

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Education and Childcare (“ministry”) reconsideration decision dated September 20, 2022. The ministry found that the appellant was not eligible for the Affordable Child Care Benefit (“ACCB”) for the period between May 17 and June 30, 2022, because under the Child Care Subsidy Regulation (“CCS Regulation”) the benefit may only be paid from the first day of the month in which the parent completes the application. The ministry found that the appellant did not submit a completed ACCB application until July 21, 2022. The ministry found that the appellant was not eligible for a backdated childcare subsidy because the ministry did not make an administrative error.

Part D – Relevant Legislation

Child Care Subsidy Act – section 4

Child Care Subsidy Regulation – CCSR – sections 4 and 13

The full text of the legislation is in the Schedule at the end of the 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:

- on July 21, 2022, the Child Care Service Centre ("CCSC") received that appellant's ACCB application, form CF2900 signed and dated on July 21, 2022;
- on July 21, 2022, the CCSC found the appellant eligible for a subsidy and issued a *Benefit Plan* for the period beginning July 1, 2022;
- on August 11, 2022, the appellant called the CCSC to inquire how the start date of the benefit was determined. The CCSC explained the details of the *Benefit Plan*;
- on August 11, 2022, the appellant sent a message to the CCSC, via her self-serve account, stating that her child has been in daycare since mid-May 2022 and she submitted forms for the subsidy on the child's first day of attendance. The appellant stated that the daycare never filled out their portion of the application until July 2022. The appellant stated that the daycare made a mistake and she was told by Licensing that she needed to make a complaint with the "Child Care operating program" because Licensing typically deals with health and safety matters.
- on August 16, 2022, the appellant called the CCSC to inquire about backdating the subsidy to the start date of childcare on May 17, 2022. The appellant said that she was misinformed by the care provider on how to submit an ACCB application. The appellant said that she expected to be eligible for the subsidy when the childcare arrangement began. The CCSC explained in detail how eligibility is assessed; how the start date for new applicants is determined; and the policy on backdating the subsidy. The appellant requested to speak to a supervisor.
- on August 24, 2022, the CCSC sent the appellant a message advising that the benefit can only start in July 2022 because that is when the ACCB application was signed and dated.
- on August 24, 2022, the appellant sent a message to the CCSC indicating that the daycare spoke to the subsidy branch who advised that the appellant should submit a Request for Reconsideration ("RFR"). The appellant stated that the daycare had called the subsidy branch to get information prior to submitting applications for parents, and was given incorrect information by the subsidy branch representative;
- on September 1, 2022, the ministry advised the appellant by letter, that she is not eligible for the ACCB for the period between May 17 and June 30, 2022. The ministry advised that the appellant is only eligible for the benefit from July 1, 2022; and is responsible for the costs of any childcare that was provided before that date. The CCSC contacted the appellant to explain the reconsideration process.
- on September 2, 2022, the appellant submitted an RFR to the CCSC with attached submissions. The RFR was received at the *Reconsideration, Litigation and Administrative*

Fairness branch of the ministry on September 12, 2022;

- on September 20, 2022, the ministry completed its review of the RFR and advised the appellant that she was not eligible for the subsidy for May 17-June 30, 2022.

2. An RFR signed by the appellant on September 2, 2020 [*sic*2022]. The appellant included a hand-written submission; a letter from the daycare; copies of email correspondence between the appellant and the daycare; a screenshot of BC Laws with section 13(2) of the CCSR circled; and a screenshot of 2 messages from the appellant's self-serve account:

- in the hand-written submission the appellant states her argument for the reconsideration and says that the daycare received incorrect information from the subsidy branch that was passed along to parents. The appellant states that she created the application for the subsidy in May 2022;
- in a letter to the appellant [undated], the daycare states that they were advised by the government that parents need to request a reconsideration on the backdating of the subsidy. The letter states that as a new daycare that is operated by a volunteer board, they misunderstood the process and were initially given incorrect information that they passed onto parents. Specifically, they advised parents to wait to apply for the subsidy. The letter states that the daycare now understands that the subsidy applications should have been submitted first;
- an email from the appellant dated August 16, 2022, addressed to a CCSC agent, states that she was advised by the daycare that they were sending ACCB forms with their portion filled out. The appellant attached 2 messages from *My Family Services* dated May 1, and May 15, 2022. The messages confirm that the appellant has successfully registered for a self-serve account and that her application for funding is incomplete. The appellant is given 60 days to complete her request for funding; otherwise, she may be required to complete a new application.

