

APPEAL NUMBER  
2020-00145

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Children and Family Development’s (the “Ministry”) decision of May 12, 2020 in which the Ministry determined that the appellant was not eligible for the Affordable Child Care Benefit (ACCB) for the period between September 1, 2019 and February 29, 2020, pursuant to sections 4 & 13 of the *Child Care Subsidy Regulation*.

**PART D – RELEVANT LEGISLATION**

CSA – *Child Care Subsidy Act, section 4*  
CSR – *Child Care Subsidy Regulation, section 4, 12 & 13*

## PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

- 1) **June 27, 2019** – The Child Care Service Centre received an incomplete Affordable Child Care Benefit arrangement form for the period of September 1, 2019 to June 30, 2020.
- 2) **July 15, 2019** – The Child Care Service Centre sent a letter to the appellant advising that they were unable to process the request without a completed Affordable Child Care Benefit application.
- 3) **August 23, 2019** – The Child Care Service Centre received an Affordable Child Care Benefit Application dated August 22, 2019 that was unsigned by both the appellant and their spouse.
- 4) **September 20, 2019** - The Child Care Services Centre sent the appellant a letter advising that they were unable to process the request for the Affordable Child Care Benefit without a completed Section 5 of the Application form which required the appellant and their spouse's signed declaration, and Section 2 on the Child Care Arrangement Form which indicated what type of care was being provided
- 5) **March 2, 2020** - the ministry noted the appellant's childcare provider contacted the Child Care Service Centre and was advised that no benefits were currently in place and requested that the appellant contact the Child Care Service Centre.
- 6) **March 4, 2020** - The ministry noted the appellant's advocate contacted the Child Care Services Centre on their behalf and was advised the appellant had failed to submit the documents as requested September 20, 2019 and that the appellant's file was closed due to inactivity. The Child Care Services Centre advised the appellant's advocate to have the appellant submit an Affordable Child Care Benefit Application and the Child Care Arrangement Form.
- 7) **March 10, 2020** - The appellant provided a signed and dated application form for the Affordable Child Care Benefit.
- 8) **March 18, 2020** – The ministry sent a letter to the appellant advising that the eligibility for the ACCB was for the period of March 1, 2020 to June 30, 2020.
- 9) **April 2, 2020** – The ministry noted that the appellant contacted the Child Care Service Centre requesting backdating the ACCB from September 1, 2019 to February 29, 2020 – as both the appellant and the caregiver were under the assumption that the benefits were in place.
- 10) **April 16, 2020** – The Ministry sent a letter advising the appellant that they were not eligible for the Affordable Child Care Benefit for the period between September 1, 2019 and February 29, 2020.
- 11) **April 30, 2020** – The appellant submitted a Request for Reconsideration to the Child Care Service Centre.
- 12) **April 30, 2020** – The Request for Reconsideration was received at the Reconsideration Branch.
- 13) **May 12, 2020** – The Ministry completed a review of the Request for Reconsideration.

### Additional Information

The appellant had requested an in-person hearing, and as such, the Tribunal was able to facilitate an in-person hearing via video conference. This was the first of its kind for the Tribunal. Microsoft Teams was used, and no participants had any issue with using the platform during the hearing.

Additionally, the appellant had an interpreter attend the hearing and the ministry had an observer attend the hearing – the appellant did not object to the presence of the observer.

## **PART F – REASONS FOR PANEL DECISION**

The issue under appeal is the reasonableness of the Ministry of Children and Family Development's (the "Ministry") decision of May 12, 2020 in which the Ministry determined that the appellant was not eligible for the Affordable Child Care Benefit for the period between September 1, 2019 and February 29, 2020, pursuant to sections 4 & 13 of the *Child Care Subsidy Regulation*.

The relevant section of the legislation is as follows:

### **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 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.

### **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 childcare subsidy.

### **Will a subsidy be paid for childcare 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 childcare subsidy may be paid for child care provided in the 30 days before the parent completes an application under section 4.

## Panel Decision

The Ministry's position, as set out in the review of the Request for a Reconsideration decision, is that the appellant is not eligible for the Affordable Child Care Benefit (ACCB) for the period during September 1, 2019 and February 29, 2020 because the ministry had not received a completed application form until March 10, 2020. While the ministry acknowledges that the appellant had provided an application at the beginning of June, 2019 – the application was never completed, despite a letter being sent on September 20, 2019 by the Child Care Services Centre (CCSC), which had indicated that the signatures of both spouses were needed on the form, as well as a "type" selected for the childcare.

The appellant's position is that the September 20, 2019 letter sent by the CCSC was never received. Therefore, after the last letter that had been sent by the CCSC on July 15, 2019 indicating that the application for ACCB was needed – in which the appellant responded to with an application for ACCB on August 22, 2019, there was no reason for the appellant to believe that the benefit application was not processed.

