

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Children & Family Development's (ministry) reconsideration decision dated October 16, 2019, finding the appellant is not eligible for the Affordable Child Care Benefit for the period between February 1, 2019 and July 31, 2019 as the appellant's application was made in August 2019, and the Affordable Child Care Benefit may only be paid from the first day of the month in which the parent completes the application as is required by the Child Care Subsidy Regulation Sections 4(1) and 13.

**PART D – RELEVANT LEGISLATION**

Child Care Subsidy Act Sections 4,5 and 6

Child Care Subsidy Regulation Sections 4,13, 17(1) and 17 (6), and 21.

**PART E – SUMMARY OF FACTS****Summary of key dates:**

- As of August 1, 2018, through to August 31, 2018 the appellant was receiving the Child Care Subsidy.
- September 1, 2018 to January 31, 2019 the appellant was receiving the Affordable Child Care Benefit.
- January 31, 2019 the appellant's Affordable Child Care Benefit payments ceased.
- June 1, 2019 the appellant's electronic Child Care File was closed automatically after four months inactivity.
- August 12, 2019- The appellant's new application for the Affordable Child Care Benefit was received by the ministry signed and dated August 12, 2019.
- September 5, 2019- The appellant was informed that the appellant was not eligible for the Affordable Child Care Benefit for the period between February 1, 2019 and July 31, 2019.
- October 3, 2019- The appellant submitted a request for reconsideration to the Child Care Service Centre.
- October 7, 2019- The appellant's request for reconsideration was received at the Reconsideration and Appeals Branch.
- October 16, 2019- The ministry found the appellant was not eligible to receive the Affordable Child Care Benefit for the period between February 1, 2019 and July 31, 2019.

**Evidence before the ministry at the time of reconsideration:**

- A system entry showing a notice to reapply dated December 26, 2018 (36 days before benefits expiry). (The correspondence record and this document were not in the appeal file for the Tribunal.)
- An undated letter written by one of the appellant's Day Care employees accompanied the original request for reconsideration expressing:
  - They recently found out the child care subsidy for the family had expired January 31, 2019.
  - Both the family and the employee were unaware the plan had expired.
  - The appellant is a single parent and the required payments would be a huge burden.

- In the Request for Reconsideration form, dated October 1, 2019, in Section 3 - Reason for Request for Reconsideration, the appellant states:
  - In the last few weeks the appellant had become aware that the child care subsidy had expired in January 2019.
  - The appellant did not have prior knowledge of the file needing to be renewed on a yearly basis.
  - Had the appellant or the Day Care received any prior information this matter would not have been an issue.
  - As a single parent, the appellant does not have the funds to pay for half a years' worth of childcare costs.
- A letter dated August 31, 2018 and sent via the ministry's computer portal from the Child Care Service Centre to the appellant which states the Affordable Child Care Benefit summary which notes the benefit period end date of January 31, 2019.
- A letter dated August 31, 2018 from the Child Care Service Centre, to the appellant's Day Care which states the Child Care Subsidy summary which notes the benefit period end date of January 31, 2019. The method of sending was undisclosed.

**Additional Information:**

- In the Notice of Appeal dated October 24, 2019 the appellant states:
  - The Day Care had not noticed or advised the appellant of the missing payments.
  - The appellant had no prior knowledge of a need to resubmit for subsidies as the appellant's Day Care had done so for the appellant.
  - The appellant was not aware of needing a Ministry of Family Services (MFS) account and had not registered until this past August (2019).
- At the hearing the appellant stated:
  - The Day Care completed the appellant's first application for the Child Care Benefit in hard copy format.
  - The appellant never received information from the Child Care Service Center of pending expiry or the need to reapply.
  - The appellant did receive one related piece of mail from the BC government explaining changes in government incentives but the information did not pertain to the appellant's subsidy.
  - The appellant did not have an online account with the ministry at the time.
  - The appellant was not aware that the subsidy had expired until July 2019 when informed by the Day Care that it was not getting paid.
- At the hearing the ministry representative stated:
  - Information shared with the appellant and Day Care had been through the ministry online portal.
  - The August 31, 2018 letter which notes the appellant's subsidy would expire was sent via the computer portal.

- The December 26, 2018 letter notifying of a need to reapply was recorded as a computer generated letter that would be sent to the portal or the appellant's current address.
- When asked if problems could occur from the computer generated letter in terms of the client receiving the letter, the ministry representative did not know.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the ministry's determination that the appellant was not eligible for the Affordable Child Care Benefit for the period between February 1, 2019 and July 31, 2019 was a reasonable application of the legislation.

**Relevant Legislation****Child Care Subsidy Act****Child care subsidies****Section 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;
  - (b) seek verification of any information supplied by a person referred to in paragraph (a);
  - (c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
  - (d) collect from a person information about another person if
    - (i) the information relates to the application for or payment of a child care subsidy, and
    - (ii) the minister has not solicited the information from the person who provides it.
- (3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may
- (a) declare the person ineligible for a child care subsidy until the person complies, or
  - (b) reduce the person's child care subsidy.
- (4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

**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.
- (2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.

**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.

**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

...

