

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 August 14, 2019. which determined the appellant was not eligible for the Affordable Child Care Benefit for the period between September 3, 2018 and June 28, 2019 by reason that the appellant didn't apply for the subsidy until July 10, 2019 and pursuant to Section 13 of the Child Care Subsidy Regulation the subsidy is only available from the first day of the month in which the parent completed the application.

**PART D – RELEVANT LEGISLATION**

Child Care Subsidy Act. Section 4 (CCSA)  
Child Care Subsidy Regulation Sections 4 and 13 (CCSR)

**PART E – SUMMARY OF FACTS**

The evidence before the Ministry at reconsideration was:

- The Appellants completed Affordable Child Care Benefit (ACCB) application form, signed and dated July 10, 2019
- Letter from the Ministry, dated July 23, 2019, advising the Appellant of their non-eligibility for the ACCB for the period between September 3, 2018 and June 28, 2019, as the application was not received until July 10, 2019.
- Request for Reconsideration dated August 12, 2019 which was submitted to the Child Care Service Centre.
- The Appellants letter dated August 7, 2019, and date stamped August 12, 2019.
- Affordable Child Care Benefit (ACCB) – Child Care Arrangement form completed on July 10, 2019 by the Appellant.
- Affordable Child Care Benefit (ACCB) Application dated July 10, 2019.
- Photocopies of identification of the Appellant and the child.

At the hearing the Appellant stated that:

- She was a single parent to 1 child.
- She is presently working full-time and also enrolled in full-time educational studies, as well is the primary care person for her child. The Appellant stated that she has little time to listen to the media or do research on the internet due to her busy schedule.
- The Appellant stated that she had made an application for Child Subsidy in 2016 and 2017, that both applications had been denied due to her income at the time being in-excess of the allowable amount.
- That she had contacted the Ministry periodically in 2017 and January 2018, concerning any updates to the Legislation and was advised that there were none. She was informed that due to her income any application would be denied because her income amount exceeded the allowable amount in the legislation.
- The Appellant stated that she had been living with her parents until 2018 at which time she relocated her residence but still receives her mail at her parent's home and has not changed her phone number nor her e-mail contact information since her first contact with the Ministry.
- That the childcare service provider failed to inform her about the change in legislation, which would have enabled her to place an application in September 2018 under the present ACCB program.
- That the Ministry made an administrative error in not reaching out to all persons who had active or non-active subsidy applications, and she was entitled to benefit from September 3, 2018 to June 28, 2019.
- The Appellant, feels that the Ministry was negligent in not sending out notification(s) either through the mail, by phone or by e-mail, informing all applicant's who had previously applied for Child Subsidy and been denied before the change of the Legislation
- The Appellant states in her letter of August 7, 2019 " I thought in Canada there is a level playing field for everyone, and everyone is entitled to equal access to benefit and a belief that you have a duty to ensure that the whole process of benefit receipt is fair". That like the Federal government, which backdates benefits on late applications to enable all persons a fair process on benefits that they are entitled to.

At the hearing the Ministry stated that:

- The Ministry had received the Appellant's application under the CCSA on July 10, 2019 and the application submitted by the Appellant conformed with the eligible criteria under the ACCB Program as of July 1, 2019.
- The Appellant was not entitled to benefits between September 3, 2018 to June 28, 2019, because there is not a provision in the legislation for backdating of any applications to the program unless an administrative error had occurred. As set out in the CCSA Regulation Section 13.
- The Ministry acknowledges that the Appellant had made applications in 2016 and 2017 under the CCSA and CCSR that was in effect during that time period. Both of these applications were denied due to the Appellants income exceeding the amount stated in the Legislation.
- The change in Legislation was announced to the Public through media releases in February 2018. The new legislation information was made available to the public through the Ministries website with on-line access to the application form and other information concerning the legislation.
- Licenced care providers were given written notification concerning the upcoming legislation changes so that they could communicate the changes to their clients. Should the care providers not share this information with their clients, it is not considered to be an administrative error under the legislation.
- The Ministry sent written notification to all persons at the time receiving Child Care Benefit from the Ministry as well as persons who had applied for CCSR within the 4 months prior to the Legislation taking into effect. But not to any person who had filed prior to the 4 month period and which files that had been closed by the Ministry because of inactivity of the file by any given Appellant. The Ministry's position is that this does not constitute an administrative error under the legislation.
- That the Appellant's file had been closed in 2017 therefore was not a file that was accessed by the Ministry to send notifications of change of legislations prior to September 2018.
- The Ministry records show that prior correspondence which was sent to the Appellant in December 2017, had been returned as "Return to sender – address incorrect" and phone calls that were placed by the Ministry received a "number not in service" response. The Ministry believed that the Appellant had changed address and phone numbers without notifying the Ministry of any new contact information.
- The ACCB Program is a provincial program not a Federal program and only became Legislation in September 2018
- Should an administrative error have occurred, under the CCSR Section 13 (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"* therefore the Appellant would only be entitled to child care subsidy for the month of June 2019.
- The Ministry states they are not required to ensure that the media announcements, written notification and Ministry website were accessed by the Appellant on or before September 2018 when the legislation was changed.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the Ministry's decision, which held that the appellant was not eligible for the ACCB between September 3, 2018 to June 28, 2019. By reason that the appellant did not apply for the subsidy until July 10, 2019, pursuant to Section 13 of the CCSA. That the legislation states that the subsidy is only paid from the first day of the month in which the parent completed the application.

