

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated May 24, 2022, which denied the appellant's request for a Child Care Subsidy (CCS) for the period of September 1, 2020 to December 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 January 21, 2022.

Part D – Relevant Legislation

Child Care Subsidy Act (CCSA) – Section 4

Child Care Subsidy Regulation (CCSR) – Sections 4, 12 and 13

Part E – Summary of Facts**Evidence at Reconsideration**

1. ACCB application, signed and dated November 3, 2020.
2. ACCB Child Care Arrangement (CCA) form signed and dated October 29, 2020 by the child care provider (the facility) and November 3, 2020 by the appellant.
3. November 12, 2020 letter from the ministry to the appellant advising that her November 3, 2020 ACCB application was incomplete and she must submit the missing information regarding the ACCB CCA.
4. ACCB application, signed and dated January 21, 2022.
5. Request for Reconsideration (RFR) dated April 12, 2022 which in part included the following:
 - Screenshot of the 'Initial Registration' confirmation email regarding the November 3, 2020 ACCB application.
 - 'Online System Notification' dated November 3, 2020.
 - 'Missing Information Notification' dated November 12, 2020 [which was in the inbox of the appellant's online portal].
 - November 12, 2020 letter from the ministry [as described in the Missing Information Notification in bullet #3].
 - ACCB CCA form sections 1-2 only.
 - Screenshot of notification that the spouse must provide specific information towards the ACCB application. This document was labelled 'Triggering Language'.
 - 1-page letter which stated, in part, the following:
 - The appellant thought the November 3, 2020 application submission was successful and assumed the facility was receiving the credit directly.
 - The online application process did not make it clear when or how she would find out the outcome of the application or how much she would receive.
 - The facility completed the ACCB CCA form and the appellant assumed the form was completed and done so correctly.
 - It appears that in 2020 the ministry's online system did not email notifications and no one contacted her directly.
 - The appellant assumed she would not be eligible because she could not have the spouse portion of the application completed due to the abusive nature of that relationship.
6. ACCB CCA dated January 4, 2022 by the facility and dated January 3, 2021 by the appellant.
7. The appellant's identification.
8. RFR dated May 5, 2022 which included all of the information from the April 12, 2022 RFR plus the following:
 - 3-page letter from the appellant which adds more detail to her arguments presented in the April 12, 2022 RFR. It also included the following:
 - She was not notified that her November 3, 2020 application was missing information and there was no indication on the form that the date her child started attending the facility was a required field.
 - She received notification that her application was complete. Therefore, she did not know that information was missing from the application.

- There was no indication on the submission form or resulting communications that the appellant would have to log into My Family Services to check about updates on the application.
- On November 12, 2020 there was an email sent through the online My Family Services portal, but she did not receive notification of this.
- When using the online calculator in November 2020, the appellant was only eligible for \$24. The system does not instruct to enter income from the last income tax (CRA) when using the calculator – so eligibility was only for \$24. However, if it was clear to use CRA information from when she was on maternity leave the appellant would have been eligible for more.
- When submitting the application, it was also not indicated that after a period of time the application would just be closed, with no further attempt to contact the applicant. The appellant expected that as a base part of government services to people around the province who do not necessarily have access to internet in their home, that they would be contact via the contact method submitted, so by phone or email.
- It states in the regulation, that the applicant must be notified of the outcome (section 12). The appellant was NOT notified of the outcome in time to make adjustments to the application or resubmit.
- The appellant only found out that the application was denied in January 2022 when she resubmitted the application due to a rate change in the daycare.
- The appellant only received written confirmation that the November 3, 2020 application was denied on April 13, 2022.
- Receiving notice more than a year later, means that the appellant was not able to reapply for this period.
- Screenshot of ‘Summary of Complete Application’ [November 3, 2020]
- Screenshot of the online ‘ACCB calculator – the appellant noted that the application does not ask for the latest CRA information. If it did, for her it would mean that the eligibility amount would have been more as the previous year she was on maternity leave.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated June 9, 2022, which stated that the primary reason for the appeal is that she was not notified of the rejection of November 3, 2020 application and she did not receive notification that an email was sent to her My Family Services account.

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

Evidence Prior to the Hearing

Prior to the hearing the appellant submitted a 6-page submission which included screenshots of:

- The November 3, 2020 ACCB CCA section 3 – The appellant stated that this section does not indicate what information is required. The appellant argued that there is space for a start date and end date but an end date is not required for the completion of the form. There are no instructions or guidance is given as to what information is required.
- Screenshot of the ‘triggering language’ as described previously.

- Screenshot of the appellant's Gmail inbox showing notifications from the ministry's My Family Services portal. There is no notification from November 12, 2020 to advise the appellant to check her My Family Services account where the November 12, 2020 letter regarding the missing information on her ACCB application was posted.
- Screenshot of a November 3, 2020 email, titled 'document checklist', from the My Family Services inbox.
- An ex-parte order giving parental responsibility to the appellant.

Evidence at the Hearing

At the hearing, the appellant reiterated her arguments as stated in both RFR's, NOA and in the evidence submitted prior to the hearing. To this, the appellant added the following:

- Context of her struggles at the time and for this reason the application process was a challenge.
- With the requirement of spousal information, she assumed she did not qualify for CCS.
- The facility completed the CCA form and she completed the remaining application. She assumed the facility completed the form as required. There were no instructions given as to which date were necessary on the form.
- She did not understand how the process worked or how she would be paid.
- She did not know that she had to repeatedly check the status of her application.
- She thought the ministry would communicate with her via the methods she had indicated; that is phone and email.
- It was easy to supply the missing information so there is no reason she would not have if she was aware it was missing in the first place. The ministry did not do its due diligence in contacting her.
- Section 12 indicates that the ministry must notify of an approval or denial via mail. She did not receive the mailed letter.
- She was not told that her file would time out due to inactivity.
- She understands now that she does not qualify for CCS for the period of September - October 2020 because the application was submitted in November 2020.

