

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated April 7, 2022. The ministry found the appellant is not eligible for the Affordable Child Care Benefit (“ACCB”) for the period between April 1, 2020 and October 31, 2021, because under the Child Care Subsidy Regulation (sections 4 and 13), the benefit may only be paid from the first day of the month in which the parent completes an application. The ministry found that the appellant did not submit a complete application for that period prior to her file being closed for inactivity. A new ACCB application was not completed until November 10, 2021.

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

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that:

- The appellant had been receiving the ACCB for her child. The previous authorization ended on March 31, 2020.
- On February 17, 2020, the ministry's Childcare Services Centre (CCSC) sent a letter advising the appellant that her previous authorization would end on March 31, 2020, and she was required to submit an application to CCSC to prevent a disruption in subsidy payments.
- On May 14, 2020, CCSC sent a letter advising the appellant that her request for renewal of the subsidy could not be processed until the appellant submitted an ACCB application (CF2900) and a Referral form (CF2044) from her social worker.
- On July 10, 2020, CCSC received (by fax) an ACCB *Childcare arrangement* form from the appellant's childcare provider, with a start date of June 1, 2020, and end date of August 28, 2020. To assess the appellant's eligibility for renewal of the subsidy the CF2900 application form and CF2044 referral form had to be submitted. The ministry notes that the previous referral from the social worker expired on June 26, 2020. CCSC sent the appellant an "unable to process" letter advising of the missing forms.
- On August 17, 2020, CCSC received a *Childcare Arrangement* form (CF2798) from a childcare centre stating that the start date for childcare is September 1, 2020, and the end date is June 30, 2021. The ministry noted that 2 other forms had not been received: the ACCB application form and the referral form from the social worker. The ministry noted that these forms are required to renew the ACCB.
- On August 27, 2020, CCSC sent the appellant an "unable to process" letter advising that the appellant was required to submit these 2 documents for the subsidy to be processed. In addition, the ministry sent an email to the appellant's social worker, advising of the missing forms. The ministry noted that no correspondence from either the appellant or social worker was received at CCSC. Specifically, no documents, telephone messages, faxes, or emails were received. The ministry subsequently closed the appellant's ACCB file for inactivity.
- On May 31, 2021, the appellant telephoned CCSC to inquire about the status of her subsidy from April 2020 to December 2020. The ministry advised the file was closed and the appellant was required to submit a CF2900 application form to have the file reopened.

The appellant stated that her childcare arrangement ended on December 31, 2020 and the childcare centre had not received the subsidy for the period April 2020 to December 2020. The appellant expressed that she is experiencing financial hardship and has not

been able to obtain a new childcare provider due to the debt owing to the childcare centre.

CCSC advised the appellant to submit an ACCB application via the online portal. The appellant requested a new application package that she could mail, including a blank application form (CC2900), ACCB *Childcare arrangement* form (CF2798), and a *Special needs* form (CF2951). The appellant requested CCSC to contact her new social worker. The ministry advised that the social worker can contact CCSC on the appellant's behalf.

- On May 31, 2021, CCSC received an email from the appellant's social worker advising that the appellant is "requesting back pay for previous months of care."
- On June 3, 2021, CCSC advised the social worker that the appellant's file required a renewal in March 2020 but a CF2900 application form was not received; the file was closed for inactivity; and the appellant is not eligible for the ACCB for the months of April to December 2020. CCSC advised that if the appellant requires current or future childcare, she needs to submit a new application to assess her eligibility for the ACCB.
- On December 7, 2021, CCSC received the appellant's new application form, CF2900 that was signed by the appellant and dated November 10, 2021. The appellant requested the subsidy to be backdated to April 2020 and attached an ACCB application form CF2900 dated January 2, 2020. CCSC noted that the January 2020 application form was not received until December 7, 2021.

The ministry explains that due to the file being closed and the length of time that had passed before the application was submitted to the ministry, CCSC relied on the most current information to assess the appellant's eligibility for a subsidy. The ministry notes that the appellant also attached a copy of the "unable to process" letter that CCSC had sent her on June 3, 2021, advising of the documents that are required to process the ACCB application.

- On December 20, 2021, the ministry sent the appellant a letter advising that she is eligible for the ACCB beginning November 1, 2021. The letter said that the appellant is not eligible for the subsidy for the period between April 1, 2020 and October 31, 2021 because she did not have an open file during that period.
- The reconsideration also indicated that beginning April 1, 2022, the Childcare Subsidy Program changed from the Ministry of Children and Family Development to the Ministry of Education and Childcare but no changes were made to the program or the Child Care Subsidy legislation.