The appellant's position is that the pre-school account manager had been dealing with the CCSC over the last year that the child had attended the program, and so it was assumed that if any issue were to arise, the appellants would have been informed either by the CCSC or the account manager. The appellant's position is that the account manager informed them on March 2, 2020 (after speaking with CCSC) that there had been an issue with the benefits/application and that the appellant should contact the CCSC.

After having found out about the benefit application issue, the appellants contacted the CCSC. At this time the appellants were informed the file had been closed, as there had not been any response after they sent the September 20, 2019 letter (indicating the application was not signed).

The Ministry relied upon sections 4 & 13 of the *Child Care Subsidy Regulation*. Section 4 states; to be eligible for a childcare subsidy, a parent must **(a) complete an application in the form required by the minister**, and as set out in section 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, and **(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.**

The panel finds that the evidence establishes that the appellants did first submit a childcare *arrangement* form on June 27, 2019 after having their child attend a fully funded childcare program for the previous year (2018). The arrangement form indicated that the period they were seeking funding was for the full 2019/2020 year. The undisputed evidence is that the CCSC sent a letter on July 15, 2019 indicating that they required an actual ACCB *application* for the benefit in order to move forward with processing. The panel finds that the undisputed evidence is that after learning that an application was required by the CCSC, the appellant's submitted both the arrangement form and application for the benefits – on August 22, 2019.

The issue at hand is the letter sent by the CCSC a month later, on September 20, 2019 which indicated that the application was unsigned and a "type" of childcare needed to be selected on the arrangement form. The appellant's claim is that this letter was never received, and if it had been, they would have continued to fill the forms, as the intent to apply for funding had not changed.

During the hearing, the panel asked the ministry if there is a requirement to inform the applicants if there is an issue with the/any application. The ministry response was that typically a letter would be sent out highlighting the issue, however more than one letter is not the standard. Moreover, the ministry noted that they would not process the application in the absence of a signed authorization to do so as it would be a breach of process.

During deliberation, the panel considered the ministry's responsibility to inform an applicant what the outcome of their application is after filing. In this case, the panel reviewed section 12 of the *Child Care Subsidy Regulation* which states; **the minister must notify the applicant as to whether or not the application is approved. And (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 childcare subsidy.**

The panel finds that the evidence establishes the CCSC had sent a letter on September 20, 2019 indicating the need for the signatures to be provided before processing. The appellant's claim is that the letter was not received. The panel finds that the initial intent of the appellant's childcare benefit application and the appellant's immediate response to the request of CCSC to correct the application is a fair indication that the appellant's intent to apply had not varied. The panel considers that if the appellants' response to the CCSC was delayed at the outset (months between emails, letters or any response to address the application) then the CCSC could reasonably conclude the application may have been abandoned after the second letter was sent without a response. However, and in this case, the panel found that the appellant had responded to the first letter of the CCSC on June 15, 2019 by submitting an application as requested in addition to the childcare arrangement form on August 22, 2019.

The panel considers section 12 of the *Regulation*, which outlines that the appellant should have been notified whether the application was approved or not approved. The panel considered the reasonableness of the CCSC inaction when it did not use the resources available to it to notify or follow up with the appellant regarding the unsigned application - provided the undisputed fact that appellant's phone number and the appellant's email address were on the application and system files. The panel found that while the ministry (CCSC) sent a letter indicating the *issue* on September 20, 2019, a level of reasonableness and procedural fairness was not applied when no follow up was offered to the appellant. Regardless, the panel found that despite the lack of follow up, the appellant had never been officially notified of the outcome of their application, as per section 12 of the *Regulation*. The panel considered that if the appellant had been officially notified of the outcome of their application, whether it was approved, not approved, or closed due to inaction, the appellant would likely have responded by either reconsideration or appeal.

Accordingly, the panel finds that the decision of the Ministry to deem the appellant ineligible for the Affordable Child Care Benefit for the period of between September 1, 2019 and February 29, 2020 an unreasonable application of the legislation in this case.

Therefore, the panel rescinds the Ministry's decision pursuant to section 24(1)(b) and section 24(2)(b) of the *Employment and Assistance Act*. The appellant is therefore successful in this appeal.

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| <b>PARTG-ORDER</b>  |  |
| THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY   |  |
| THE PANEL <input type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input checked="" type="checkbox"/> 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |  |
| <b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>  |  |
| <i>Employment and Assistance Act</i>  |  |
| Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>   |  |
| and   |  |
| Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>   |  |

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| <b>PARTH-SIGNATURES</b>          |                                       |
| PRINT NAME<br>Jennifer Armstrong |                                       |
| SIGNATURE OF CHAIR               | DATE (YEAR/MONTH/DAY)<br>2020/June/16 |

|                                |                                       |
|--------------------------------|---------------------------------------|
| PRINT NAME<br>Kevin Ash        |                                       |
| SIGNATURE OF MEMBER            | DATE (YEAR/MONTH/DAY)<br>2020/June/16 |
| PRINT NAME<br>Carla Gail Tibbo |                                       |
| SIGNATURE OF MEMBER            | DATE (YEAR/MONTH/DAY)<br>2020/06/20   |