

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Education and Child Care (the “Ministry”) reconsideration decision, dated August 2, 2022 (the “Reconsideration”), which concluded that the Appellant was not eligible for the Affordable Child Care Benefit (the “ACCB”) for the period between September 1, 2019 and February 28, 2022. The Ministry’s reasons were the Appellant had not complied with a request for information pursuant to section 5 of the *Child Care Subsidy Act* (“CCSA”) and had not completed an application for the ACCB with all required information in it, pursuant to section 4 of the *Child Care Subsidy Regulation* (“CCSR”) after the Appellant’s previous authorization for the ACCB had expired on August 31, 2019.

Part D – Relevant Legislation

Child Care Subsidy Act (“CCSA”)- section 5
CCSR- section 4

Part E – Summary of Facts

The information before the Ministry at the time of the Reconsideration included the following:

- Letter from the Child Care Services Centre to the Appellant, dated March 3, 2022, confirming that it was unable to process the Appellant’s request for the ACCB because of missing information on the application form, including a signed date from the current care provider and a wet signature or stamp from the Authorize Profession Special Needs form;
- Letter from the Child Care Services Centre to the Appellant, dated June 26, 2020, confirming that it was unable to process the Appellant’s request for ACCB because it did not have a referral form from the Appellant’s social worker;
- Letter from the Child Care Services Centre to the Appellant, dated March 16, 2020, confirming that it was unable to process the Appellant’s request for ACCB because it did not have a referral form from the Appellant’s social worker;
- Letter from the Child Care Services Centre to the Appellant, dated September 10, 2019 (the “September 10, 2019 Letter”), confirming that it had authorized the ACCB but required confirmation of information on the Appellant’s file (specifically, that the Appellant have the child care provider contact the Ministry) and that the Appellant needed to provide such information to avoid an overpayment and/or cancellation of the ACCB;
- The Appellant’s ACCB application, dated February 24, 2022;
- Letter from the Child Care Services Centre to the Appellant, dated April 14, 2022, confirming that it had determined that the Appellant was not eligible for the ACCB between September 1, 2019 and February 28, 2022; and
- The Appellant’s Request for Reconsideration, dated July 11, 2022 (the “RFR”), which included a handwritten note from the Appellant setting out the following:
 - The Appellant had tried to contact the social worker at the end of 2019 to submit a referral, as had been done for the previous ten years in which the Appellant had received the ACCB;
 - The Appellant was advised at that time that a new social worker had been appointed and the Appellant could not contact the social worker;
 - The Appellant’s child’s mental health deteriorated in 2020 and 2021 and the Appellant was required to call the police on several occasions;
 - During episodes involving the Appellant’s son, electronics have frequently been damaged, disconnecting the Appellant from the internet; and
 - The Appellant’s financial circumstances have worsened as a result of not receiving the ACCB and having to live on income assistance only.

At the hearing of the Appeal, the Appellant referred to the letter included with the RFR and advised that all people have unique situations. The Appellant described her divorce and the financial struggles she encountered thereafter as a result of not being able to obtain any support from her spouse.

The Appellant noted that she has always had the same child care worker for her son and that the child care provider for the period in which the Ministry had authorized child care from September 1, 2019 to March 31, 2020 was the same child care provider she had always used.

The Appellant acknowledged receipt of the September 10, 2019 Letter but did not recall receiving the other letters but confirmed that they were sent to the correct address. The Appellant stated that she called a social worker after receiving the September 10, 2019 letter but was also dealing with other issues at that time, including recovery from injuries sustained in a motor vehicle accident. In addition to dealing with the injuries from the accident, the Appellant advised that her child had become quite aggressive, which also impacted her ability to deal with the applications for child care.

The Appellant confirmed having received the ACCB in the past and having had to seek a new authorization each year to continue to be eligible for it. She advised that, in the past, there had been occasions where the application had not been completed but that she would then fill out the necessary information and provide it. The Appellant stated that contacting the social worker in the period after September 1, 2019 was made more difficult for a number of reasons, including the change in social workers, her son's aggressiveness, and her own recovery from injuries sustained in the motor vehicle accident. The Appellant stated that she had looked after her child herself during the period of the pandemic.

The Ministry advised that the ACCB for the Appellant was approved for the period from September 1, 2019 to March 31, 2020 but was not paid as a result of the Ministry requesting confirmation from the child care provider after a letter sent to the child care provider was returned to the Ministry. Despite sending out the September 10, 2019 Letter to the Appellant, the Ministry did not hear from the child care provider and did not pay the ACCB as a result of not having had confirmation from the child care provider that ongoing child care was being provided.

The Ministry confirmed that between April 1, 2020 and February 28, 2022, the Appellant's application for the ACCB was not confirmed because the Appellant had not provided the required referral from the social worker, the CF2044. The CF2044 was eventually sent to the Ministry on March 11, 2022, according to the timeline set out in the Reconsideration.

