

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 22, 2021 which denied the appellant's request for a Child Care Subsidy (CCS) for the period of September 1, 2021 and October 31, 2021 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 November 1, 2021.

**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 November 1, 2021.
2. ACCB Child Care Arrangement form signed and dated November 1, 2021.
3. Request for Reconsideration from the appellant, signed and dated December 7, 2021, which, in part, stated the following:
  - The appellant attempted to submit the ACCB application, but the website would not accept it until all the mandatory information was submitted.
  - The appellant was waiting for the child arrangement form from the childcare center and their subsidy number.
  - The appellant was told that when the application was submitted the subsidy would be backdated.
  - The website did not allow the submission of an incomplete application despite trying 2-3 times.
  - The appellant did not get the necessary information until November 2021.
  - The appellant thought that this was the normal process and did not realize that she was having trouble with the application process.

**Evidence Submitted Prior to the Hearing**

1. Letter from the executive director of the childcare facility where the appellant's child attends, signed and dated January 11, 2021, in part, stated the following:
  - The appellant registered her child in the care facility for September 2021 and the child has been attending since.
  - The childcare facility had trouble access its ACCB portal due to glitches which deemed the account 'inactive'. As a result, the facility was unable to provide the appellant with the necessary information for the ACCB application.
  - Several calls were made to the ACCB department to resolve the issue, which ultimately took 2 months to resolve.
  - The facility was assured that the families would not be penalized for the delay of getting their applications.
  - The facility was assured that the families accessing ACCB would be fully compensated, and any approved funding would be backdated to the facility's start date.

**Evidence on Appeal**

Notice of Appeal (NOA), signed and dated January 5, 2022, which stated "This is not my error. This is a system flaw and delay".

**Evidence at the Hearing**

At the hearing, the appellant, in part, stated the following:

- She tried to discuss the issue on the phone with the ministry but that was in November. During the application process she did not have any direct contact with the ministry.
- She was unaware of the My Family Service portal and was not informed about it.
- The daycare facility was new and there were system glitches. The result was that she could not get the information she needed to complete the application. This is explained in the January 11, 2022 letter from the daycare facility.
- She submitted the ACCB application immediately after receiving the mandatory information from the daycare facility which took 2 months.
- She clearly qualifies for the ACCB and would have submitted all the necessary information in September 2021 if she had it and knew about the process.
- She thinks the ministry or government should send out its policies and procedures to new daycare facilities, so this sort of thing does not happen to other families.

***Admission of Additional Information.***

A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case, the panel determined that the January 11, 2022 letter, from the executive director of the childcare centre where the appellant's child attends, is admissible because the information allow for full, and fair disclose of all matters related to the issue on appeal.

**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 of September 1, 2021 to October 31, 2021 pursuant to the CCSR sections 4 and 13 and because a complete ABBC application was not submitted until November 2, 2021, is, reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

*The Appellant's Position*

The appellant argued that due to system failures a delay was caused in the application process and submission. These failures were not on her part or the part of the daycare facility. The appellant also argued that she was assured that subsidy would be backdated to September 1, 2021 as indicated by the January 11, 2021 letter.

*The Ministry's Position*

The ministry argued that the subsidy approval depends partly on receiving a completed application as per section 4 of the CCSR, and that a completed application was not received until November 2, 2021. Therefore, the ministry is unable to establish eligibility for ACCB until this date. The ministry also argued that pursuant to section 13 of the CCSR, eligibility begins from the 1 day of the month that the ACCB application was received. The ministry argued that backdating the subsidy 30 days from the application day is only possible if an administrative error has occurred and there is no evidence of such an error. The ministry noted that the My Family Services portal accepts incomplete applications and indicates which documents are necessary for completion. The appellant could have applied in September and submitted the necessary documents when they became available.

*Panel's Decision*

The panel notes that the ministry did not attend the hearing and therefore was unable to address the panel's questions regarding policies, procedures and how each portal works. Without such information, the panel made its finding on the information in the appeal package which did not include additional submissions from the ministry.

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. The appellant does not deny that her application was submitted in November 2021.

However, the appellant stated that she started the application process in September of 2021 but could not submit her application until mandatory information was submitted. The appellant stated that she repeatedly checked with the daycare facility for the necessary information. The daycare facility signed the ACCB Child Care Arrangement on October 20, 2021. Thus, indicating that the appellant was active in her pursuit to complete the application. The January 11, 2022 letter from the daycare facility confirms that there was a delay which was not in its control. This letter also confirms the appellant's statements that the daycare facility was assured that the families of the daycare facility would not be penalized for such delays.

Section 13 (2) states that if an administrative error is made, the CCS may be paid for childcare provided in the 30 days before the application is completed pursuant to section 4. In this case, the evidence demonstrates that a delay was caused by a system failure that deemed the daycare facility's account inactive. The panel finds that this is an administrative error that is not caused by the appellant or the daycare facility but rests with the governmental agencies over which the appellant has no control. The panel finds that an administrative error has occurred and therefore the ministry's finding that the appellant is not eligible for the ACCB from September 1, 2021 to October 31, 2021 was not reasonable.

### **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 childcare subsidy for the period of September 1, 2021 to October 1, 2021, pursuant to sections 4 and 13 of the CCSR, was not reasonable. The ministry decision is rescinded, and the appellant is successful at appeal.

The legislation states:

#### **CCSA:**

##### *Childcare 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.
- 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.

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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)

Section 24(2)(a)       or Section 24(2)(b)

**Part H – Signatures**

Print Name

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2022/01/21

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2022/01/21

Print Name

Linda Smerychynski

Signature of Member

Date (Year/Month/Day)

2022/01/21