

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated May 29, 2019 where the ministry determined that the appellant was ineligible for the Affordable Child Care Benefit for the period between September 1, 2018 and January 31, 2019 in accordance with the Child Care Subsidy Act (CCSA), Section 4 and Child Care Subsidy Regulation (CCSR), Sections 4 and 13 as the appellants application form was signed and dated February 28, 2019.

**PART D – RELEVANT LEGISLATION**

Child Care Subsidy Act, Section 4, 5 and 6 (CCSA)  
Child Care subsidy Regulation, sections 4,9, 12, 13, 17 and 21 (CCSR)

**PART E – SUMMARY OF FACTS****Information before the ministry at reconsideration:**

The appellant has been receiving the Affordable Child Care Benefit, also known as the Child Care Subsidy (CCS) for her son. The ministry states that its records show that on September 21, 2018 the Ministry advised the appellant by telephone that in order to determine further eligibility she was required to submit a Consent to Collect CRA Records, (form CF2930 CRA) and was directed where to find the form and was provided CRA's email address.

On February 1, 2019 the ministry automatically closed the appellant's CCS file due to inactivity.

On February 11, 2019 the appellant contacted the ministry by phone informing them that her child-care provider had not been paid in months. The ministry informed the appellant that a requested CRA form had not been provided and the appellant's benefit plan ended August 31, 2018. The appellant replied that the CRA form had been faxed in September 2018 after a call from the ministry. The appellant was advised to submit a new application.

On March 4, 2019, but signed and dated on February 28, 2019, the appellant submitted a new Affordable Child Care Benefit application form, Child Care Arrangement form, and a ministry form for Consent to Collect CRA Records.

On March 14, 2019 the appellant requested the application be backdated to provide benefits from September 2018. The ministry, responded the same day in a letter denying the request stating that she was not eligible for the benefit between September 1, 2018 and January 31, 2019 and that the benefit may only be paid from the first day of the month in which the parent completes the application.

On March 19, 2019 by letter the ministry advised the appellant of approval of the application commencing coverage from February 2019.

On May 15, 2019 the appellant signed a request for reconsideration. The appellant states that in late January her childcare provider informed her that she was not approved for funding from September 1, 2018 to January 20, 2019 and they were both confused as the paperwork was sent in long ago. She did not receive any information written or by phone informing that she needed to send in forms during this period. She called in February and was told she was not approved because of not sending in a form. She asked why she was not covered as nothing had changed. She did not receive any support from her son's father and is the sole provider for his care. She advised that she cannot afford to pay for daycare which means she won't be able to work.

On May 29, 2019 the ministry reviewed the request for reconsideration and denied the appellant's request.

**Notice of Appeal**

On June 5, 2019 the appellant signed a notice of appeal in which she stated that she has always submitted all forms to subsidy and stating that:

... my day care provider has a letter from subsidy saying [her son] was approved for 12 mnths at [his named] day care.

In that 12 mnth, I got a letter from subsidy saying from September 7 to January 31 I wasn't approved?

... I wish to Appeal this reconsideration decision. Due to my Day Care provider was Approved for the 12 mth. ... I have a letter from manager of [the local] library that they did send in Fax subsidy (sic) the papers.

In a letter dated June 6, 2019, the town's Chief Librarian confirmed that the appellant had used the library fax facilities to submit documents to the ministry and that in the past the ministry had not always received her faxed documents, and she thus encouraged her in the future to keep the confirmations of what was sent and when.

**Hearing**

The panel conducted a teleconference hearing on July 3, 2019 which was adjourned and held on July 26, 2019.

In accordance with section 22(4) of the Employment and Assistance Act, the panel can only admit evidence that was before the ministry at the time of reconsideration and evidence that is in support of the information and records that were before the ministry at the time of reconsideration.

At the hearing, the appellant called a witness to take part in the hearing. The individual was a co-worker and friend who was involved in assisting the appellant complete applications and forms, review documents and transmit documentation to the ministry and others. The panel concluded that there was no new evidence as the witness called by the appellant merely confirmed verbally the details of her providing support for the reading, filing and faxing information to the ministry amongst others as a result of the appellants dyslexia. The ministry did not object to the calling of the witness.

The panel considers the letter provided by the town librarian to be new evidence as it was not available at the time of reconsideration. The panel concluded that this evidence was admissible under Section 22(4) of the Employment Assistance Act as the information was in support of the records before the ministry.