The appellant explains to the CCSC agent that she did not realize there was any issue when she saw that the application was incomplete. The appellant says that she realized something was not right in mid-July when she received forms and was told to re-do and submit her application for the subsidy because the application from May had expired.

- Email correspondence between the appellant and the daycare dated July 21 and 22, 2022, offers an explanation for why the daycare did not submit the application in May. The daycare states that in order for the ACCB to be approved, "all of our other subsidy applications had to be completed and approved (including the CCFRI) leaving us being officially approved 10 days ago."

The daycare states that at the time of registration, they had submitted the initial

application for the ACCB and were awaiting approval. However, the application process took them more time than expected "and over the 60 days" [that the appellant was given to complete her application for funding]. The daycare states that "after approval, the facility is then required to complete a section, and then give it to the parent for completion; which was what we had to ask parents to re-submit a few days ago."

The appellant states that she was surprised to get the signed form back "two days ago...but with my portion blank." The appellant says she was under the impression that when she completed her portion of the application at the time she registered her child for daycare, "that the daycare portion was then filled out and sent off and subject to approval."

The daycare states that they were not able to update the appellant before she made a payment for August 2022. The daycare indicates that they are "now an approved CCFRI facility." The daycare indicates that the appellant's confirmed full-time childcare rate is \$950.

3. An ACCB application form (CF2900) signed by the appellant on July 21, 2022, indicating that she requires licensed full-time group care for her child because both parents are working full-time 5 days per week. The appellant signed the declaration indicating, among other things, that she understands that the benefit "may be paid from the first day of the month in which the application is completed, or the date child care begins, whichever is later. I am responsible for childcare fees prior to this date." Instructions on the form explain how to submit the application to the CCSC.

Additional evidence at the hearing

With the consent of both parties the appeal was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* ("EAA"). Both parties provided written submissions which the panel accepts as argument. The submissions also contain additional evidence requiring an admissibility determination by the panel under section 22(4) of the EAA.

Appellant

Subsequent to the reconsideration decision the appellant submitted a letter from the daycare (undated), received by the Tribunal on October 18, 2022. The letter explains that a society was recently created by local volunteers to open the daycare. The daycare was licensed and opened on May 16, 2022. The appellant's child started attending the daycare on May 17, 2022.

The letter explains that the daycare's license was issued effective May 1, 2022, at which time they had to submit an application "to CCOF and CCFRI." The daycare received their "CCOF/CCRI agreement" in late June, backdated to May 2022. The daycare then completed "our ACCB submissions by mid-July 2022."

The letter states that the daycare was advised "that the subsidy would be backdated for parents and to wait to submit the ACCB Child Care Arrangement forms until we were approved, which was July 2022." The daycare explains that they understood the instructions from the CCSC "to mean that the full application, ourselves, and the parents, should wait until we had all of the approvals."

The letter notes that the ACCB *Child Care Arrangement* form states that "this form must be submitted with an ACCB application form (CF2900) to apply for benefits." The daycare states that "this encouraged our belief that both applications were to await approvals."

The letter states that once the daycare had everything in place, "we submitted the *Child Care Arrangement* forms for our children and advised the parents to complete and submit their parts as well." When the applications were approved, effective July 1, 2022, the daycare called the CCSC "and was advised to tell parents to appeal, explaining [the daycare's] misunderstanding." The daycare explains that the error they made in advising parents was inadvertent as the volunteers had not been through the process before.

Admissibility

The panel finds that the new letter from the daycare provides additional detail about the information it gave to parents and what understanding the daycare had as a new facility with regard to the approval process. The panel admits the letter under section 24(2) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Ministry

In a letter to the Tribunal dated October 21, 2022, the ministry states that it has reviewed the appellant's submission and relies on the reconsideration decision as the ministry's written submission on appeal. In addition to argument, the ministry explains that an application for the ACCB is completed by the parent, not the daycare provider.

The ministry states that the daycare provider is independent of the CCSC, and that if clients need information about the subsidy application, they should contact the CCSC before applying for the subsidy. The ministry notes that the CCSC provides information to clients and daycare providers

on a daily basis and is familiar with the procedures and the legislation for applying for a subsidy, "including new daycare facilities in the process of obtaining their agreements."