**The Legislation:****Child Care Subsidy Act****Child care subsidies**

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

**Child Care Subsidy Regulation****Section 4 - How to apply for a subsidy**

(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.]

[am. B.C. Regs. 218/2003, s. 1; 187/2007, s. (b); 84/2016, s. 2; 148/2018, App. 1, s. 3.]

**Authorizations required****Section 4.1 --Authorizations required**

(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).

[en. B.C. Reg. 148/2018, App. 1, s. 4.]

### **Section 13 - Will a subsidy be paid for child care provided before completion of the application?**

(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.

[am. B.C. Reg. 337/2008, s. 4.]

**Panels Reasons**

The Panel reviewed all written documentation and the verbal testimony evidence that was presented at the hearing by the Ministry and Appellant.

Documents reviewed by the Panel:

1. ACCB Application dated July 10, 2019, completed by the Appellant, with attached photocopy identification documents for the Appellant and child.
2. ACCB Child Care Arrangement form, dated July 18, 2019 which was completed by the Appellant. Indicating that a Licensed Group Child Care provider was providing child care for the Appellant for her child and the frequency of such child care with applicable fee's charged by the Licensed Child Care provider. This document was also signed by the care provider on July 10, 2019
3. Letter to the Appellant dated July 23, 2019 from the Ministry, denying the Appellants application for the period of September 3, 2018 to June 28, 2019.
4. Request for Reconsideration application completed by the Appellant on August 7, 2019 with an attached 2 page letter written by the Appellant stating her reasons for request for reconsideration.
5. Reconsideration Decision dated August 14, 2019, with Appendix A - Reasons and Appendix B – Legislation
6. No additional documents were presented to the Panel by the Ministry or the Appellant at the time of the hearing.

Verbal Evidence by the Appellant:

1. She is a single parent to 1 child.
2. That she is presently employed full-time, enrolled in full-time educational studies and the primary care person for her child.
3. That in 2016 and 2017, she had completed applications for Child Subsidy with the Ministry, but had been denied funding due to her income amount exceeded the allowable amount in the legislation.
4. The Appellant stated that she was in periodic verbal communication with the Ministry in 2017 and once in January 2018 about any possible legislative changes that would make her eligible to receive the child care subsidy. Through these communications was told that the legislation was not changed and because her income exceeded the amount set out in the current legislation, her application would be denied.
5. The Appellant felt that the Ministry was negligent and made an administrative error, by not notifying all prior applicants who had been denied funding, to inform them about the new legislation. Therefore Section 13 (2) of the CCSR apply.
6. That due to her "working my fingers to the bone, long hours and long days for the last few years' she was not aware of any media broadcasts concerning the Legislation changes to the Child Subsidy Act.
7. The Appellant stated that her Child Care Provider did not notify her of any Legislative changes and she only heard of the changes through a friend "almost a year down the road".
8. The Appellant stated that her contact information has not changed, therefore the Ministry would have been able to send her information about the new Legislation but failed to do so. Therefore the Ministry made an administrative error and should backdate her application to September 2018.

Verbal Evidence by the Ministry:

1. That an completed application under the ACCB Program was received by the Ministry from the Appellant on July 18, 2019
2. A letter was sent to the Appellant on July 23, 2019, advising her that she was not eligible for the subsidy between September 3, 2019 to June 28, 2019, but would receive the subsidy starting July 1, 2019.
3. That the Ministry records show that the Appellant had made an application in 2016 and 2017 under the previous Legislation for Child Subsidy, but had been denied due to her income exceeding the allowable in the legislation.
4. That the ACCB Program is a Provincial program and only came into effect as of September 3, 2018.

5. That the Ministry had communicated through media releases within the Province to notify the general public as to the changes to the Legislation and the new ACCB program. As well, all present recipients and applications within the 4 months prior to the Legislation taking in effect, were notified in writing of the changes. That the Ministry did due diligence in notifying the public, therefore it does not constitute an administrative error.
6. That the Ministry states that all licenced child care providers where send written notification of the new ACCB program so they may share it with their clients.
7. The Ministry upholds the Reconsideration Decision of August 14, 2019.

The Panel finds that:

1. The Affordable Child Care Subsidy program and Legislative changes came into effect on September 3, 2018.
2. The Appellant did not make her application for the Affordable Child Care Subsidy program until July 2019.
3. The Appellant has not shown that there was an administrative error made by the Ministry, as required by Sec. 13 (2) of the CCSR.
4. The Panel finds that the legislation does not allow backdating of applications. Only the discretion of the Ministry to "provide subsidy for a period of 30 days prior the completion of the application by the parent under Section 4, if a administrative error had been made."

The Panel finds the ministry's reconsideration decision of August 14, 2019 which denied the Appellants application for backdating of her application under the Affordable Child Care Subsidy Program was reasonable. There is no remedy in the legislation that allows the Ministry to pay the Child Care Subsidy retroactively for 12 months. The only remedy in the legislation for retroactive payment is if the Ministry made an administrative error pursuant to Section 13(2) of the CCSR. The panel finds that is was reasonable for the Ministry to determine that no administrative error was made. While there was evidence that the Ministry did not deliver information of the program to the appellant, there is no obligation for the Ministry to deliver this information or inform the appellant about the program.

The Panel confirms the Ministry's decision. The Appellant is unsuccessful in this 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

Linda Smerychynski

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 October 15

PRINT NAME

Jennifer Armstrong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 October 15

PRINT NAME

Meghan Wallace

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 October 15