The Ministry also stated that it had determined that the non-payment of the ACCB was not due to an administrative error. When asked, the Ministry representative could not say whether it was standard practice for the Ministry to contact a child care provider but said that the letter sent to the provider and later returned was likely an information letter advising that the ACCB had been approved and indicating how to apply for payment for child care services rendered. Nevertheless, the return of that letter is what triggered the Ministry to request that the child care provider contact the Ministry to provide an update for the child care provider's contact information.

Finally, the Ministry stated that its position was that none of the non-payments were the result of an administrative error on the part of the Ministry and, as such, section 13(2) was not applicable to the Appellant.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for the ACCB between September 1, 2019 and February 28, 2022 because the Appellant had not complied with a request for information from the Ministry, pursuant to section 5 of the CCSA and had not completed an application for the ACCB with all required information in it, pursuant to section 4 of the CCSR after the Appellant's previous authorization for the ACCB had expired on August 31, 2019.

Panel Decision

In this case, although the period for which the Appellant was denied the ACCB covered from September 1, 2019 to February 28, 2022, the reasons for the denial were different for the period between September 1, 2019 and March 31, 2020 and the period from April 2, 2020 to February 28, 2022.

In the first period, the Appellant had been approved by the Ministry for the ACCB but the ACCB was never paid because the Ministry had made a request for the child care provider to provide updated contact details, possibly (although it's not clear) pursuant to section 5 of the CCSA. That information was never provided to the Ministry.

The Appellant confirmed having received the September 10, 2019 Letter, which specifically requested that the Appellant have the child care provider contact the Ministry to provide contact details as a letter from the Ministry to the child care provider had been returned to the Ministry. Although the Appellant provided a number of possible explanations as to why this was not done, section 5 of the CCSA specifically permits the Ministry to:

- 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;
- seek verification of any information supplied by a person referred to in paragraph (a);
- direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
- collect from a person information about another person if
 - the information relates to the application for or payment of a child care subsidy, and
 - the minister has not solicited the information from the person who provides it.

for the purposes of determining or auditing eligibility for the CCSA. Where a person fails to comply with the direction "to supply the minister with information within the time and in the manner specified by the minister" or "to supply verification of any information supplied by that person or another person", the Ministry has the authority to declare the person ineligible for the ACCB or to reduce the person's ACCB.

The Ministry had the statutory authority to not pay the ACCB in the circumstances and, in view of the Ministry's notification to the Appellant that it required the child care provider to contact it, failing which the Appellant might lose the ACCB, the panel finds that the Ministry's decision to

not pay the ACCB to the Appellant for the period between September 1, 2019 and February 28, 2022 was a reasonable application of the discretion afforded to it under section 5 of the CCSA.

For the second period of time at issue, to February 28, 2022, the Ministry did not approve of the Appellant's application for the ACCB (the "2020 Application") at all. In that period, the Reconsideration Decision noted that the Appellant had not submitted a referral form from a social worker, as required, pursuant to Ministry's application form.

Section 4(1) of the CCSR sets out that, to be eligible for the ACCB, an applicant must complete an application *in the form prescribed by the minister* (emphasis added). The Reconsideration references a number of components to that application, including the referral from a social worker. Although the Appellant stated that numerous attempts were made to contact the social worker, the Appellant could not say that she did not receive any of the letters mailed to her from the Ministry which identified shortcomings with the 2020 Application but did confirm that those letters were sent to the correct address. The Appellant also confirmed her familiarity with the process for applying for the ACCB, having been in receipt of it for approximately ten years prior to 2019 and having had to re-apply each year for it. In view of these factors, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for the ACCB between April 1, 2020 and February 28, 2022.

Finally, the panel finds that the Ministry was reasonable in its determination that section 13(2) of the CCSR was not applicable to the Appellant's circumstances. While this section substantially restricts the amount the Ministry may retroactively pay to an applicant for the ACCB in the case of an administrative error, it is difficult to see how the failure of the child care provider to contact the Ministry to provide updated contact information or the Appellant's failure to complete an application in the form prescribed by the Ministry could be an administrative error on the Ministry's part.

The Appellant is not successful in this appeal.

Relevant Legislation

Section 5 of the CCSA permits the government to pay child care subsidies to persons who meet the requirements of the CCSR:

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.

Section 4 of the CCSR sets out the procedures for applying for a child care subsidy:

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 the parent's spouse, if any, 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. 84/2016, s. 2.]

Section 13 of the CCSR allows the Ministry to make retroactive payments of the ACCB in limited circumstances:

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.

Appeal Number 2022-0185

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
Adam Shee

Signature of Chair

Date (Year/Month/Day)
2022/September/7

Print Name
Carla Tibbo

Signature of Member

Date (Year/Month/Day)
2022/September/8

Print Name
Daniel Chow

Signature of Member

Date (Year/Month/Day)
2022/September/7