The ministry explains that the *Affordable Child Care Benefit Arrangement* form (CF2798) is not an application form, "but rather a consent form provided by the daycare outlining the care arrangement between the parent and the care provider." The ministry explains that to be eligible for the ACCB, "a parent is required to submit to the ministry an ACCB application, CF2900" which is assessed per the date it is submitted in accordance with section 13(1) of the CCS Regulation.

Admissibility

The panel finds that the submission from the ministry provides additional detail about the ACCB application process including which forms are required and the role of the CCSC. The panel admits the submission under section 24(2) 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 that found the appellant ineligible for the ACCB for the period between May 17 and June 30, 2022, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the appellant is only eligible for the ACCB from July 1, 2022 and is not eligible for a backdated childcare subsidy because there was no administrative error on the part of the ministry.

Arguments***Appellant***

The appellant's position is that she relied on incorrect information from the daycare to apply for the ACCB and that she should be eligible for a backdated subsidy because the daycare made an administrative error based on information they received from the subsidy branch.

In her *Notice of Appeal*, the appellant states that she disagrees with the reconsideration decision because the subsidy branch told the daycare how to proceed. The appellant argues "that it is indeed an administrative error since they gave our daycare incorrect information."

In her communications with the CCSC, the appellant submits that she was unfairly penalized through the mistake by the care provider because she thought she would be eligible for the subsidy when the care arrangement began. The appellant argues that based on section 13(2) of the CCS Regulation, "there should be no issue paying [the appellant] back for June, since this was an administrative error on the daycare's part." The appellant submits that the screenshots of communications from *My Family Services* in her self-serve account, are evidence that she created her application for the ACCB back in May 2022.

Ministry

The ministry's position is that the appellant is not eligible for the ACCB for May-June 2022 because a complete ACCB application was not submitted until July 21, 2022. The ministry argues that the appellant is only eligible for the subsidy for the period starting July 1, 2022, which is the month in which the application was completed in accordance with section 13(1) of the CCS Regulation.

In the reconsideration decision, the ministry states that the role of the reconsideration officer is to determine if the CCSA and the CCS Regulation have been applied correctly and consistently. The ministry states that the reconsideration officer does not have the authority to overturn legislation.

The ministry's position is that the appellant is not eligible for a backdated subsidy under section 13(2) of the CCS Regulation because there was no administrative error on the part of the ministry. In the reconsideration decision, the ministry argues that the intent of section 13(2) is "to ensure that the ministry follows procedures to deliver administratively fair service to an applicant in accordance with the legislation."

The ministry argues that "the delivery of information by the daycare provider to the applicant, including misinformation about how to apply for subsidy, is outside of the scope of the CCS Regulation section 13(2)" because the daycare provider is independent of the ministry. The ministry notes that the government website for the ACCB explains the procedures and forms that are required for the subsidy application.

The ministry further argues that it did not make an administrative error because the CCSC provided the appellant with support in a timely manner via telephone and through the appellant's self-serve account. The ministry argues that the CCSC would have given the daycare accurate information about the ACCB because the CCSC provides information to childcare providers on a regular basis. The ministry submits that the CCSC applied the correct start date to the benefit in accordance with section 13(1) of the CCS Regulation.

In the appeal submission, the ministry argues that it is the client's responsibility to contact the ministry to receive information about the application process because the ACCB application is completed by the parent, not the daycare provider. The ministry argues that if the appellant had contacted the CCSC before applying for the subsidy, she "would have been advised of the proper procedures for the application of the benefit, and the process for retroactively paying subsidy in the event an ACCB *Child Care Arrangement* form, CF2798 could not be submitted at the time of applying."

The ministry has concluded that "the error occurred in the service provider's understanding of the procedures to apply for the subsidy." The ministry argues that it was "not an error on the part of the ministry advising of incorrect information."

Legislative requirements

Under section 4 of the *Child Care Subsidy Act*, the minister may pay childcare subsidies where the requirements set out in the Regulations are met. Section 4(1) of the CCS Regulation lists specific eligibility requirements including the requirement 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 section 13(1), the

subsidy may be paid from the first day of the month in which the parent completes the application. In accordance with section 13(1), the ACCB application would need to be completed by the appellant in May 2022 to be eligible for the period between May 17 and June 30, 2022.