During the hearing, the ministry verbally confirmed that the appellant had been provided no date during the September 2018 telephone call regarding the submittal of the CRA form and that the ministry cannot confirm if the decision to terminate the benefit was provided in writing to either the appellant or the child care provider, and that the decision to require a new application was because the file had been closed on February 1, 2019 due to inactivity.

During questioning, the ministry stated that the reason the benefit had terminated on August 31, 2018 was because the legislation had changed on September 1, 2018,

During the hearing, the appellant confirmed her position as noted on the notice of appeal and request for reconsideration.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry's decision to deny the appellant's eligibility for CCS for the period between September 1, 2018 and January 31, 2019 because the appellants application form was signed and dated February 28, 2019 in accordance with the Child Care Subsidy Act (CCSA), Section 4 and Child Care Subsidy Regulation (CCSR), Sections 4 and 13 is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the applicant.

**Legislation****Child Care Subsidy Act**

## Child care subsidies

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

## Information and verification

5. (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

- (a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;

## Reconsideration and appeal rights

6. (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:

- (a) a decision that results in a refusal to pay a child care subsidy to or for the person;
- (b) a decision that results in a discontinuance or reduction of the person's child care subsidy.

**Child Care Subsidy Regulation**

## 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]  
 (4) Repealed. [B.C. Reg. 84/2016]

## Authorizations required

4.1 (1) To be eligible for a child care subsidy for a child other than a child described in section 7 (2), an applicant and the applicant's spouse, if any, must supply the minister with authorizations for

- (a) the disclosure to the Canada Revenue Agency of the full name, birth date and social insurance number of the person,
- (b) the disclosure by the Canada Revenue Agency of the personal information of the person that is relevant to the person's income, and that the minister needs for the purposes of sections 9 [calculation of family's adjusted annual income] and 9.1 [income review], for the 2 years previous to the current calendar year, in accordance with the MOU For Income Verification between the Canada Revenue Agency and the minister, regardless of whether the person completed an income tax return for those years, and
- (c) the indirect collection by the minister of the information described in paragraph (b).

(2) To be eligible for a child care subsidy for a child other than a child described in section 7 (2),

- (a) an applicant must supply the minister with authorizations for the disclosure to the applicant's spouse, if any, of personal information of the applicant used in determining the family's adjusted annual income, and
- (b) an applicant's spouse, if any, must supply the minister with authorizations for the disclosure to the applicant of personal information of the applicant's spouse, if any, used in determining the family's adjusted annual income.

- (3) To be eligible for a child care subsidy for a child, an applicant and the applicant's spouse, if any, must supply the minister with authorizations for
- (a) the disclosure by a third party of the personal information of the person that the minister needs for the purpose of determining or auditing the applicant's eligibility for a child care subsidy, and
  - (b) the indirect collection by the minister of the information described in paragraph (a).

Calculation of family's adjusted annual income

9. (4) If a notice of assessment is not available for either of the 2 calendar years before the current year with respect to the applicant or the applicant's spouse, if any,
- (a) the applicant may give to the minister a statement, in the form required by the minister, attesting to the applicant's or the applicant's spouse's, as applicable, total income from all sources except social assistance payments, stated in Canadian dollars, for the previous year, and
  - (b) on receiving income information satisfactory to the minister under paragraph (a), the minister may determine the annual income of the person based on that information.

Applicant must be notified of outcome

12. (1) The minister must notify the applicant as to whether or not the application is approved.  
 (2) If the application is not approved, the notification must be in writing and must include the minister's reason for refusing to pay a child care subsidy.

Reconsideration of decisions

17. (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.

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.

Transition to new child care subsidy 2018

21. (1) In this section: "**current child care subsidy recipient**" means a parent
- (a) who is eligible for a child care subsidy for September 2018,
  - (b) to or for whom a child care subsidy is paid for June, July or August 2018, and
  - (c) who, on or before August 31, 2018, supplies the minister with the authorizations that will be required under section 4.1 [disclosure authorizations] as that section will read on September 1, 2018;
- "**new child care subsidy**" means the monthly child care subsidy for a child receiving a type of child care as determined in accordance with sections 7, 8, 9 and 9.1 as those sections will read on September 1, 2018, for the type of child care the child is receiving;  
 "**old child care subsidy**" means the monthly child care subsidy for a child receiving a type of child care as determined in accordance with sections 7, 8, 9 and 10 as those sections read immediately before September 1, 2018, for the type of child care the child is receiving.
- (2) This section applies in relation to a current child care subsidy recipient, unless
- (a) a child care subsidy is paid for a child for June or July 2018, but not for August 2018, and
  - (b) the type of child care in respect of which the minister may pay a child care subsidy for September 2018 for the child is not the same type of child care for which the child care subsidy referred to in paragraph (a) is paid.
- (3) If this section applies, the minister
- (a) must determine whether the new child care subsidy is less than the old child care subsidy, and
  - (b) if the new child care subsidy is less, may pay the old child care subsidy in accordance with this section.
- (4) This section applies in relation to a current child care subsidy recipient until the earlier of the following:

- (a) any change in circumstances that affects the eligibility of the parent for a child care subsidy, other than a change of type of child care provided in the same type of child care setting;  
(b) August 31, 2019.

(5) For certainty, if the only change in circumstances affecting the eligibility of the parent for a child care subsidy is a change of type of child care provided in the same type of child care setting, subsection (3) continues to apply.

### **Ministry Position**

The ministry position is that the appellant neglected to provide a required consent form in order to determine eligibility and on February 1, 2019 the CCS file automatically closed due to inactivity. On February 11, 2019 the appellant contacted the ministry advising her day care provider had not been paid and was informed that the ministry had not received the required CRA form. The appellant stated that the form was faxed to the ministry and the ministry advised her to submit a new application.

A new application was signed and dated February 28, 2019. In accordance with CCSR Section 13 (1) the appellant's eligibility (under a new application) began on February 1, 2019 being the first day of the month in which application was completed.

As set out in CCSR Section 13 (2), an application may be backdated 30 days before completion of the application if there was an administrative error. The ministry states that the authorization commencing September 1, 2018 was not completed due to the failure of the appellant to return a form. Although the appellant stated that the form had been faxed there was no information supplied to confirm this and the ministry reports that its records show no such form was received.

The ministry has appended a copy of a letter, to the appellants notice of appeal, from the appellant's town library which confirmed that the appellant has been using the library to fax CCS documents to the ministry and indicates that the ministry in the past has not always received her faxed documents and that the letter writer encouraged her in the future to keep the confirmations as evidence of what was sent and when as evidence.

### **Appellant Position**

The appellant's position is that she did fax all forms when asked and received no information to tell her that they still needed a form. She does not understand why she had been previously informed that she was covered for a full 12 months and was covered before September 2018 but not the months in between as nothing had changed on her end. She is the sole financial provider for her son and has no funds for daycare. She said that without daycare she could not work.

As soon as requested the appellant submitted the new Affordable Child Care Benefit application form, Child Care Arrangement form, and a ministry form for Consent to Collect CRA Records.

After an adjournment to arrange for the appellant's witness to appear, the appellant's co-worker and friend appeared as a witness. The witness informed the panel that she has been an active supporter for the appellant because of the appellant's inability to fully read and comprehend documents and, when asked, she has helped the appellant to understand, fill out and fax all documents regarding the ministry's requests for documents in respect of the child care subsidy. She cannot recollect specific dates and forms as this was a support function only.

### **Panel Decision**

The reconsideration decision states that the appellant has been receiving CCS for her son and that on September 21, 2018 the ministry advised the appellant that she needed to submit a CRA form in order to determine further eligibility. In the hearing the ministry advised that the ministry did not specify a time for submission. There is also no information that the ministry supplied the appellant with the ministry's "Consent to Collect CRA Records" form but directed her to the CRA and provided a CRA email address.

The appellant's day care provider informed her in late January 2019 that she did not receive payments from September to December 2018. The appellant contacted the ministry and was told that they had not received the

CRA form required and that a new application and approval would be required. The appellant stated that she had faxed all forms. A new application was prepared and signed February 28, 2019 and received by the ministry on March 4, 2019. The appellant contacted the ministry and requested that she receive the missing payments as she had provided all documents to the ministry and she had been approved for 12 months. Citing the legislated provisions of the CCSR Section 4(1), on March 14, 2019 the ministry denied her request for the payments to include those from September 2018 to January 2019 as the new application date was February 28, 2019 and her previous authorization ended August 31, 2018. The reconsideration decision confirmed the decision to deny the request stating that a new application with a signature date of February 28, 2019 is effective in satisfying CCSR Section 13 (1) which allows a CCS to be paid from the first day of the month in which the parent completes an application.

