

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (the ministry) dated June 3, 2019 that denied the Appellant his request for the Affordable Child Care Benefit (the “subsidy”). In denying the subsidy, the ministry stated that the Appellant had applied for the subsidy on January 28, 2019, which the ministry stated was “*a new Affordable Child Care Benefit Application*”, following the appellant’s submission of an Affordable Child Care Special Needs form on January 2, 2019, which form had been completed by his doctor on December 7, 2018. The ministry said that the Appellant was not eligible for the subsidy for the period September 1, 2018 to December 31, 2018 because his application was submitted on January 28, 2019 and therefore he was only eligible for the subsidy beginning the first day of the month in which the application was completed, which was January 2019.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA), sections 4 and 14
Child Care Subsidy Regulation (CCSR), sections 2 and 4

PART E – SUMMARY OF FACTS**Information Before the Ministry at Reconsideration**

The information before the ministry at reconsideration included the following:

- (i) An Affordable Child Care Benefit Application dated January 28, 2019, in which the Appellant provides
- His and his spouse's name, address and contact information,
 - the name and birthdate of the dependent child for whom the Child Care Subsidy is sought, and
- (ii) An Affordable Child Care Benefit Child Care Arrangement form, incompletely filled out, dated January 28, 2019 in which the Appellant provides
- the name, address and contact information of the child care provider,
 - the details of the type of child care provided, specifically for Licensed Group childcare, for which he seeks a subsidy,
 - details of the child and the child's birthdate,
 - copies of the identification of himself and his spouse, and
 - stating that the application dated January 28, 2019 that the child care provider listed on the form is not replacing a previous childcare provider, but
- the Appellant did not complete the sections concerning what days of the week and times of the day childcare is provided.
- (iii) An Affordable Child Care Benefit Child Care Arrangement form appearing to be the same as in paragraph (ii) above, but dated January 25, 2019.
- (iv) Request for Reconsideration dated May 14, 2019, in which
- "Section 1 – Requestor Information" and "Section 2 – Ministry Decision" are on the first page. The original decision by the ministry is dated "2018-Sep-27" and states that the decision is effective "2018-Sep-01". In that original decision, the ministry adjudicator stated that the ministry had reviewed the request for Child Care Subsidy and has found that the Appellant was not eligible for the subsidy for the period September 1, 2018 to December 31, 2018 because a subsidy may only be paid from the first day of the month in which the parent completes the application, and the Appellant's application was completed on January 28, 2019, so therefore the Appellant was only eligible to receive a subsidy from January 1, 2019 and that the Appellant was responsible for paying the cost of childcare received before that date,
 - The Appellant states that he is the father of 2 children, and that when in September 2018 he wished to apply for the subsidy for the one child, who is disabled, he called the ministry service centre and was told the subsidy form would not be accepted if his doctor's "special needs" form for the child was not enclosed with the application; the Appellant said that the doctor filled the form within several weeks and was told that he would receive the subsidy from September 2018 even if the doctor's form took time. The form was not sent to the ministry until January 2019 and that is why the Appellant applied in that month. He said that the subsidy was paid to him from January 2019 and was requesting that the subsidy be retroactive to September 2018, as the delay on the part of the doctor's office was not within his control. He stated that the disabled child had also changed from part-time to full-time daycare as at May 13, 2019, and in support attached a Child Care Arrangement form and a Special Needs Form signed by the physician, and dated December 7, 2018.
- (v) a letter from the Appellant entitled "Request for reconsideration", undated, in which the Appellant states that he is the father of 2 children, and that on September 22, 2018 he applied for a subsidy for both. He stated that when he called the service centre he was informed that the subsidy form would not

be accepted if the physicians special needs form for the one child was not enclosed with the application. He says he told the service centre that he was applying for the one child only but as the form requested the names of the children he added the 2nd child's name. He was told he still needed to get a special needs form for the one child and was told that the subsidy would be paid from September 2018 even if the physician's form would take time. He said approaching the physician and getting the form filled and collected took several weeks and when he followed up he was told the form was ready but it was faxed to the ministry on January 2, 2019, and that in the meantime, between when he first applied for the subsidy and when the doctor's office submitted special needs form, his application was expired and he had to start the new application process "*because of which we submitted all the papers in Jan 2019*". He requested reconsideration and stated that the one child went from part-time to full-time daycare as of May 13, 2019. He attached his Request for Reconsideration form, his initial application, his physician's special needs form, a new child care arrangement form, and requested that the ministry make a "*fair decision in this situation*".