(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.

**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.

**Appellant's Position**

The appellant's original application for the Child Care Subsidy was completed by the Day Care. At that time, the appellant was not aware of a need to have a Ministry of Family Services account to receive the appropriate correspondence which would have informed the appellant of subsidy status and any need to do anything. The appellant stated that having not received any correspondence from the ministry the appellant was not aware that the child care subsidy had an expiry date and the appellant's file was (or would be) closed. The appellant appealed the discontinuance and file closure that was without notice or ability to cure and felt that the Day Care costs should be covered for the period between February 1, 2019 and July 31, 2019, and continuing.

**Ministry's Position**

The ministry upon review of the new application determined the appellant was not eligible for the Affordable Child Care Benefit for the period between February 1, 2019 and July 31, 2019 as the former file had closed and the appellant had not submitted a new application until August 12, 2019 and therefore their eligibility for the benefit began on August 1, 2019.

**Panel Decision**

In order to be eligible for a Child Care Subsidy the appellant was to complete an application on the form required by the minister under Section 4(1) of the Child Care Subsidy Regulation. The required form was first completed by the appellant's Day Care in paper form and sent to the ministry. The record reveals that the appellant was in receipt of the Child Care Subsidy from August 1, 2018 to August 31, 2018, and then the Affordable Child Care Benefit from September 1, 2018 to January 31, 2019. The record does not reveal the application or approval and the knowledge or involvement of the appellant in that transition or the ministry's imposition of an expiry date. Payments were made to the appellant's Day Care until expiry and only upon it becoming belatedly aware of the payments ending did it bring this to the appellant's attention which began the course of events leading to this appeal.

The ministry was unable to direct the panel to the authority and requirements for the ministry to set or impose an expiry date on benefits, how they are to be imposed, beneficiaries notified, or what beneficiaries are to do to continue benefits. The word "expire", or any form of it, does not appear in the Act and Regulation. The panel noted the power of the minister to audit and require information from beneficiaries per Section 5 of the Act, by which the minister can determine someone ineligible for a subsidy or reduce a subsidy until requested information is provided. It also noted the obligation of the minister to review benefits during the transition under Section 21 of the Child Care Subsidy Regulation. The ministry representative was unable to direct the panel to how that power and related authority would be interpreted to apply to the circumstances of this case.

The panel understands from the ministry that communication from the ministry to the appellant in terms of the appellant's status was via a computer portal. In the Reconsideration decision, the Reconsideration Officer notes information was sent to the appellant through the computer portal. The appellant advised the panel that the appellant did not have an online account for that purpose and had not been notified that the benefits had an end date of January 31, 2019.

(Although not determinative here, that notice, however, left blank the “End Date” for the “Reasons for Needing Child Care” and “Family Income” evaluations.) The ministry was not able to show that the appellant had an online account or ever accessed the portal to have received the notifications and be put to action to maintain the benefits. The panel was told a computer generated letter noting the expiry date was sent to the appellant’s current address December 2018, but the ministry was not able to verify the sending or receipt of this letter. The appellant denies receipt.

The appellant’s actions were consistent with being unaware of the imposition of an expiry date that would terminate benefits and of any need to act to maintain the benefits. From all the circumstances the panel finds that the appellant was not aware that the subsidy would be discontinued on January 31, 2019. Accordingly, the appellant was denied the right to comply with the unknown renewal procedures on the appropriate date of February 1, 2019, rather than be forced to reapply for which benefits could only begin in the month of that new application as required by section 13 of the Child Care Subsidy Regulation. Equally, upon discontinuance without notice the appellant was denied the opportunity to appeal that discontinuance within the required time period and which would set aside that decision until reconsideration as specified by section 17 of the Child Care Subsidy Regulations. In the current circumstances that reconsideration did not occur until October 16, 2019 at the earliest, but the decision only addressed the new application and not the discontinuance. The same denial of an opportunity to appeal applies to the closing of the appellant’s file where doing so extinguished the opportunity to cure, to renew, or otherwise ensure the restoration of benefits without commencing a new application.

While the ministry may have been correct in its determination that benefits may not be backdated from a new application it failed to consider that the appellant was appealing the originating discontinuance of benefits and extinguishment of an opportunity to cure in order to ensure the benefits continued without a new application. The panel concludes that the reconsideration decision was not reasonable in that it failed to consider the actual nature of the appeal and the circumstances. The circumstances included the lack of notice of an impending discontinuance of benefits, the discontinuance when it occurred, the entitlement for the appellant to appeal the discontinuance, and that the circumstances 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

Charles Schellinck

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/11/21

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/21

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/11/21