

APPEAL NUMBER
2021-00042

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated January 11, 2021, which found that the appellant was not eligible for the Affordable Child Care Benefit (“the child care benefit”) for the period from August 1, 2020 to October 31, 2020 as eligibility began on November 1, 2020 and there was no administrative error made by the ministry, pursuant to Sections 4 and 13 of the Child Care Subsidy Regulation (CCSR).

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Affordable Child Care Benefit Child Care Arrangement dated November 3, 2020 indicating the days and times child care is provided to the appellant's child ("the child") and signed by the child care provider and the appellant.
- 2) Affordable Child Care Benefit Application form naming the appellant as the applicant, the applicant's declaration and consent provided November 7, 2020 and the spousal consent, which is timestamped "Monday November 9 2020 18:41."
- 3) Letter to the appellant dated November 17, 2020 in which the ministry set out the appellant's eligibility for the child care benefit and indicated the benefit period is November 1, 2020 to April 30, 2021, the reasons for needing the child care, the income eligibility assessment and the resulting monthly benefit of \$771.68.
- 4) Letter to the appellant dated December 4, 2020 in which the ministry wrote:
 - The appellant was not eligible for the child care benefit for the period August 1, 2020 and October 31, 2020.
 - The child care benefit may only be paid from the first day of the month in which the parent completes the application.
 - The application submitted was completed on November 9, 2020 and, therefore, the appellant was only eligible to receive the benefit from November 1, 2020 and is responsible for paying for the costs of any child care that was received prior to this date; and,
- 5) Request for Reconsideration dated December 29, 2020 with attached letter.

In the Request for Reconsideration and attached letter, the appellant detailed the following:

- The appellant's child had shown some red flags for a complex developmental condition ("the condition") just when starting daycare. The appellant and the appellant's spouse were very busy finding the professionals needed to assess and help the child.
- The deadline was very short. This made it impossible for the appellant and the appellant's spouse because of the emotional situation that they were in and the busy days they experienced.
- While they expected more support, they feel they were penalized just because of the situation they fell into. It is unfair that a family with the appellant's financial situation is eligible for the benefit, but they then are not [eligible] because the appellant had to deal with a highly-charged unexpected problem.
- While Section 13 of the CCSR specifies that child care subsidy may be paid from the first day [in the month] in which the parent completes the application, COVID-19 changed the world in a way that people cannot do many tasks in the deadlines determined pre-COVID-19. Consequently, many organizations, such as CRA [Canada Revenue Agency], extended the deadlines due to the new situation.
- Finding professionals needed to help and to assess the child was very difficult during the pandemic, including getting a hearing assessment, meeting with a pediatrician while waiting for months to be assessed for the condition.
- For the hearing assessment, the initial waiting time given was 9 to 12 months and there were no private centres to assess young children. The appellant had to go to many

places to find a way to do this assessment.

- Meeting with a pediatrician is the first step in assessment for the condition and the minimum waiting time was 3 months. As time is very important for any intervention plan for a child with the condition, the appellant almost called all the pediatrician offices in the area to find a shorter waiting time.
- To be assessed for the condition, the average waiting time for finding an assessment centre is more than 6 months. Daily follow-up helped them to find an appointment in less than one month.
- The appellant talked with a manager at the ministry who said that the appellant did better than 99% of parents of children with the condition.
- While the appellant understood that this story does not provide any legal reason for appealing the decision, this information was shared to show the tough situation they were in and they had to give the highest priority to finding professionals needed to help their child. This could not be done unless they postponed some other tasks. This was a very difficult and incredible mental situation they were in.

Additional information

In the Notice of Appeal dated February 19, 2021, the appellant expressed disagreement with the ministry's reconsideration decision and wrote:

- There is unfairness in the CCSA and the CCSR.
- Due to COVID-19 restrictions and a personal disaster, they could not complete the forms on a very short deadline period.
- The appellant strongly believes this short deadline is unfair and does not consider the tough situations some families may have.

At the hearing the appellant stated:

- They were feeling pressured by their family physician to have the diagnosis of the condition as soon as possible.
- At the time, they were so agitated that their only concern was the health and safety of their child.
- The incident was so unexpected and devastating that it took a toll on them. They could see their child was losing capabilities.
- They want to emphasize that they made the appeal because they know other families are suffering from problems and they are not able to take advantage of the benefits because of their problems.
- When they were seeing the "red flags" for the condition, their child was also having a hard time and was waking up crying at night.

At the hearing, the appellant's spouse and representative stated:

- They went through an unsuccessful experience getting their child in a previous daycare and it took a lot of time, more than a month, to get their child settled in the second daycare. They waited for a year to get into the first daycare and, in December 2019, the owner told them after about 3 weeks of caring for their child that they could not continue

to care for their child anymore. They had not applied for the child care benefit at that time.