2. A letter from CCSC dated December 20, 2021, advising the appellant she is not eligible for the ACCB from April 1, 2020 to October 31, 2021 because the ACCB may only be paid from the first day of the month in which the parent completes the application. The application was completed on November 10, 2021, authorizing the subsidy from November 1, 2021 forward. The letter says the appellant is responsible for the cost of any childcare prior to November 1, 2021. The appellant may request a reconsideration of this decision.

3. Letters from CCSC as follows:

- May 14, 2020, stating that the appellant's request for the ACCB cannot be processed until the appellant completes the application form (CF2900). The letter asks the appellant to contact her social worker to submit a CF2044 referral form to CCSC. A copy of the application form was enclosed.
- July 21, 2020: identical to the May 14, 2020 letter;
- August 27, 2020, identical to the May and July 2020 letters but specifying that CCSC requires an updated application form (CF2900) "to assess benefit for July 1, 2020 forward."
- June 3, 2021: identical to the August 27, 2020 letter.

4. A Request for Reconsideration (RFR), signed by the appellant on March 22, 2022, with a hand-written submission stating that the social worker did not send in the paper work on time, but the appellant was told to put her child in childcare. The appellant explained that her child needed to attend childcare to get support for a disability; the appellant was taking a program; and Covid (the pandemic) began. The appellant states she is receiving Disability and cannot afford to pay for anything.

The appellant submitted the following documents with the RFR:

5. An ACCB application form (CF2900) signed by the appellant on January 2, 2020, and received by CCSC on December 7, 2021. The appellant checked *yes* in Section 1 which asks if a ministry social worker "arranged or recommended your childcare." The appellant check marked that her reason for needing childcare (5 days per week) was because she was attending an employment program. Under *Comments*, the appellant wrote that the ministry worker "approved childcare via ministry social worker." Instructions at the bottom of the form explain how to submit the application to CCSC.

6. An ACCB application form (CF2900) signed by the appellant on November 10, 2021, and received by CCSC on December 7, 2021. The appellant checked *yes*, a ministry social worker arranged/recommended childcare. The reason for needing childcare was left blank as was the section for comments.

7. An ACCB *Childcare arrangement* form signed by a licensed childcare provider on November 10, 2021 and received by CCSC on December 7, 2021. The start date for the childcare is September 1, 2020, with the end date November 30, 2020. The monthly fee is \$320.

Evidence on appeal

Subsequent to the *Notice of Appeal*, the appellant submitted an email to the Tribunal which the panel considers to be her argument. In addition, the appellant submitted a letter from a ministry social worker dated June 8, 2022. The social worker states that the appellant requested (in a phone conversation) further information regarding the ministry's involvement regarding childcare for the period April 20, 2020 to October 31, 2021.

The social worker states that the ministry's assessment at that time was that childcare was in the child's best interest to build structure and stability. The social worker states that the Team Leader confirmed that another social worker who was working with the appellant during that period discussed the "ministry's perspective" with the appellant. The ministry's perspective at that time was that childcare would assist the appellant and her family to be well supported. The social worker indicates that if the appellant is seeking further information, she can make an *Access to information* request for her file.

Admissibility of additional documents

Under section 22(4) of the *Employment and Assistance Act* (EAA), 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. The ministry did not have any objections to the letter from the social worker. The panel admits the letter as evidence under section 22(4) of the EAA because the information from the social worker is relevant to the issues to be decided, providing background information in support of the appellant's request for the ACCB.

*Evidence at the hearing**Appellant*

The appellant explained the difficulty she had in communicating with her social worker. The ministry told her that she needed a form from the social worker but there was a lot of back and forth and it was very hard to get in touch with the social worker during the pandemic due to their backlog. The appellant did not always have the same social worker.

The appellant added that 2 different social workers said that the child was supposed to be in childcare for those dates (April 2020 – October 2021) and the childcare centre "kept putting in paper work" on the appellant's behalf. The appellant said the social workers told her to keep sending the child to childcare because "the childcare was approved."

In response to questions, the appellant said that the child was going to the childcare centre on and off during the pandemic (as things opened up). The childcare centre was not asking her to pay up front because the childcare was previously funded by the

ministry. But now that the appellant was found ineligible for the ACCB (from April 2020 – October 2021), she is being asked to pay the outstanding fees for that period.

In response to further questions, the appellant explained that the application form she signed in January 2020 was submitted late because she had to go through the social worker's Team Leader to "straighten things out." While the Team Leader did not say to the appellant that the social worker was at fault for not submitting the application on time, they said that the appellant should have had her childcare costs covered by the ministry during the April 2020 – October 2021 period.

The appellant explained that it was her understanding that the childcare centre faxed the application forms to CCSC, and CCSC "was supposed to get in touch with the social worker to confirm that [the child] is supposed to be in childcare." However, the social worker "did not tell CCSC that the child was eligible" so the appellant got a letter that said she was not eligible for the ministry subsidy.

