

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated January 24, 2022 which denied the appellant's request for a Child Care Subsidy (CCS) for the period of September 28, 2021 to November 30, 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 until December 1, 2021.

This hearing was originally scheduled for March 3, 2021, and was subsequently adjourned to April 8, 2021 and May 2, 2021, as the appellant was unwell and also sought out an advocate.

At the hearing, the appellant consented to a ministry observer attending the teleconference for training purposes.

Part D – Relevant Legislation

Child Care Subsidy Act (CCSA) – Section 4

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

The full text of the legislation is in the Appendix at the end of this decision.

Part E – Summary of Facts

Evidence at Reconsideration

1. ACCB application signed by the appellant on December 1, 2021 and received by the ministry on December 3, 2021.
2. Request for Reconsideration (RFR) from the appellant, signed and dated December 16, 2021, which stated that her “medical condition ... caused a delay to submit a claim back in September”, and that she “had been restricted to be in bed for 2 months” . She included medical reports. One chart summary by her physician dated November 24, 2021 stated that the appellant was “still has pain” and was “very restricted in terms of range of motion” .

Evidence on Appeal

The Notice of Appeal (NOA), signed and dated February 10, 2022, in which the appellant stated “I had medical problems so I was unable to complete the forms which was required for the months of October, November”... The NOA included medical records from the appellant’s prenatal clinic, medical clinic, hospital, family physician and specialists.

The panel considers the contents of the NOA to be the appellant’s argument and therefore a determination of admissibility is not necessary.

Evidence at the Hearing

At the hearing, the appellant reiterated her argument as stated in the RFR and NOA, and in part, stated the following:

1. She has had severe back pain since February 2021 and an MRI in June 2021 showed that she had a disc extrusion.
2. She gave birth on September 26, 2021 and was told to stay in bed and was prescribed medication due to her back pain and recovery from a caesarean section. She was in pain after child birth and this pain continued for several months. Medical records from her physician and hospital were provided to support that the appellant had a lumbar disc extrusion, pain in her lower back, was unable to work and was prescribed medication for the pain.
3. After the birth of her child she was unable to care for her child and her parent provided child care. Her parent was paid by the appellant to provide this service.

She had a hard time getting out of bed due to the pain and her parent helped her get up to go to the bathroom, get groceries, and bottle feed her baby. She does not have internet or a computer and the parent who was helping her cannot read or write. She could not get to the library to use a computer to fill out the form and did not have help to do so.

4. She sent “another application form” to the Ministry which was dated November 28, 2021, but this application, which provided details about her childcare arrangement, was not submitted on appeal and was not included in the application for reconsideration.

At the hearing, the ministry relied on its reconsideration decision.

Admission of Additional Information

Under section 22(4) of the Employment and Assistance Act, 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 information regarding the appellant's parent providing childcare, the appellant paying the parent for the childcare, and that a Child Care Subsidy "application" was made on November 28, 2021, is admissible because the information provides additional detail about the appellant's circumstances when she was applying for the ACCB.

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 28, 2021 to November 30, 2021 pursuant to the CCSR sections 4 and 13 because the ACCB application was not submitted until December 2021, is reasonably supported by the evidence and the legislation.

The Appellant's Position

The appellant argued that she was unable to submit the ACCB application before December 2021 due to the amount of pain she was experiencing, and her inability to travel to a place where she could make an application. The appellant explained that her medications started working by December and once she was able to apply, she did.

The Ministry's Position

The ministry argued that eligibility for the subsidy depends on when the application is received as per section 4 of the CCSR, and that an application was not received until December 3, 2021. Therefore, the ministry is unable to establish eligibility for ACCB before this date. The ministry stated that pursuant to section 13 of the CCSR, eligibility begins from the first day of the month that the ACCB application was received. The ministry argued that backdating the subsidy 30 days from the application date, as requested by the appellant, is only possible if an administrative error has occurred and there is no evidence of such an error.

Panel's Decision

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. In this case, the evidence establishes that the appellant did complete an application in the form specified by the ministry which was submitted in December 2021. Although the appellant said that she made "another application" on November 28, 2021, the ministry confirmed that no other application was received and the appellant did not make contact with the ministry until she submitted her ACCB application in December 2021.

Section 13 of the CCSR stipulates that a CCS may be paid from the first day of the month in which the parent completes an application under section 4. The appellant submitted the application form in December 2021. The panel finds that the ministry's application of the legislation is reasonable because the evidence demonstrates that the appellant's ACCB application was submitted in December 2021 and that pursuant to the legislation the CCS would start in the month of December 2021.

Section 13 also stipulates that if an administrative error has occurred, the CCS may be backdated 30 days. In this case, the ministry confirmed that the file was reviewed for any administrative errors and none were found. The panel also notes that the appellant did not argue that an administrative error occurred.

The panel acknowledges that the ministry cannot make an exception in this case as the ministry does not have the authority to overturn legislation. In addition, the legislation does not give the ministry any discretion to consider medical reasons as a factor that prevents an applicant from submitting the ACCB application earlier.

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 28, 2021 to November 30, 2021, pursuant to sections 4 and 13 of the CCSR, was reasonably supported by the evidence and is a reasonable application of the relevant enactment. The ministry decision is confirmed, and the appellant is not successful at appeal.

Appendix

The legislation states:

CCSA:*Childcare subsidies*

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

The regulation states:**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 4.

APPEAL NUMBER
2022-0025

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

Robert McDowell

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2022/06/06

PRINT NAME

Margaret Koren

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2022/06/06

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2022/06/06