followed up with the ministry after receiving the January denial letter and, that if he had done so, he would have been advised that there were other methods of proving his family's income for the purposes of ACCB eligibility. In contrast, the appellant argues for a "common sense" interpretation of the legislation as he does meet the eligibility threshold for the period at issue and had provided proof of this as soon as it was available to him. The appellant conceded that he could have followed up with the ministry after receiving the January 2019 denial letter, but based on the information requested in the ACCB application, believed that he needed to wait until he had done his 2018 taxes.

The panel is unable to find that the ministry's reconsideration is an unreasonable application of the legislation. Section 9.1(5) permits the ministry to pay the subsidy from the first day of the month after the month in which a person requests an income review and the ministry has done exactly this in the appellant's situation. However, the panel notes that the result of the ministry's reasonable application of the legislation is that an individual who was eligible in the period at issue and relied on the ministry's forms to inform himself as to the information required to prove his eligibility has now lost 3 months of eligibility. The panel is troubled by this factual outcome despite its conclusion that the ministry was reasonable in its application of the legislation.

### **Conclusion**

The panel finds that the ministry's reconsideration decision determining that the appellant is not eligible for the ACCB for the period January 1 to March 31, 2019 is a reasonable application of the legislation. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

APPEAL NUMBER

**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)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/05

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/05

PRINT NAME

Melissa McLean

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/05