The appellant said she followed up with the social worker (and Team Leader) instead of CCSC because she "was told to follow up with the social worker." The appellant noted that the letters from the ministry asked her to contact the social worker.

The appellant said that she only contacted CCSC after her new social worker tracked down the older application (CF2900 signed on January 2, 2020). The appellant explained that the social worker's involvement with her family has decreased over time; her child is "a support file" now and the appellant does not hear from the social worker unless she contacts them.

Ministry

In addition to argument (which the panel addresses in Part C – *Reasons*), the ministry clarified that it is not the ministry that is asking the appellant to repay anything. Rather, the ministry found the appellant ineligible for childcare payments for the April 2020 – November 2021 period.

The ministry explained that the reason it asks clients to re-apply for the subsidy rather than renew it, is because the recipient's circumstances may have changed. The ministry needs to re-assess eligibility so that the recipient is not faced with repaying the ministry if issued a subsidy for which they're not eligible.

The ministry said it is CCSC's role to assess the client's eligibility for the ACCB and make the payment; it is not the social worker's responsibility. The ministry said that CCSC is responsible for notifying the client on whether the application is approved and must provide reasons if the application is refused. The ministry explained that CCSC can request information from the applicant and if not received, the subsidy is denied and the file may be closed.

In response to questions, the ministry explained that if the child is in ministry care or involved with a social worker, the ACCB application would still be required. A social worker may or may not be involved with the family; not every applicant has a social worker.

The ministry said that as far they know, there is no separate childcare program that ministry social workers administer and provide payment for. The ministry did not have any file notes other than what is in the record and said they're not sure what the social worker said or did, or why the appellant was given certain information.

When asked if CCSC undertakes any follow up where there is no response from the client (after several "boiler plate" letters were sent), the ministry said they are not aware of any follow up in the appellant's case. However, the ministry's usual practice is to send letters by mail or through the online system.

Admissibility of oral evidence

The panel finds that the testimony provides detailed background information about the process the appellant went through to apply for the ACCB and the ministry's approach to determining eligibility. The panel finds the information is admissible under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which denied the appellant's request for a Child Care Subsidy for the period April 1, 2020 to October 31, 2021 pursuant to the CCSR sections 4 and 13 because the ACCB application was not received by CCSC until December 2021, is reasonably supported by the evidence and the legislation.

Appellant's Position

In the RFR submission the appellant argues that the debt to the childcare centre arose because the social worker put the appellant's case "on the back burner" and "never got back to me in time or sent in the paperwork." The appellant believes that "going back and forth and having a slow reaction from the social worker caused this mess." The appellant said that she "doesn't have money to pay for a social worker's slowness/mistakes."

The appellant argues that her appeal submission (June 8, 2022 letter from her new social worker) "proves that [child] needed that care." At the hearing, the appellant argued that "the letter shows that [child] was supposed to be in daycare under the ministry."

The appellant said she realizes the social worker was very backlogged with higher priority cases, but she understood that the subsidy was approved because the social worker told her "to keep sending [child] to care." The appellant argues that the social worker had approved the subsidy in the past, "they send out the info, and the childcare is approved." The appellant acknowledged that she as the parent had to sign the CF2900 application form

Ministry's Position

In the reconsideration decision the ministry argued that eligibility for the subsidy depends on when the application is completed as per section 4 of the CCSR, and that a new application was not completed until November 10, 2021 and not received by CCSC until December 7, 2021. Therefore, the ministry is unable to establish eligibility for the ACCB before the date that the most recent application was signed.

The ministry argued it was reasonable to close the appellant's previous subsidy file because the authorization had ended on March 31, 2020 and CCSC did not hear from the appellant (or the social worker) after sending several letters. 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 signed and the ministry applied the correct start date (November 1, 2021) based on the application signed by the appellant on November 10, 2021.

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 error in this case because the appellant was advised of the end date for the previous subsidy, and specifically told what forms were required to avoid a disruption in service.

At the hearing, the ministry argued that there may have been a miscommunication between the social worker and appellant, but the parent is still responsible for submitting the application form (CF2900). The ministry argued that CCSC, not the social worker, is responsible for processing the application, determining eligibility, and approving the payments where the recipient is eligible for the subsidy.

Analysis

Under section 4 of the *Child Care Subsidy Act*, the minister may pay child care subsidies where the requirements set out in the Regulations are met. Section 4(1) of the Child Care Subsidy Regulation lists specific eligibility requirements including the requirements to complete an application in the form prescribed by the minister and supply identity and other documents.

Section 13 of the CCSR governs the ministry's payment of the subsidy. Under subsection 13(1), the subsidy may be paid from the first day of the month in which the parent completes the application. Subsection 13(2) of the Regulation sets out an exception in the case of an administrative error. If an administrative error has been made, a childcare subsidy may be provided in the 30 days before the parent completed the application.