Section 13(2) of the Regulation sets out an exception in the case of an administrative error. If an administrative error has been made, the minister has a limited discretion to pay a childcare subsidy for childcare that was provided in the 30 days before the parent completes the ACCB application. This means that if an administrative error was confirmed on the evidence, the appellant could be eligible for a backdated subsidy for the month of June 2022.

The panel notes that “administrative error” is not defined in the Child Care Subsidy legislation, nor does section 13(2) specifically state that an administrative error is one that is made by the ministry. The appellant submits that section 13(2) can include an administrative error by the daycare, while the ministry maintains that the backdated subsidy under section 13(2) is only available for a ministry error.

Panel’s decision

CCSR section 13(1)

The panel finds that the reconsideration is a reasonable application of the legislation. The ministry was reasonable to find that the appellant is not eligible for the ACCB for May and June 2022 because the CF2900 application form was not completed until July 21, 2022, and under section 13(1) of the CCSR, the subsidy is payable from the first day of the month in which the parent completes the application.

The appellant’s evidence is that she started the application process in May 2022 and was relying on the daycare to submit her application form along with “their portion of the application” [*Child Care Arrangement* form CF2798]. The daycare did not submit the appellant’s CF2900 form in May because they were waiting for final approvals to operate as a newly licensed childcare centre. The appellant did not submit the CF2900 application to the ministry on her own initiative in May because it was her understanding that the daycare had submitted the form on her behalf.

The appellant did not submit a CF2900 form until July 21, 2022, upon being advised that the application she had begun in May had expired for lack of completeness. The panel therefore finds that it was reasonable for the ministry to pay the subsidy from July 1, 2022 forward in accordance with section 13(1) of the CCSR.

CCSR (section 13(2))

The panel finds that the ministry was reasonable to conclude that the appellant was not eligible for a backdated subsidy based on administrative error. The letters from the daycare indicate that they acknowledge giving the appellant incorrect information about when the CF2900 form was due for the subsidy to be paid from the first month that the child began attending the centre. The panel finds that the ministry's interpretation of section 13(2) as applying to administrative errors by the ministry is a reasonable application of the legislation.

Both the appellant and the ministry accept that the daycare provided inaccurate information to the appellant about the ACCB application procedures, but the appellant said that it was the ministry that gave the daycare incorrect information that was passed onto parents. The ministry argued that the CCSC provides daycare providers with information on a regular basis and would therefore have given the daycare accurate information about the ACCB.

The panel finds that it is more likely that the CCSC gave the daycare correct information because the CCSC answers many inquiries on behalf of the ministry and would be familiar with the application requirements. The ministry noted that the government website for the ACCB explains the procedures and forms that are required for the subsidy application. The record indicates that the CCSC communicated with the appellant in a timely manner via telephone and messages to the appellant's self serve account. Based on the totality of evidence, the panel finds that the ministry did not make an administrative error under section 13(2) of the CCSR.

The rules of statutory interpretation hold that the interpretation of a specific section of legislation cannot be separated from the broader purpose or objective of the legislation. The plain meaning (dictionary definition) of "administrative" and "error" indicates a mistake that relates to the operation of an organization. The *Child Care Subsidy Act* empowers the minister to pay childcare subsidies for various purposes including improving access to affordable childcare and facilitating the operation of a childcare centre. The Act also gives the minister the authority to specify the application forms to be used and to delegate functions to organizations such as the CCSC.

The CCSR describes, among other things, the types of childcare that can be subsidized as well as the application requirements. Under the Act and the Regulation, the ministry is responsible for administering the childcare scheme.

When considered in the broader statutory context, the panel finds that it was reasonable for the ministry to interpret section 13(2) of the CCSR as referring to errors made by the ministry or their delegated staff in the administration of the Act and Regulation, rather than errors made by others in providing childcare services. In the panel's view, an error made by a third party such as the daycare would be outside the minister's control and beyond the scope of the childcare subsidy legislation which empowers the minister, not the daycare, to regulate the ACCB.

Conclusion

The panel finds that the reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant because the ministry did not receive a completed childcare subsidy application until July 2022 and the ministry did not make an administrative error in providing information about the ACCB or processing the appellant's application. The panel confirms the reconsideration decision. The appellant is not successful with her appeal.

Schedule – Relevant Legislation***Child Care Subsidy Act*****Child care subsidies**

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

Child Care Subsidy Regulation**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.

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.

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)

2022/11/22

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2022/11/22

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2022/11/22