

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated April 20, 2022, which denied the appellant's request for a Child Care Subsidy (CCS) for the period of June 1, 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 completed form until December 21, 2021.

Part D – Relevant Legislation

Child Care Subsidy Act (CCSA) – Sections 4 and 5

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

Part E – Summary of Facts

Evidence at Reconsideration

1. ACCB Application which was signed and dated December 21, 2021.
2. The appellant's BC identification card as well as her child's birth certificate.
3. ACCB Consent to Collect CRA Records form, dated December 12, 2021
4. ACCB Child Care Arrangement form which was signed and dated December 21, 2021.
5. ACCB Medical Condition form, which was signed and dated December 8, 2021, and indicated that the appellant has a permanent medical condition that started February 2, 2016.
6. ACCB Child Care Arrangement form which was signed and dated February 8, 2022.
7. A letter from the manager of the child care facility that the appellant's child attends. This letter is signed and dated April 5, 2022, and in part stated that:
 - The appellant was referred to the child care facility by a social worker after she developed PTSD.
 - Her child's attendance at daycare allows time for the appellant to work on her own mental health.
 - Said social worker was able to set up ACCB until May 2021.
 - The appellant was given the paperwork to apply for ACCB from June 2021 to December 2021 which was to be submitted by February 2021.
 - At this time, her child was diagnosed with Autism Spectrum Disorder (ASD) and a sleep disorder. The appellant's mental health declined significantly due to a lack of sleep and physical health deteriorated due to an ill-treated spider bite. These factors left her unable to deal with the ACCB paperwork.
 - The social worker who previously helped the appellant retired.
 - There was limited contact with the appellant over the summer months as the child's grandfather dropped-off and picked-up the child from daycare.
 - The appellant's child responds well to the routine and structure the daycare provides.
 - The appellant is unable to afford the balance owing or any further costs associated with her child's care.
8. A letter from a behavioural analyst, signed and dated March 28, 2022, which stated in part that:
 - While the child has been diagnosed with ASD and a sleep disorder that causes developmental delays, the family has also suffered major trauma which heavily impacts the ability to cope.
 - Part of the intensive plan of support is to have the child in daycare full time to aid with building the important skills of social development.
 - It has been shown that when the child attends daycare, the child can get proper sleep which impacts the child and family in positive ways.
 - The appellant has been so severely impacted that it is difficult for her to organize and complete all the multitudes of paperwork required to acquire the necessary supports.

- With the child in daycare, the appellant will be able get rest and time to attend her appointments and treatments, which will allow the family to recover and function.
9. A letter from the appellant's physician, signed and dated April 4, 2022, which stated in part that:
- The appellant suffers from number of challenging chronic mental health issues.
 - It is very important that her child continue to be provided daycare services, in order to permit the appellant to engage in the ongoing treatment of her conditions and the stability of her mental health.
 - If her child is no longer provided day-care services, her mental health is very likely to decline precipitously and severely.
10. ACCB Special Needs form for the appellant's child, which is signed and dated February 3, 2021, requesting additional support services until September 21, 2023 due to an impairment.
11. ACCB Special Needs form for the appellant's child, which is signed and dated January 20, 2022, requesting continued support until age 19.
12. ACCB Medical Condition form, which was signed and dated September 24, 2019, which indicated that the appellant has a temporary medical condition with a start date of March 29, 2019, and an 'unknown' end date.
13. ACCB Child Care Arrangement for which was signed and dated February 2, 2021.
14. Request for Reconsideration, signed and dated April 6, 2022, and stated, in part, the following about the appellant and her circumstances:
- She struggles with PTSD and has been under a physician's care for several years.
 - She was in counselling in 2019 and was referred to a number of resources/supports to help process the PTSD. However, Covid-19 struck and when things shut down her supports were also unavailable.
 - She suffered a spider bite which was not treated properly and the impact of this lingers.
 - Her child rarely sleeps at night and as a result she gets little rest when he is home. Therefore, she needs her child to be in child care so she can rest.
 - In December, the child was diagnosed with ASD and an extreme sleep disorder.
 - Her lack of sleep makes things less manageable with her child. Some days she cannot cope with the most minor tasks and the paperwork/forms have been overwhelming.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated April 29, 2022, which stated that the appellant suffered from mental health and family issues which prevented the ability to do any paperwork, and this was not considered by the ministry.

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

Information Submitted Prior to the Hearing

Prior to the hearing the appellant submitted a 19-pg submission prepared by her advocate. In this submission the appellant reiterates her mental health challenges and how they impacted her ability to submit an ACCB application by May 2021.

