

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 2, 2019 which denied the appellant's request for a Child Care Subsidy (CCS) for the period between September 1, 2018 and June 30, 2019 pursuant to the *Child Care Subsidy Regulation* (CCSR) sections 4 and 13 because the appellant's Affordable Child Care Benefit (ACCB) application was not submitted in its complete form until July 26, 2019.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA) – Section 4

Child Care Subsidy Regulation (CCSR) – Sections 4 and 13

PART E – SUMMARY OF FACTS**Evidence at Reconsideration**

1. ACCB application, signed and dated July 26, 2019, which included spousal consent to provide Canada Revenue Agency (CRA) records and to disclose information.
2. ACCB document checklist:
 - Dated September 12, 2018 which stated that the following documents were provided to the ministry: child care arrangement form, government issued identification (ID) for the appellant's children, the appellant's government issued ID and the appellant's proof of citizenship status (PCS). This checklist did not indicate which documents were outstanding at this time.
 - Dated November, 2018, which stated that the following documents were provided to the ministry: government issued identification (ID) for the appellant's children, the appellant's government issued ID, the appellant's work schedule and the appellant's spouse's work schedule. The checklist requested the following documents: child care arrangement form, and the appellant's PCS.
 - Dated February 7, 2019 which stated that the following documents were provided to the ministry: child care arrangement form, government issued identification (ID) for the appellant's children, the appellant's government issued ID and the appellant's PCS, the appellant's work schedule, and the appellant's spouse's work schedule. This checklist did not indicate which documents were outstanding at this time.
3. Child Care Arrangement form signed and dated September 26, 2018.
4. Request for Reconsideration, signed and dated September 9, 2019.
5. Letter, signed and dated by the appellant, September 18, 2019, and, in part, stated the following:
 - The application for ACCB was initially made in September 2018. However due to language barriers and incomplete responses from the ministry, the appellant failed in completing this application until July 2019.
 - The appellant and the spouse work full time and their 2 children require supervision at that time.
 - In September 2019 the appellant's spouse failed to provide authorization for CRA information since English is challenging; especially reading English.
 - The spouse did not notice that a response was needed to the email from the ministry in September 2019 requesting consent.
 - Several calls were made to the ACCB department when waiting for approval but no one informed them of the complete list of the outstanding documents.
 - They were informed that some of the documents were missing, but they had previously submitted them with the first application.
 - Applications were re-submitted in November 2018 and February 2019. The appellant called the ACCB department when waiting for the funds to come in.
 - The appellant was told by a worker, who spoke the appellant's native language, that the spouse does not need to sign the consent form since the ACCB already talked to the spouse on the phone and got authorization.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated October 15, 2019, which reiterated the information contained in the letter from September 18, 2019 and added the following:

- On November 8, 2018 the appellant called the ministry but was not told the spousal consent had to be submitted nor did the ministry provide a complete list of the missing documents.

- After March 15, 2019 spousal information was updated and the native language worker advised them that spousal consent was not needed since the spouse information was fully updated. At this time, a complete list of missing documents was not provided.
- If the appellant was aware that spousal information and consent was necessary they would have been provided.
- The appellant believes that the ministry made errors in the application process.

Evidence at the Hearing

At the hearing, the appellant reiterated what was stated in the September 18, 2019 letter and the NOA, in part, added the following:

- With the help of friends, several attempts were made to apply for ACCB but they were not aware of what information was necessary and the ministry did not provide a full list of the requirements.
- The requirement of spousal consent was not clear to them.
- An email requesting spousal consent was received in September 2019 but they did not know how to respond due to a language barrier.
- They were assured by a ministry worker, who spoke their native language, that spousal consent was not necessary and the application was complete.
- They did not understand why their application disappeared from the ministry system.
- The purpose of the ACCB is to support families so that parents can work but language barriers and errors by the ministry made the process unfair.
- After moving to Canada the appellant and their spouse began a business but they have had financial problems. They have had to borrow hundreds of thousands of dollars from friends and associates to establish their business but because child care is so expensive one of the parents had to stay at home to look after the children. When the ACCB program was introduced in 2018 it provided that parent with the opportunity to assist the other with the business because the ACCB meant that their children could go into day care.

At the hearing the ministry relied on its reconsideration decision and added the following:

- The September 2018 ACCB application would have generated an email to the spouse requesting spousal consent. When questioned the ministry responded that there is no record of the email and no indication that each subsequent application generated similar emails.
- The website clearly indicates, in several languages including the native language of the appellant, that interpreter services are provided for those who struggle with English.
- The ministry is able to see the incomplete application but cannot see a record of any of the telephone calls between the appellant and ministry staff prior to July 2019. Therefore, when questioned the ministry could not deny or confirm that the appellant was told that spousal consent was no longer required since consent was given over the phone.
- The ACCB application had recently changed to deal with dormant applications. Now a courtesy call is made if an application is left inactive for 30 days after initiating it.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision which denied the appellant's request for a Child Care Subsidy for the period between September 1, 2018 and June 30, 2019 pursuant to the CCSR sections 4 and 13 because a complete ABBC application was not submitted until July 26, 2019, is, reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation states:

CCSA:*Child care subsidies*

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

CCSR:*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 each adult dependant, 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) A parent ceases to be eligible for a child care subsidy on the date that is 12 months after the date of application under subsection (1) or this subsection, as applicable, unless, before that date, the parent completes an application referred to in subsection (1) and otherwise complies with that subsection.