The specific issue to be determined is eligibility for the ACCB under section 13(1) of the Regulation for the 19-month period from April 1, 2020 - October 31, 2021. Eligibility for this period will depend on whether the appellant provided the ministry with an application in the form required by the minister in April 2020.

The appellant's evidence is that she did provide a renewal application (signed on January 2, 2020) but it was not received by CCSC until December 2021 "because the social worker didn't follow the proper process to submit the application on time." The appellant's evidence is that the childcare centre faxed the application to CCSC, but the social worker didn't contact CCSC to follow up and confirm that the child needed to attend childcare.

The ministry's evidence is that the appellant submitted two applications (form CF2900) that CCSC received on December 7, 2021. The ministry acknowledges that one of the applications was signed by the appellant on January 2, 2020 but maintains that this application cannot be assessed retroactively because the appellant's file was closed for inactivity after her previous subsidy ended on March 31, 2020. The ministry acknowledges that it received *Childcare arrangement* forms from the childcare centre in July and August 2020 but other forms that the ministry asked the appellant to submit (CF2900 application, and CF2044 referral form) were not received.

Panel's decision

The panel finds that the ministry was reasonable in not assessing the application that was signed on January 2, 2020, and received December 7, 2021, because the appellant's file was no longer open. The panel finds that the ministry was reasonable in closing the file for inactivity because CCSC sent the appellant letters in February and May 2020 advising that a new application was needed. The appellant was asked to complete a new application and provide a new referral form from the social worker because her subsidy was ending and the previous referral had expired.

The appellant was still eligible for the ACCB when she signed the January 2020 application because the previous subsidy did not end until March 31 of that year. Under sections 4(1) and 13(1) of the CCSR, the appellant was required to complete a new application in April 2020 in order for eligibility to be reassessed by CCSC so that the subsidy could continue from April 1, 2020 forward.

The letters from CCSC explain that the ACCB renewal could not be processed until CCSC received the required forms. The record shows that CCSC sent the appellant further letters in July and August 2020 advising of the missing forms. In August 2020, an email was also sent to the appellant's social worker regarding the missing forms. CCSC did not hear from the appellant or social worker and closed the file.

While the email to the social worker and the request for referral forms indicate the ministry was aware of the social worker's involvement, there is no indication that the ministry was expecting the social worker to apply for the subsidy on the appellant's behalf or determine the appellant's eligibility for the childcare payments. The CCSR makes it clear that it is the parent's responsibility to apply for the subsidy ("parent must complete an application in the form required by the minister").

In the appellant's circumstances "the form required by the minister" was the CF2900 application form as well as a referral form from a social worker (CF2044) recommending the childcare. The CF2900 requires the applicant parent's declaration and signature, and specifies where the form is to be sent.

There is no provision in the CCSR for a ministry social worker to apply for the subsidy on behalf of a custodial parent and determine eligibility. The letters to the appellant confirm that the reason the appellant was asked to contact the social worker was to obtain a referral form.

The appellant argues that the recent letter from the social worker (June 8, 2022) "approves" the subsidy from April 2020 forward. The letter demonstrates that childcare was in the best interest of the child and was required to support the family, but the letter falls short of confirming that CCSC, which is a separate department from the social worker, found the appellant eligible for the subsidy for that period.

The panel accepts that there was a miscommunication between the social worker and the appellant about what the referral means. The appellant clearly relied on the social worker and childcare centre to assist her with the ACCB application. The child was "approved" for

childcare in terms of the social worker's recommendation, but this did not mean that the ministry had found the appellant eligible for the subsidy. The letters that were sent to the appellant made it clear that a new application form was also required.

It is unfortunate that CCSC did not follow up with the appellant after several letters were sent with no response from the appellant or the social worker, or when a *Childcare arrangement* form was received from the childcare centre. However, the evidence does not indicate any policy requirement for further follow up.

The panel finds that the ministry advised the appellant of what forms were needed and the ministry was therefore reasonable to conclude that no administrative error was made. The panel acknowledges that the ministry could not make an exception in this case because the ministry does not have the authority to overturn legislation.

The panel is sympathetic to the appellant's circumstances but finds that the ministry's application of the legislation was reasonable. The appellant is eligible for the subsidy from November 1, 2021 forward but not eligible for the April 2020 – October 2021 time period because her file was already closed when an application for that time frame was submitted to CCSC.

Conclusion

Based on the information in its entirety including additional evidence that was admitted, the panel finds that the ministry's reconsideration decision, which determined that the appellant is not eligible for the ACCB for the period April 1, 2020 to October 31, 2021 is a reasonable application of the legislation. The panel confirms the ministry's reconsideration decision. The appellant is not successful on 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.

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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2022/06/21

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2022/06/21

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2022/06/21