This information was not new as it mirrored the information on record at the time of the reconsideration.

This submission also included a legal argument reasoning why the ministry erred in its reconsideration decision. The arguments relevant to the issue hand are noted below in the 'Evidence at the Hearing' section of this decision.

Evidence at the Hearing

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

- Described her long history with anxiety and depression.
- She used medication that was prescribed by her psychiatrist. However, the psychiatrist abruptly left the practice and the appellant's new GP was reluctant about the appellant continuing with the prescribed medication. This created a greater sense of instability and was at around the time the ACCB application would have been required.
- Described the traumatic events of her partner's death which lead to her PTSD diagnosis.

The appellant's advocate argued, in part, the following on behalf of the appellant:

- The appellant completed an ACCB application in February 2021. This has been acknowledged by the fact that she received this benefit from February 2021-May 2021 and is evidence of her ongoing eligibility for the benefit and eligibility from June 2021-November 2021.
- The ministry's interpretation of the legislation was not reasonable, and a reasonable interpretation of the legislation would lead to a conclusion that the appellant was eligible for ACCB for the period of June 2021-November 2021.
- It is a fundamental principle of statutory interpretation that when the overall purpose of an Act is to make benefits available, a liberal interpretation of the provisions is necessary. Any ambiguity in a benefit-conferring statute should be resolved in favour of the claimant.
- The Act and Regulation do not contemplate an ACCB recipient having to repeatedly submit multiple applications. Nor does it contemplate that a recipient would need to confirm their continued eligibility or renew authorization through a new application. The ministry's direction that ACCB recipients must confirm their ongoing eligibility through re-submitting an application package is an administrative decision, not one necessitated by legislation. The Act and Regulation ask only for "an application", which the appellant already submitted in February 2021, and is evidence of her on-going eligibility.
- Section 13 allows the ministry to pay the child care subsidy from the first day of the month in which a parent completes 'an application' under section 4. The plain language interpretation of this provision is that the ministry may not backpay an applicant before the first day of the month in which the parent completed their initial application.
- However, once a parent has submitted the initial, originating application, they have completed 'an application'. Section 13 does not prohibit the ministry from back paying the child care subsidy for any intervening period between the parent's initial application

and any subsequent renewal of their authorization, even if the authorization lapses during this time.

- To monitor on-going eligibility through multiple applications is an administrative decision by the ministry which is not necessitated by the legislation.
- In its denial, the ministry has conflated the Act's statutory restrictions with the ministry's administrative requirements. This results in their erroneously interpreting section 13 as prohibiting the ministry from ever back-paying, even if the parent had already applied for the ACCB, been approved, continues to be eligible, and subsequently demonstrates their continuous eligibility.
- The ministry's overly restrictive interpretation of the legislation goes beyond the plain language meaning of the legislation.
- The appellant's failure to contemporaneously confirm her eligibility and keep her authorization active is best categorized as an oversight that was remedied once she retroactively confirmed her continued eligibility over the relevant time period.

At the hearing, the ministry relied on its reconsideration decision and added that :

- Section 5 of the EAR allows the ministry to make a determination of illegibility if an applicant fails to comply with its direction.
- The ministry stated that the appellant was advised via the portal on April 19, 2021 that her ACCB application was due to expire in May 2021.
- The ministry also stated that per ministry policy, an eligibility application is typically required annually. In this case, the licenced care facility can only take children up to age 36 months per the child care arrangement submitted in February 2021 and the appellant's child would have been 36 months old May 2021. Therefore, to prevent an overpayment, the ministry decided that the appellant's February 2021 ACCB application would only be valid until May 2021.

In response to the ministry's arguments (as listed below) the appellant's advocate argued the following:

- Section 5 of the EAR was not the basis of the ministry's decision and as a part of procedural fairness, the appellant has the right to know what the ministry relied on to make a decision against her. Also, section 5 is yet another example of the ministry's conflation of policy and legislation.
- Like section 5 of the EAR, the appellant's child's age was not argued in the reconsideration decision. On the child care arrangement form submitted February 2021, the care facility indicated that it is a licensed group child care facility and includes under 36 months, 30 months to school age, group multi-aged child care, and school age child care. The appellant's child has continued to be in the same facility but went from the toddler room to the day-care room at age 36 months.
- Due to her inability to manage computer related task, the appellant had accidentally created multiple accounts on the ministry's online portal and had difficulty accessing any of them. She did not receive the April 19, 2021 notification that her ACCB application was due to expire.