- Unfortunately, after they got their child settled in the second [current] daycare, they noticed some red flags of the condition in their child. This news disrupted their lives as a happy family.
- Their child attended the second daycare from August 1, 2020 through October 31, 2020 and is currently attending only 3 days per week at the daycare and is at home 2 days during the week. In August 2020, the appellant also went to the daycare to help their child settle down.
- They then had to spend lots of time with professionals to determine what to do and COVID-19 added to the complications. Many assessments that had been scheduled for May through July 2020 were cancelled and these cancelled appointments had to be re-scheduled.
- They have some examples for why there was not enough time to finish the application for the child care benefit by the deadline given by the ministry.
- First, they had to go through a hearing assessment with an audiologist. Their child did not react to their own name being called and they had to determine whether this might be due to a hearing impairment or was part of the complex developmental condition.
- They discovered that there was no private hearing assessment facility for young children in the area. There were no wait times less than one year. Due to the COVID-19 travel restrictions, they could not go to the United States to have the assessment done. The appellant's spouse followed up on a daily basis to get the assessment done.
- To get a diagnosis of the condition, there must be the agreement of three professionals, specifically: a pediatrician, a speech therapist and a psychologist. Based on the opinion of the professionals, time is of the essence for treatment, which should be started in a timely manner.
- The pediatrician was the first step for them. They contacted all pediatricians in B.C. and none of them, even in surrounding cities, had wait times less than 3 months.
- They were eventually able to do the speech assessment and the hearing assessment in one month. The appellant's spouse spent every day/ all the time working on this.
- As parents, they had to spend all their time taking care of their child's health and safety.
- The second step was to have the assessment for the condition. To go through the government process, there is a two-year wait time. They had to resort to private centres and all of them in B.C. have at least a 3 to 4 month wait time. As a result of daily follow up, they achieved an assessment in late October 2020.
- The appellant's spouse spent all effective time on this. The mental impact and trauma was so severe from this happening that they were not soon back to their normal lives.
- They understand that the ministry's decision is based on the CCSR but, in their particular case, the one-month deadline is not fair. They are eligible for the grant based on their financial evaluation. It is only because of their child's condition that they are not able to get this grant.
- They had not taken care of the formalities of the application. They had started filling out the application before the child began attending daycare but did not get back to completing the application until November 2020. The application was completed on-line.
- A ministry representative told the appellant's spouse that with all the follow-ups that were made they achieved better results than 99% of parents of a child with the condition and

this was only possible by sacrificing other things like completing the application.

- Please consider that they have been working several jobs, also taking care of their child and hiring professionals.
- They also experienced some language challenges and the appellant's spouse had to be heavily involved because of better English-language skills than the appellant's.
- If they did not experience these many challenges, they could have applied for the child care benefit on time.
- They agree that the decision was made in accordance with the CCSR but maintain that the CCSR is not as fair as it could be. They appealed to the Tribunal because the CCSR was put in place but it cannot cover all possible situations.
- They believe most parents in their shoes would dedicate their time to helping their child.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry also clarified that:

- Any discretion exercised by the ministry and any exemptions applied must be done in accordance with the CCSR.
- The evidence does not show that an administrative error was the cause of the timing of the appellant's application. An administrative error would be considered, for example, when the parent had completed the application in a timely manner but there was a problem with the processing of an application because of an error that the ministry made.
- The ministry reviewed the COVID-related policy exceptions relating to the child care benefit, but they are only available for allowing a parent to continue to receive the benefit if their child is already in care. The exceptions do not apply for an application for a new subsidy.
- A request to amend the legislation might be directed to the appellant's MLA or possibly to the provincial Ombudsperson.

Procedural matters

The appellant provided verbal authorization at the hearing for the appellant's spouse to act as the appellant's representative. The hearing was conducted via video conference with language translation provided by an interpreter for the appellant and the appellant's spouse.

Admissibility of Additional Information

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision, which found that the appellant was not eligible for child care benefit for the period from August 1, 2020 to October 31, 2020 as eligibility began on November 1, 2020 and there was no administrative error made by the ministry, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The applicable sections of the CCSR are set out in the Schedule at the end of these Reasons.

Ministry's Position

The ministry's position is that that the appellant was not eligible for the child care benefit for the period from August 1, 2020 through October 31, 2020 because the application was signed and dated by the appellant on November 7, 2020 and signed and dated by the appellant's spouse on November 9, 2020 and submitted to the ministry on November 9, 2020 and, therefore, eligibility began on November 1, 2020 pursuant to Sections 4 and 13 of the CCSR. The ministry wrote that pursuant to Section 4(1) of the CCSR in order to be eligible for a child care benefit, a parent must complete an application in the form required by the ministry. Under Section 13(1) of the CCSR, the child care benefit may be paid from the first day of the month in which the parent completes the application under Section 4. In the case of the appellant, the application was completed on November 9, 2020 and the appellant is, therefore, eligible from the first day of November 2020. At the hearing, the ministry stated that any discretion exercised and any exemptions applied by the ministry must be done in accordance with the CCSR. The ministry argued that there is no evidence that an administrative error was made by the ministry as set out in Section 13(2) of the CCSR.

