

Part C – Decision Under Appeal

The Ministry of Child and Family Development (the “ministry”) determined that a request for reconsideration was sought after the legislated deadline. The ministry found that the request for reconsideration sought February 14, 2022 was not made within the required 20 business days of its decision of September 3, 2020. Therefore, the ministry stated that it could not reconsider that matter and no reconsideration was conducted.

The decision sought to be reconsidered was regarding a Verification and Audit decision finding that the appellant was ineligible for child care subsidy payments while receiving payments from September 2018 to March 2019.

Part D – Relevant Legislation

Child Care Subsidy Act (CCSA), sections 6, 6.1, and 7.

Child Care Subsidy Regulation (CCS Regulation), sections 1 and 17.

Employment and Assistance Act 22(4).

Please refer to the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts**Original Decision and Deadline**

On September 3, 2020 a Debt Notification Package was delivered to the appellant. It was from the Verification and Audit Unit, dated September 1, 2020, containing a decision that the appellant was ineligible to receive an already paid Child Care Subsidy from September 2018 to March 2019 and requiring repayment. It also informed the appellant of her entitlement to request reconsideration within the limited period of **20 business days** [Bold font in original letter].

On February 14, 2022 the appellant communicated with the Verification and Audit Officer and the Collections Officer expressing a belief that she had provided documents “stating and proving I have already solved this issue”. However, later that day she requested a reconsideration.

Request for Reconsideration

In response to the appellant’s verbal request on February 14, 2022, the Verification and Audit Officer prepared a Request for Reconsideration which was delivered (on February 19, 2022) to the appellant for completion. On March 21, 2022 the appellant returned it signed and completed. The Panel notes that the Request for Reconsideration form begins with the statement “You may request a reconsideration of the decision outlined below. To do so, you must complete and submit this form to the ministry within **20 business days** of the date of receiving this reconsideration package.” [Bold font in original] March 21st was the 20th business day after receipt of the Request of Reconsideration package by the appellant, accounting for Family Day.

The appellant had problems completing the form. In phone calls and exchange of emails on March 21 the appellant corrected deficiencies in her completion of the form. However, in the same course of communication, the appellant was told “You have passed your deadline. Please talk to your collection officer....” The signed form was forwarded to the Reconsideration, Litigation and Administrative Fairness Branch, which received it the next day (March 22, 2022).

On April 4, 2022 the ministry completed its review. In the standard format under the heading “Reconsideration Decision” it informed the appellant that a Reconsideration could not be conducted because of expiry of the 20 business days for the appellant to have requested the reconsideration.

Prior to the Original Decision by the Verification and Audit Officer –

On December 10, 2019 the Verification and Audit Officer wrote to inform the appellant that a review was being conducted to determine whether the Child Care Subsidy was issued appropriately. The appellant was asked to provide copies of tenancy agreements for 5 addresses by January 10, 2020.

On February 20, 2020 the Verification and Audit Officer received a fax with a tenancy agreement for the last of the listed addresses. The Verification and Audit Officer made no use of it in the matter, after determining that it was for dates outside the audit period of September 2018 to March 2019.

On July 14, 2020 the Verification and Audit Officer sent the appellant a notice of the audit assessing ineligibility and containing the overpayment calculation. It set out an opportunity for the appellant to contact the writer before a certain date in order to contest the matter and provide information; otherwise the assessment would be concluded without the appellant’s

input. Within days the appellant spoke by phone with the writer from the ministry. No other contact or information followed before the decision was made and the September 1, 2020 Debt Notification Package was sent.

Appeal Submission - Appellant

The appellant provided a written submission “in explanation of why [the appellant was] appealing the employment and assistance ministry decision against [her].” The appellant also stated that it has taken “a long time to figure out what this was about and how to go about fighting for myself and my kids. I finally decided to fight it, but things got out of hand really quickly. My child subsidy has gotten stopped I am fighting to not be in thousands of dollars in debt, and have no childcare... due to not having the funds, and my work is at risk.”

In large part the appellant addressed arguments about eligibility for child care subsidy. She also explained that she got inconsistent information from the ministry and that she had not received the complete request for reconsideration (when it was sought on February 14, 2022). The appellant stated that she was told that if she filled out, completed, signed and sent back the form “by the end of the day ... it will not be considered late.” In support she provided screenshots of messages dated February 14, and March 21, of 2022. (Some showed the first line of text and others more complete messages. The time of each cannot be determined but the sequence is assumed by the Panel from the order presented.)

The appellant describes the situation as stressful, and since the ministry had her account frozen has not been able to go into work due to lack of childcare. She expressed that the reconsideration was her last option.

Appeal Submission – Ministry

The ministry relied upon the filed documents although, in response to the appellant’s submission, it wanted the Panel to note that “The Reconsideration decision that is now at appeal is for the Verification and Audit Unit’s decision ... on overpayment of \$6,132.00” as distinct from another amount for another time period with the same person.

Under section 22(4) of the *Employment and Assistance Act* this Panel is able to consider evidence that is not part of the record if it considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The information was properly made part of the record of this hearing even if intended as an administrative note rather than as a submission. In any event the Panel has maintained attention solely on the current matter and accordingly gives no weight to whether another matter exists involving the same parties.

Part F – Reasons for Panel Decision

The matter under appeal is the ministry's April 4, 2022 decision to not conduct a reconsideration of its September 1, 2020 decision. The basis and evidence for that decision was that the appellant had not requested the reconsideration within the legislated deadline period.

The Panel's authority here is to determine whether the decision of April 4, 2022 was reasonably supported by the evidence and a reasonable application of the applicable enactments in the circumstances.