(vi) A letter from the ministry to the appellant dated January 29, 2019 advising the Appellant that it had received the Affordable Child Care Benefit application and stating that according to the declaration the Appellant signed he must supply the Child Care Service Centre with all required supporting documents and that the subsidy had been authorized based on the information provided, and asking him to complete the Child Care Arrangement form and the Special Needs form.

(vii) A 2nd letter from the ministry to the appellant dated January 29, 2019 with attachments describing the Appellant's benefit plan and eligibility, including a letter that same date advising the benefit. Start date was January 1, 2019 in the end date was August 31, 2019 and setting out the amount of benefit, the care provider, and the name of the child for which the benefit is provided as well as other information including the assessed incomes of the appellant and his spouse.

(viii) A letter dated April 11, 2019 from the ministry to the appellant advising that the Appellant is not eligible for the subsidy for the period from September 1, 2018 to December 31, 2018, that he is responsible for childcare prior to January 1, 2019 and of the Appellant's right to request for reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the reconsideration decision of the Ministry of Children and Family Development dated June 3, 2019 that denied the Appellant his request for the Affordable Child Care Benefit (the "subsidy") was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. In denying the subsidy, the ministry stated that the Appellant had applied for the subsidy on January 28, 2019, which the ministry stated was "*a new Affordable Child Care Benefit Application*", following the appellant's submission of an Affordable Child Care Special Needs form on January 2, 2019, which form had been completed by his doctor on December 7, 2018. The ministry said that the Appellant was not eligible for the subsidy for the period September 1, 2018 to December 31, 2018 because his application was submitted on January 28, 2019 and therefore he was only eligible for the subsidy beginning the first day of the month in which the application was completed, which was January 2019.

Relevant Legislation***Child Care Subsidy Act (CCSA)*****Child care subsidies**

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

Forms

14 The minister may do either or both of the following:

- (a) prescribe forms for use under this Act;
- (b) specify forms for use under this Act.

Child Care Subsidy Regulation (CCSR)**What types of child care may be subsidized?**

2 The minister may pay a child care subsidy if a type of child care set out in Column 2 of a table in the Schedule is provided

- (a) in a licensed child care setting,
- (b) in a licence-not-required child care setting,
 - (b.1) in a registered licence-not-required child care setting, or
- (c) in the child's own home, but only if the child care is provided by someone other than a person who
 - (i) is a relative of the child or a dependant of the parent, and
 - (ii) resides in the child's home.

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)

(3) Repealed. [B.C. Reg. 187/2007, s. (b).]

(4) Repealed. [B.C. Reg. 84/2016, s. 2.]

Section 4 of the *CCSA* allows the Minister to pay a child care subsidy if the requirements of section 2 and 4 *CCSR* are met.

Parties' Submissions***Appellant's Submissions***

The appellant repeated information that he had provided the ministry at Reconsideration, and explained that on September 22, 2018 he had first filled in the online application form but after filling it out was

having difficulty submitting it. He telephoned the Call Centre and was told that he must have all of the required information before he could submit his application. He said it was submitted to the ministry, but was not complete because the family physician's Special Needs form, certifying the disability of his child, was missing. He also said that the Call Centre told him he had to apply for both of his children even though one was not disabled and was in school and it was the other child, who has special needs, for whom he was applying. He explained that he had been trying between September and December 2018 to have the Special Needs form completed but his family physician was away. He called his family physician every 10 days or so until his family physician did complete the Special Needs form in December 2018, at which point he submitted it to the ministry. He submitted that when he made inquiries he learned that his initial application would be within the ministry computer system.