Appellant's position

In the Notice of Appeal, the appellant argued that there is unfairness in the CCSA and the CCSR and, at the hearing, the appellant stated that they would like to see the legislation amended. The appellant wrote that they strongly believe this short deadline is unfair and does not consider the tough situations some families may have. At the hearing, the appellant agreed that the decision was made in accordance with the CCSR but maintained that the CCSR is not as fair as it could be. The appellant stated that they appealed to the Tribunal because the CCSR was put in place but it cannot cover all possible situations. The appellant's spouse stated that they believe most parents in their shoes would dedicate their time to helping their child. In the Notice of Appeal, the appellant wrote that due to COVID-19 restrictions and a personal disaster, they could not complete the forms on a short deadline period. At the hearing, the appellant's spouse stated that COVID-19 changed the world in a way that people cannot do many tasks in the deadlines determined pre-COVID-19.

At the hearing, the appellant and the appellant's spouse described their circumstances at the

time that their child entered day care in August 2020, which revolved around “red flags” indicating their child may have a complex developmental condition that needed to be evaluated in the context of the COVID-19 pandemic that contributed to long waiting times for assessments to be scheduled. The appellant’s spouse stated that English-language skills were also a consideration as the appellant’s spouse understands English more than the appellant, requiring that the appellant’s spouse spend all effective time in securing the required assessments for their child. The appellant stated that at the time they were so agitated that their only concern was the health and safety of their child and this incident was so unexpected and devastating that it took a toll on them. The appellant’s spouse stated that the mental impact and trauma was so severe from this happening that they were not soon back to their normal lives. The appellant’s spouse stated that they are eligible for the child care benefit based on their financial evaluation and it is only because of their child’s condition that they are not able to get this grant.

Panel decision

Section 4 of the CCSR says that to be eligible for a child care subsidy a parent must complete an application in the form required by the ministry and supply the ministry with proof of eligibility for a child care subsidy. The appellant confirmed at the hearing that the child attended day care from August 1, 2020 through October 31, 2020 and is currently attending the same day care. The appellant does not dispute that the child care subsidy application form was completed on November 9, 2020. Section 13(1) of the CCSR says that a child care subsidy may be paid from the first day of the month in which the parent completes an application under Section 4.

Although the appellant argued that Section 13(1) includes an extremely short deadline that is unfair in not considering the tough situation that a family may experience, the parent may complete the application before the child starts attending day care and is also given an additional grace period of a month to complete the application after the child begins attending day care. While the appellant explained the reasons for the delay in completing the application after the child commenced daycare on August 1, 2020, the panel notes that the application for the child care benefit was started by the appellant in the period prior to their child commencing day care and no explanation was provided for not completing the application prior to the child attending day care. The panel finds that the ministry reasonably determined that the child care subsidy may be paid from November 1, 2020, as the first day of the month in which the appellant completed the application, pursuant to Section 13(1) of the CCSR.

Section 13(2) of the CCSR provides an exception to Section 13(1) if an administrative error has been made. In the case of an administrative error being 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. At the hearing, the ministry stated that any discretion exercised by the ministry and any exemptions applied must be done in accordance with the CCSR. The ministry clarified that Section 13(2) of the CCSR requires an administrative error to have been made by the ministry for the child care subsidy to be paid 30 days before the parent completed an application. The

ministry stated, for example, that if the ministry made an error in processing a timely application for the child care benefit, that may be considered an administrative error by the ministry.

The appellant requested that the panel read into Section 13(2) of the CCSR an additional exception for a delay by the parent in completing an application more than 3 months after their child started attending day care due to the parents experiencing extremely stressful circumstances. The appellant asked that an exception be made where the parent faces a family crisis upon being made aware of “red flags” that their child may have a complex developmental condition and the parents need to put all their time and effort into getting the necessary professional assessments and assistance, which is made more difficult because of scheduling delays due to the COVID-19 pandemic. Although the panel acknowledges that the appellant and the appellant’s spouse both described a challenging situation to experience as parents, Section 24 of the *Employment and Assistance Act* only gives the panel the limited jurisdiction to determine whether the ministry reconsideration decision is reasonably supported by the evidence or a reasonable application of the existing legislation in the appellant’s circumstances. Therefore, the panel finds that the ministry reasonably interpreted Section 13(2) of the CCSR to address administrative errors made by the ministry and as not including an exception for a parent’s delay in completing the application for the child care benefit.

Conclusion

The panel finds that the ministry's decision, which found that the appellant was not eligible for the child care benefit for the period from August 1, 2020 through October 31, 2020 as eligibility began on November 1, 2020 and there was no administrative error made by the ministry, pursuant to Sections 4 and 13 of the CCSR, was a reasonable application of the applicable enactment in the appellant’s circumstances. Therefore, the panel confirms the decision and the appellant’s appeal is not successful.

Schedule

Section 4 of the CCSR provides:

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, s. (b).]

(4) Repealed. [B.C. Reg. 84/2016, s.2.]

Section 13 of the CCSR provides:

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.

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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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-03-12

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-03-12

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-03-12