The parties do not disagree about when the appellant was notified of the September 1, 2020 decision. We find that it was September 3, 2020, and that October 1, 2020 was the deadline for requesting a reconsideration (accounting for Labour Day). That limited 20 business days period is set by the CCS Regulation section 17(1)(b).

The earliest contact by the appellant after that decision was about 137 days after the expiry of the deadline and that didn't progress to a verbal request for reconsideration until about 498 days after the deadline. The filing of the form was days later yet.

The consequence of not delivering a request for reconsideration within the 20 business days is set out in CCS Regulations section 17(4) which deems the person notified of the decision to have accepted it; it also makes clear that the decision is not open for appeal, including to this tribunal. The evidence shows that the appellant did not deliver a request for reconsideration of the September 1, 2020 decision within the legislated deadline, or indeed for a long period afterward.

The Panel considered the appellant's claims of being misled by the ministry which might become relevant to enforcement of the deadline.

The Panel empathizes with the appellant. She appears to have been led by the ministry into believing that the filing of the request for reconsideration in 2022 might be of benefit to her. Indeed, the instructions on the top of the Request for Reconsideration form is misleading where it instructs about a filing deadline with a starting point that is not in line with section 17(1)(b) of the CCS Regulation. Rather than starting on receipt of the form, the regulation requires that the request must be submitted within 20 business days after the person is notified of the decision.

The Panel finds no basis to consider that the deadline was extended, or that the 2020 decision was being held pending further information from the appellant which might overturn it, or that the deadline was restarted in some manner. Nor does the Panel find that the 20 business days could be restarted by receipt of the form. The Panel also finds no fairness principle (or principle of equity) that the appellant was misled by, and relied upon, the ministry to act to her detriment in not responding within the deadline in 2020.

In 2021, after the deadline, the appellant sent one document to the Verification and Audit Officer related to a time period outside of the audit period. Nothing further was done. The parties exchanged communications on the matter in 2022. To the extent that there was any confusion in the 2022 communications (February 14 and March 21) and even if they led the appellant to file the request for reconsideration, the deadline had long passed. There is no evidence that the appellant was led into a worse position or prevented from acting to benefit her position by those communications or the ministry processing the request for reconsideration at issue here. Nothing changed and the appellant was not induced to act, or delay acting, to her detriment.

Section 17(1) of the CCS Regulation states that the request “must” be “delivered within 20 business days after the person is notified of [the] decision.” It’s not open for the ministry or this Panel to change. The Panel also notes that it is not alterable by the text of a form.

The Panel finds that the request for reconsideration was filed well past the deadline set out by CCS Regulation section 17(1)(b) and that under section 17(4) the original decision is not open for review by this tribunal.

The ministry declined to conduct a reconsideration of the 2020 decision and informed the appellant on a standard decision form. Use of that form also does not change the issue or considerations here. The appellant has a right to appeal to this tribunal under CCSA section 6(3), if dissatisfied with the outcome of a request for a reconsideration under section 6(1). It does not require that the request for reconsideration result in a reconsideration. It may result in a decision to not conduct a reconsideration for expiry of the time to make such a request, as is the case in this matter. It appears to the Panel that the reason for the ministry facilitating the 2022 request for reconsideration is that the decision on it can only be appealed to this tribunal if the request is made and denied.

Conclusion

The Panel’s finds that the decision to not conduct a reconsideration was reasonably supported by the evidence and a reasonable application of the applicable enactments in the circumstances. The decision of the ministry is confirmed.

The appellant is not successful on appeal.

Schedule of Legislation***Child Care Subsidy 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.

(3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of the *Employment and Assistance Act*.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

No appeal from decision based on same circumstances

6.1 If a person reapplies for a child care subsidy after

- (a) the person's eligibility for the child care subsidy has been determined under this Act,
- (b) a right of appeal under section 6 (3) has been exercised in respect of the determination referred to in paragraph (a), and
- (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented,

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

Overpayments, repayments and assignments

7 (1) If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.

(2) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy.

(3) A repayment agreement may be entered into before or after a child care subsidy is paid.

(4) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is a debt due to the government and may

- (a) be recovered by it in a court of competent jurisdiction, or
 - (b) be deducted by it from any subsequent child care subsidy or from an amount payable to that person by the government under a prescribed enactment.
- (5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

Child Care Subsidy Regulation

Definitions

1 (1) In this regulation:

"**Act**" means the *Child Care Subsidy Act*;

"**applicant**" means a parent who applies under section 4 for a child care subsidy;

"**business day**" means a day other than Saturday or other than Sunday or another holiday listed in the *Interpretation Act*;

...

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.
- (2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Service Centre.
- (3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.
- (4) If a request for reconsideration is not delivered in the time required by subsection (1),
- (a) the person is deemed to have accepted the decision, and
 - (b) the decision is not open to review in a court or subject to appeal to a tribunal or other body.
- (5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must
- (a) reconsider the decision, and
 - (b) provide the person who delivered the request with a written decision on the request.
- (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.

(7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister

(a) reconsiders the decision, and

(b) provides the person who delivered the request with a written decision on the request.

[am. B.C. Regs. 262/2002, s. 6; 337/2008, s. 6; 148/2018, App. 1, s. 10.]

EMPLOYMENT AND ASSISTANCE ACT

22 ...

(4) 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.

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
Kent Ashby

Signature of Chair

Date (Year/Month/Day)
2022/05/14

Print Name
Jane Nielsen

Signature of Member

Date (Year/Month/Day)
2022/05/14

Print Name
Wes Nelson

Signature of Member

Date (Year/Month/Day)
2022/05/14