Ministry Submissions

The ministry relied upon the reconsideration decision and also gave further explanations. The ministry said that an applicant can in fact fill out the online Application form and it will be within the ministry computer system, but until all the required documentation is provided it is not considered complete and will not generate a file.

On questioning, the ministry representative agreed that the Appellant's initial application would be within the ministry computer system, but as it had not generated a file upon which action was to be taken, she did not have access to it. The ministry had not provided that initial application, complete or not, as part of the appeal documents. The representative said that it was not present because she did not have access to it. The ministry was also asked where the notes from the Call Centre that would have been made when the Appellant telephoned were. The ministry representative said that notes would not have been made because there was no file opened, and the reason no file was opened was that the application was not complete. The ministry also said that any application that had been dormant for several months would have expired.

Panel Finding

The panel notes that under section 4 *CCSA*, the ministry may pay child care subsidies, subject to the regulations, and that the applicable regulation for determining what type of child care may be subsidized is section 2 *CCSR*. Section 4 *CCSR* specifies what an applicant for the subsidy must supply. The only applicable sub-section of section 2 *CCSR* is subsection (a), because the subsidy being applied for, as set out in the Appellant's Affordable Child Care Benefit Child Care Arrangement form was in a Licensed Group child care.

Panel Finding - Section 2(a) *CCSR*

The ministry did not address the issue of whether or not the subsidy applied for was for a Licensed child care setting, and the Affordable Child Care Benefit Child Care Arrangement form in fact says that the child care was to be in a Licensed Group Child Care facility. The panel finds that the subsidy was in fact applied for in relation to a Licensed child care setting, and that the requirement of *CCSR* section 2(a) is satisfied.

Panel Finding - Section 4(1) *CCSR*

The question then becomes whether or not the Appellant satisfies the requirements of section 4(1) *CCSR*; in order to satisfy those requirements, the applicant 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 each adult dependent, and
- (c) supply the minister with proof of identity of each member of the family and proof of eligibility for a child care subsidy.

The panel finds that in order to be for a subsidy, all 4 of those conditions must be satisfied, and that if any is not satisfied, then the applicant for the subsidy is not entitled to it.

Taking those 3 requirements in reverse order:

Section 4(1)(c) - This Paragraph has 2 subparts:

- firstly, an applicant must provide the minister with proof of identity of each family member, and
- secondly, an applicant must provide proof of eligibility for a child care subsidy.

Proof of Identity

In the document mentioned in Part E "Summary of Facts" section (ii) under *Information Before The Ministry at Reconsideration* above, proof of identity of each family member had been supplied.

The panel finds that this 1st requirement of section 4(1)(c) CCSR was satisfied.

Proof of Eligibility for a Child Care Subsidy

The term "*eligibility*" is not defined in either the CCSA or the CCSR. In the material, the ministry arrived at a conclusion as to the amount of the Appellant's monthly benefit.

Thus, in finding a monthly benefit amount based on the information provided by the Appellant and is referred to in Part E "Summary of Facts", and in setting the amount of monthly benefit to which the Appellant is entitled, the ministry has demonstrated that proof of eligibility for a child care subsidy was submitted to it.

The panel finds that this 2nd requirement of section 4(1)(c) CCSR was satisfied.

Section 4(1)(b)

This paragraph requires that an applicant provide the Minister with his social insurance number, and that of any other dependent adult. The Appellant did supply his social insurance number in the documents referred to in Part E "Summary of Facts" above. From those same documents, in which the incomes of the Appellant and his spouse are set out, it is apparent that the Appellant's spouse is not dependent, and therefore it is only the Appellant's social insurance number that is required.

The panel finds that the requirement of section 4(1)(b) CCSR was satisfied.

Section 4(1)(a) CCSR

This paragraph requires that an applicant for a child care subsidy must complete an application in the minister's required form.

The panel notes that under neither the CCSA nor the CCSR are there any prescribed forms, despite the authority of the Minister to prescribe them under section 14 CCSA.