When asked, the appellant stated the following:

- She did not receive the November 12, 2020 physical letter. Her address as stated on the letter is correct. She has an individual mail box for her apartment and only her and her mother had access to it.
- She only saw the contents of the November 12, 2020 letter when she logged on her My Family Services account in January 2022 to complete another ACCB application.
- To her knowledge no other mail was missing from this period (November 2020).
- Her child was in daycare at the facility from September 2020 to December 2021 and she paid the fees for this period.
- The facility receives a government subsidy and the parents then pay a reduced amount. The appellant thought that the subsidy the facility received was the ACCB she applied for with the ministry. She was unclear about the amount she would get and about the processes.

At the hearing, the ministry relied on its reconsideration decision. When questioned, the ministry stated the following:

- Due to inactivity, a file will automatically close. This closure is computer generated.
- Typically, when information is missing on an application, contact with applicants is made once via multiple means. In this case, a physical letter was mailed out and the same letter was sent to the appellant's My Family Services email. It is unknown if physical mail goes out by registered mail but likely it is sent by regular mail.
- The ministry cannot prove that a notification was sent to the appellant's Gmail account on November 12, 2020 or that the November 12, 2020 was mailed out. However, the procedure is that a letter via regular mail and an email to My Family Services account would be sent.
- Communication can be conducted via telephone but typically for missing information on an application, communication would be via physical mail and email to the My Family Services account.
- Circumstances such as abusive relationships can only be considered as extenuating circumstance if the legislation specifies so. In this case, the applicable legislation does not allow the ministry to consider extenuating circumstances.
- Emails and email notifications are automatic and do not need to be initiated by a worker.

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 that 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 contents of the submission by the appellant prior to the hearing are admissible because the information in the documents allow for full and fair disclose of all matters related to the issue on appeal. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance*.

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 September 1, 2020 to December 31, 2021 pursuant to the CCSR sections 4 and 13 because a complete ABBC application was not submitted until February 2, 2022, 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 the ministry failed to communicate that information was missing from her November 3, 2020 ACCB application as she did not receive a notification in her Gmail of an email sent to her My Family Services account and she did not receive a physical letter via mail. She also argued that she relied on the facility to properly complete the CCA form and had no reason to believe information was missing, she did not understand the process and clear instructions were not provided, and she was in personal distressed which caused further challenges.

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 the November 3, 2020 application was not complete as it was missing information. A completed application was not received until January 21, 2022. Therefore, the ministry is unable to establish eligibility for ACCB until this date. The ministry argued that it sent the appellant an email via the My Family Services portal and a mailed letter on November 12, 2020 to advise that information was missing from her ACCB application and that this information is required to process the application.

The ministry also argued that pursuant to section 13 of the CCSR, eligibility begins from the first day of the month that a ACCB completed application is 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.

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. The evidence establishes that the appellant submitted an incomplete application on November 3, 2020 and the appellant does not dispute this.

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. In this case, an application was submitted on November 3, 2020 but it was not a complete application. A completed application was submitted on January 21, 2022. The panel finds that the evidence demonstrates that the appellant's completed ACCB application was submitted on January 21, 2022, and that pursuant to the legislation the CCS would start in the month of January 2022.

Section 13 of the CCSR also stipulates that 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. The appellant has argued that she was not notified that information was missing from her November 3, 2020 application. As such she did not have the opportunity to rectify the situation and lost revenue. The appellant repeatedly stated that she did not understand the process and did not realize she needed to check on the status of her application. She also provided evidence that she did not receive a notification to her Gmail account to indicate that an email was sent to her My Family Services email account. She also argued that she did not receive a physical copy of the November 12, 2020 letter regarding the missing information. She argued that the ministry did not do its due diligence to communicate with her.

The evidence demonstrates an email was sent to the appellant's My Family Services email account on November 12, 2020. Though it cannot prove it over 1.5 years later, the ministry argued that a letter advising the appellant that her November 3, 2020 application was incomplete and identifying the missing items was sent on November 12, 2020. The ministry argued that notifications are computer generated and it is procedure to mail out physical letters when information is missing on applications.

The panel finds that given the fact that an email was sent to the appellant's account on November 12, 2020 to advise her that information was missing on her November 3, 2020 ACCB application, an administrative error did not occur.

The appellant has argued that the ministry's application process, calculator tool and online system were confusing to use, did not provide clear instructions and were in part to blame for her confusion. The panel finds that the appellant's concerns are related to the ministry's procedures and processes and the panel does not have the jurisdiction to make a finding of reasonableness on such matters.

Section 12 of the CCSR stipulates that the minister must notify the applicant as to whether or not the application is approved. If the application is not approved, the notification must be in writing and must include the minister's reason for refusing to pay a child care subsidy. The appellant argued that she was not notified in writing. The panel finds that section 12 is not applicable because in this case a denial or acceptance decision was not made regarding the appellant's November 3, 2020 ACCB application.

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, 2020 to December 31, 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.

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) Repealed. [B.C. Reg. 2018]

Applicant must be notified of outcome

- 12** (1) The minister must notify the applicant as to whether or not the application is approved.
- (2) If the application is not approved, the notification must be in writing and must include the minister's reason for refusing to pay a child care subsidy.

Will a subsidy be paid for child care provided before completion of the application?

- 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.

2022-0122

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: 2022/07/07

Print Name

David Handelman

Signature of Member

Date: 2022/07/07

Print Name

Robert Kelly

Signature of Member

Date: 2022/07/07