Admissibility of Additional Information

The ministry did not object to the admission of the information submitted prior to the hearing.

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 found that the ministry's statement that the ministry determined that to prevent an overpayment the appellant's February 2021 ACCB application would expire in May 2021 rather than the typical one-year period due to the age of her child and the care facility's perceived inability to care for older children, is admissible because the information allows for full and fair disclosure of all matters related to the issue on appeal.

The panel also determined that the appellant's 19-page submission that was prepared by her advocate is admissible because the information allows for full and fair disclosure of all matters related to the issue on appeal.

Finding of Facts

- The ministry and 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 evidence establishes that the appellant completed applications in the form specified by the ministry, and they were submitted on September 25, 2020, February 26, 2021 and December 21, 2021.
- Section 5 indicates that the ministry 'may' find the recipient ineligible if they do not comply with the ministry's direction.
- The appellant renewed her CCS via the online portal on February 26, 2021 and was informed that it would end on May 31, 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 ministry does not have the authority to overturn legislation; the purpose of a reconsideration is to verify that legislation has been applied correctly and consistently.

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 CCS for the period of June 1, 2021 to November 30, 2021 pursuant to the CCSR sections 4 and 13 because an ABBC application was not completed until December 21, 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 she was not well enough mentally and physical to meet the challenges of completing the necessary paperwork for the ACCB at the time it was necessary. She also argued that the ministry's interpretation of the legislation was overly restrictive and unreasonable.

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 an application was not completed until December 21, 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 first day of the month that the ACCB application was completed. 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.

Majority Decision

The purpose of the Ministry of Children and Family Development is to provide services that are accessible and inclusive. The Acts and Regulations make benefits available to those who need them and the ACCB is governed by the laws set out in the CCSA and CCSR. The majority panel recognizes that the ministry has the authority to create administrative measures, policies and processes to carry out the legislation. The majority panel also acknowledges that the ministry does not have the authority to override legislation. The majority panel also acknowledges that the evidence establishes that the appellant's child and the appellant need the benefit that the appellant requested.

The panel is not empowered to substitute its decision for that of the ministry but must assess whether the ministry's decision was within or outside the range of reasonableness.

Section 4 of the CCSR and 5 of the CCSA

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 evidence establishes that the appellant did complete an application in the form specified by the ministry in February 2021 and then again in December 2021. The February 2021 application was the basis for the appellant being approved for CCS for February 2021 through May 2021.

The appellant argued that the ministry's interpretation of the legislation is not reasonable by requiring applications subsequent to the February 2021 application to determine ongoing eligibility. The Act and Regulation do not contemplate an ACCB recipient having to repeatedly submit multiple applications. Nor does it contemplate that a recipient would need to confirm

their continued eligibility or renew authorization through a new application. The requirement of additional applications is an administrative decision by the ministry

The majority panel notes that in the reconsideration decision and at the hearing, the ministry stated that the February 2021 application expired in May 2021 and therefore eligibility for ACCB expired in May 2021. Prior to the expiration date, on April 19, 2021, the ministry's Child Care Service Centre sent the appellant a message notifying the appellant that the benefit plan was ending in approximately 30 days and of how to request continuation of the benefit.

The legislation, in its current form, does not prevent the ministry from having expiration dates on eligibility and it does not specify for how long eligibility is determined, as was the case in past legislation which set a 12-month expiration period. Therefore, the ministry is within its authority and the legislation to implement expiry dates which in turn create the need for subsequent applications to determine eligibility.

In this case, the appellant's child continued to attend the same care facility but went from the toddler room to the day-care room. The ministry explained that the May 2021 expiry date was set to prevent an overpayment and was determined by the child's age and whether the care facility could accommodate children of a certain age. At the hearing it appeared that the ministry misread the Child Care Arrangement form regarding the ages of children for whom care could be provided by the care facility. However, the majority panel notes that even though the appellant's child could, and did, continue to receive care at the same care facility, there is a distinction between children under 36 months and those over 36 months as is noted on the form. Moreover, this distinction is consistent with the Child Care Subsidy Regulation which indicates a significant reduction in the amount of CCS funding for children upon reaching 37 months of age. Additionally, the fact that the child was moved from one room of the care facility to another when they reached 36 months indicates to the majority panel that the age of the child is a consideration for the care provider. If a specific age poses a change in care, then pursuant to section 5 of the CCAA, the ministry must be informed of this change and the ministry has the legislative authority to specify the form in which this new information is supplied. Therefore, the majority panel finds that it was reasonable for the ministry to set an expiration date that corresponded with the child's age.