The panel notes that neither in the Affordable Child Care Benefit Application nor in the Affordable Child Care Benefit Child Care Arrangement forms provided to the Appellant by the ministry is there any mention of a requirement that the Affordable Child Care Benefit Special Needs form firstly has to be provided at all and secondly there is no mention that it must be provided at the same time as the Affordable Child Care Benefit Application.

In the material provided by the ministry the Affordable Child Care Benefit Special Needs form has a separate form number in the lower left-hand corner than either the Affordable Child Care Benefit Application form or the Affordable Child Care Benefit Child Care Arrangement form.

The panel finds that submission of the Affordable Child Care Benefit Special Needs form is not part of the Affordable Child Care Benefit Application, and is therefore not part of “*an application in the form required by the Minister*”, which is what must be submitted under section 4(1)(a) *CCSR*.

In the Reconsideration decision the ministry states that it “*received your new application form, signed and dated January 28, 2019*” thus implying that there was an earlier application form of which the ministry was aware. This conclusion is further supported by the fact that in that same Reconsideration Decision the ministry stated that the Special Needs form was received on January 2, 2019, but that the Appellant’s “*new application form*” was received 26 days later on January 28, 2019. This conclusion is supported to an even greater extent by the fact that the original Ministry Decision was dated September 27, 2018 to become effective September 1, 2018, as related on page 1 of the Request for Reconsideration.

By not providing the original 2018 Application for the appeal, the panel draws an inference adverse to the ministry that had that application been supportive of the Reconsideration decision, it would have been provided, but as it was not provided - it would have been supportive of the Appellant. In such circumstances, the benefit of the doubt should be given to the Appellant. See authorities such as *McTavish v MacGillivray and others*, Supreme Court of British Columbia, Vancouver Registry Nos. B944248 & B951646, July 18, 1997 at para. 18.

If the ministry evidence that a completed application had to be received before a file was opened was true, there would have been no place to put the Special Needs form, and the Appellant’s application of January 28, 2019 would have not been referred to as a “*new application*”, and the original decision would not have been dated September 2018. The panel prefers the Appellant’s evidence, which was consistent throughout, to that of the ministry. The panel concludes that there was in fact a file open, contrary to the ministry’s assertion that there could not have been a file open because not all the required documents had been received. The ministry spoke of an application “*expiring*”, but there is no mention in the legislation of any time period after which an application expires. Further, “*Child With Special Needs*” is defined in the *CCSR* and mentioned in section 9 as one of the factors affecting the family’s adjusted annual income, and applied to determine the amount in Schedule A, section 2.

The panel finds that because the Affordable Child Care Benefit Application form is not a part of an application form required by section 4(1)(a) *CCSR*, because the online application in the ministry system is also a completed application as required by the minister, because there was an application which had been received by the ministry and acted upon in September 2018 and because the January 2019 application was a new application, the requirement to “*complete an application in the form required by the Minister*”, was satisfied in September 2018. The panel further finds that the appellant’s application was complete when it entered the ministry computer system in September 2018, and although he applied again for the subsidy in January 2019, it was not necessary that he do so.

The panel further finds that the Appellant is not requesting a retroactive subsidy, but a subsidy to which he was entitled from September 1, 2018, the first of the month in which he originally applied. In failing to provide the subsidy from September 2018 on, the ministry did not commit an administrative error, but erred in the application of the legislation and therefore section 13(2) *CCSR*, which deals with payment of the child care subsidy being backdated only if there has been an administrative error, has no application.

Conclusion

The panel finds that the ministry’s determination, which denied the Appellant his request for the Affordable Child Care Benefit because his application was submitted on January 28, 2019 and therefore he was only eligible for the subsidy beginning the first day of the month in which the application was completed, which was January 2019, was neither reasonably supported by the evidence nor a

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reasonable application of the applicable enactment, namely the *Child Care Subsidy Act* and the *Child Care Subsidy Regulation*, in the circumstances of the Appellant.

The panel rescinds the ministry's reconsideration decision. The appellant is successful on his appeal.

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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

DONALD R. McLEOD

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/JULY/15

PRINT NAME

ANGIE BLAKE

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/JULY/15

PRINT NAME

MARGARITA PAPANBROCK

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/JULY/18