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).

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.

The Appellant's Position

The appellant argued that due to language barriers and inefficiency on part of the ministry to inform which documents were necessary or missing in the application process delays in submitting a completed ACCB application were caused. The appellant also argued that the ministry made several administrative errors which caused delays in the application process and they should not be unfairly penalized for the ministry's errors.

The Ministry's Position

The ministry argued that without the spouse portion of the application completed, the application is deemed incomplete, pursuant to section 4 of the CCSR, and that a completed application was not received until July 26, 2019. Therefore the ministry is unable to establish eligibility for ACCB based on the application received in September 2018. The ministry also argued that with each application attempt, the appellant was advised of the outstanding information required to complete the application and that therefore there is no evidence to establish that the ministry made an administrative error.

Panel's Decision

In its reconsideration decision the ministry explained that the ACCB is governed by laws set out in the CCSA and CCSR. Section 4 of the CCSR stipulates that to be eligible for a CCS a parent must complete an *application* in the form required by the minister, supply the social insurance number of the parent and the parent's spouse, if any, and supply proof of the identity of each member of the family and proof of eligibility for a CCS.

The panel acknowledges that that appellant submitted a complete application form for ACCB on July 26, 2019 which, pursuant to section 4 of the SSCR, established the eligibility for ACCB. The appellant did not disagree with this fact. The panel finds that the ministry correctly determined the date of eligibility for ACCB is July 26, 2019.

However, the panel notes that the appellant repeatedly stated that in March 2019 a ministry worker, who spoke the appellant's native language, indicated that the spouse's information had been updated and

therefore consent was not necessary as it was given over the phone. In the September 18, 2019 letter, the appellant stated that “they had been told that some of the documents are missing, but they had submitted [them] in the first application” which indicates that the appellant did not understand that after 60 days of not completing the application an auto-close was triggered, which required a whole new application as is stated in the ministry’s reconsider decision. The panel notes that the ACCB document checklist sent to the appellant on September 12, 2018, November 8, 2018 and February 7, 2019 did not indicate that the appellant was required to submit spousal consent and only listed the additional documents required for the application.

At the hearing, the ministry stated that its records indicate that an English language email was generated and sent to the appellant in September 2018 and this was confirmed by the appellant. While the ministry records did not retain a copy of that email, the ministry is of the opinion, and the appellant confirmed, that the email advised the appellant that eligibility for ACCB required spousal consent, and the ministry also acknowledged that it had no record of subsequent emails for each application the appellant submitted. Additionally, the ministry acknowledged that there is no record of the phone calls between the appellant and the ministry staff from September 2018 to July 2019 when the appellant’s application had been approved. In the absence of such evidence, the ministry could not deny or confirm that the appellant was advised in March 2019 that the application submitted at that time was complete and no further information was necessary. Therefore, on this matter, the panel must put more weight on the appellant’s written submission and oral testimony as stated above.

The ministry also stated that, because the ACCB was only introduced by the provincial government in early 2018, when the appellant first attempted to apply for the ACCB, the application process was new. In recent months the ministry has implemented a new process of a courtesy call after 30 days partly because too many ACCB applications had been abandoned by prospective applicants before they had been completed. It is unknown whether applications other than the appellant’s were abandoned due to language barriers or because of other procedural complications on the ministry’s end. Regardless, the panel notes that there was indeed an apparent need to change the application process.

In light of the sequence of events as experienced by the appellant and as summarized above, the panel finds that, although the ministry’s website does clearly offer interpretive services, the processes employed in the case of the appellant created confusion.

CCSR section 13

Unfortunately, neither the CCSA, the CCSR nor the *Interpretation Act* define the term ‘administrative error’ and therefore the panel must rely on the dictionary definition of the term. The Collins Dictionary and Wikipedia define an “administrative error” as institutional actions that are considered incorrect or wrong because the actions were carelessness, neglectful, created confusion or omitted something important or necessary. In this case, the panel finds that the actions of the ministry created confusion for the appellant in their attempt to complete the ACCB application. These actions include not informing the appellant of all of the outstanding documents needed to complete the application and advising the appellant, in their native language, that spousal approval was not necessary. The panel finds that the evidence demonstrated that an administrative error has occurred and that the ministry was not reasonable in determining that an administrative error had not occurred pursuant to section 13 of the CCSR. The panel notes, pursuant to section 13 (2) of the CCSR, 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.

Conclusion

Having considered all of the evidence, the panel finds that the ministry's decision, which concluded that the appellant was not eligible for a child care subsidy for the period of September 1, 2018 to June 30, 2019 pursuant to sections 4 and 13 of the CCSR, was not reasonable given the evidence that established that an administrative error had occurred. The panel rescinds the ministry's decision and returns the decision.

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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/15

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/15

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/15