Though the majority panel is empathetic with the appellant's situation, it finds that the ministry did not misinterpret the legislation and was reasonable to implement an expiry date on the appellant's February 2021 ACCB application and therefore require a subsequent application to determine eligibility.

Section 13 of the CCSR

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. It also stipulates that if an administrative error has occurred, the CCS may be backdated 30 days.

The appellant argued that once a parent has submitted the initial, originating application, they have completed 'an application'. Section 13 does not prohibit the ministry from back paying the

child care subsidy for any intervening period between the parent's initial application and any subsequent renewal of their authorization, even if the authorization lapses during this time.

Section 13 of the CCSR specifically makes reference to section 4 of the same regulation. That is, CCS is paid from the first day of the month in which the parent completes an application under section 4. Section 4 sets out how one can become eligible for the CCS. As previously discussed, the majority panel found that the appellant's eligibility ceased in May 2021 and a new application was necessary.

Furthermore, though the appellant may not agree with the ministry's policies and procedures, there is no evidence that an administrative error on the part of the ministry occurred.

Dissenting Decision

There is no disputing the fact that the Act empowers the Ministry to establish procedures and enforce procedures. Even if the expiry date was created through a misinterpretation of the information on the application, it is within the power of the Ministry to impose it. It is also within the scope of their powers to terminate the file when the expiry date passes without a response.

It is my opinion that the Ministry misinterpreted the relevant legislation when they assumed that termination was the only option available. Section 5(3) states "If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may (a) declare the person ineligible for a childcare subsidy until the person complies, or"

In the Reconsideration Decision, the Ministry states: "The RO does not have the authority to overturn legislation; the purpose of a reconsideration is to verify that legislation has been applied correctly and consistently." In suggesting they have no choice the Ministry appears to equate the "may" to "will". However, Section 29 of the Interpretation Act says: "'may' is to be construed as permissive and empowering;" If it was meant to be imperative, either "must" or "shall" would have been used.

In fact, the legislation provides a second option that "may" be used. Section 5(4) states "For the purpose of auditing childcare subsidies, the minister may direct childcare providers to supply the minister with information about any childcare they provide that is subsidized under this Act."

When Ministry decided to terminate payments, and then the file, the original application was available, which showed the intent was to continue using the same childcare facility for the foreseeable future. It also stated that the appellant had a medical condition that interfered with her ability to care for her child, and that the child had special needs that would require support until at least September of 2023. The Ministry was also aware of the appellant's financial situation and knew that loss of the childcare subsidy would put a severe financial burden on someone who already had limited resources. When the appellant finally became aware that the childcare facility was not getting paid, she immediately, with assistance, submitted information that established that, had the file not been terminated, she would have been eligible throughout the entire period.

The Ministry sent the reminder that the application would expire to the portal. There is no evidence that the Ministry checked the portal to determine whether the appellant had accessed

it after the reminder was sent. Note that this is a portal set up by the Ministry, not a personal email account the client uses for normal purposes. Because management of this portal is managed under the Ministry's direction, they should have the ability to have this check performed.

There is no evidence that the Ministry checked with the childcare provider to see if the child was still attending their facility or to contact the appellant via that method.

Had the file not been terminated, the original application date would still be in effect and the appellant would have been eligible for the full period of coverage.

Given the financial impact loss of the subsidy can have on those who already have limited means, and given that many of the Ministry's clients often have limited ability to deal with administrative issues, it is my opinion that the Ministry decision was unreasonable in not selecting the second option and performing at least the two simple checks before terminating payments and the file.

Conclusion

Having considered all the evidence, the majority panel finds that the ministry's decision, which concluded that the appellant was not eligible for a childcare subsidy for the period of June 2021 to November 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 by majority, and the appellant is not successful at appeal.

The legislation states:

CCSA:

Childcare subsidies

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

Information and verification

- 5** (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

- (a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;
- (b) seek verification of any information supplied by a person referred to in paragraph (a);
- (c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
- (d) collect from a person information about another person if

- (i) the information relates to the application for or payment of a child care subsidy, and
- (ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

(3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may

- (a) declare the person ineligible for a child care subsidy until the person complies, or
- (b) reduce the person's child care subsidy.

(4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

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]

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

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)

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

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date 2022/06/03

Print Name

Wesley Nelson

Signature of Member

Date 2022/06/03

Print Name

Barbara Sharp

Signature of Member

Date 2022/06/03