It is stated in the reconsideration decision that the previous authorization ended on August 31, 2018 and the legislated provisions were enforced and follow the required signing of the new authorization. Yet at the hearing the panel was told by the ministry representative that the termination date was set in place due to a change in legislation and not the usual ending of an approval period. The reconsideration decision only states that "Your previous authorization ended on August 31, 2018". The appellant was not aware of the ending date of August 31, 2018 and was confused by the discontinued benefits. The panel concludes that this was not a regular expiry and renewal and the appellant appears never to have been informed that this request for a CRA form was in connection to a new authorization and that non receipt of the form would result in payments stopping. There is nothing in the ministry submission setting this out. The appellant had in her own mind complied with all requests and heard nothing further until March 14, 2019 when the ministry sent her a letter advising her that she was not eligible for a CCS benefit for the period from September 1, 2018 to January 31, 2019.

The panel considered all of these facts and finds the ministry would be correct in establishing eligibility from February 1, 2019 in accordance with CCSR Section 13 (1) based on a new application being required after August 31, 2018. However, the matter of a new application also concerns the termination of benefits and submissions were made on this matter as a whole. At the hearing the ministry representative informed the panel that the termination of the approved CCS for the appellant at August 31, 2018 was due to a change in legislation affecting all recipients of the CCS. Both parties agree that there was a request for a CRA form without a defined submission date, and the appellant was under the impression that she had been approved for a 12-month period and could not understand why payments stopped in September. The appellant was unaware of the expiry date of August 31, 2018.

The appellant states that in September or October of 2018 she provided this CRA form and the ministry states that the ministry file does not reflect a form being submitted. Even without that submission being made it is clear that a ministry's form fulfilling the request was signed February 28, 2019 and received March 4, 2019. That request lacked a deadline, as required by Section 5(1)(a) of the CCSA, or otherwise to have rendered the submission late.

The panel notes that CCSR Section 21 deals with the transition to new Child Care Subsidy 2018. CCSR **Section 21 (1)** defines a "current child care recipient" as a parent "(a) who is eligible for a child care subsidy for September 2018, (b) to or for whom a child care subsidy is paid for June, July or August 2018, and (c) who, on or before August 31, 2018, supplies the minister with the authorizations that will be required under section 4.1..."

The panel further notes the CCSR Section 9(4) (a part of the legislation change in September 2018) allows the minister to accept other methods of calculating income in lieu of a "notice of assessment". There is no evidence that this was considered or discussed. Additionally, the panel has considered the fact that the requirements of CCSR Section 12 which details notice requirements appears not to have been followed leading to the termination of benefits from September 2018 through to the processing of the new application in March of 2019. There is no reference to any of this in the ministry reconsideration decision.

The panel also notes the provisions of CCSA Section 6 (1)(b) afford an appellant the opportunity to request a reconsideration of the decision to discontinue child care benefit, and CCSR Section 17(6) requires the ministry to set aside the decision until the reconsideration decision had been conducted. The ministry, also, did not address these provisions.

As the appellant appears to have had no written knowledge of either the stopping of payments until March 2019, or the reason why until May 29, 2019, she was denied the right to a reconsideration while payments were still being

paid. When the reconsideration decision was actually completed it only reviewed the facts as they related to a new application, to the exclusion of consideration of the termination of payments after which the ministry required that new application.

While the ministry may have been correct in requesting the CRA form and that it may establish a new authorization date this does not convince the panel of the reasonableness of the reconsideration decision based on the legislation and the facts available to the ministry. For these reasons the panel finds the decision of the minister not to be in accordance with the legislation and also to be unreasonable as it relates to the appellants specific circumstances.

Irrespective of the foregoing the panel has considered whether the CRA form was submitted by the appellant in September or October 2018, before the file was declared 'inactive'. The panel notes that there is corroboration for the appellant's contention that a form was submitted. While not conclusive, the testimony of the witness and the letter from the librarian support the fact that the appellant had the practise of responding to ministry requests with their assistance, as well as her stated practise of complying with ministry requests for years. The panel finds that at the reconsideration the ministry did not weigh that evidence and merely accepted the stated absence of the form in the ministry's records as determinative. The panel concludes that the reconsideration decision was not reasonable in that it failed to consider whether the proper steps were taken to terminate the benefits together with the ministry's requirement that the appellant file a new application. In the circumstances, the failure to do so also denied the appellant natural justice.

### **Conclusion**

The panel rescinds the ministry reconsideration decision as it was not a reasonable application of the legislation in the circumstances of the appellant. The appellant is 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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/07/26

PRINT NAME

Don Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/07/27