

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 29, 2022, which determined that the appellant’s request for reconsideration regarding their eligibility for the Affordable Child Care Benefit (ACCB) was not granted as the request exceeded the legislated time limits permitted to submit a Request for Reconsideration.

Specifically, the minister found the appellant failed to deliver a completed Child Care Subsidy Request for Reconsideration to the ministry within the legislated 20 business days time-limit mandated by Section 17(4) of the Child Care Subsidy Regulation. Therefore, no reconsideration would be conducted.

**Part D – Relevant Legislation**

Child Care Subsidy Act- Section 6  
Child Care Subsidy Regulation- Section 17

**Part E – Summary of Facts****Summary of key dates:**

- November 2, 2021- the appellant submitted an Affordable Child Care Benefit Application, CF2900 to the Child Care Service Centre.
- November 22, 2021- a review was conducted which determined the appellant did not qualify for the Affordable Child Care Benefit due to the family's income being too high.
- November 14, 2022- the appellant submitted a Request for Reconsideration.
- November 16, 2022- the Request for Reconsideration was received at the Reconsideration, Litigation and Administration Fairness Branch.
- November 29, 2022- the ministry completed its review of the appellant's request.

**Additional Information****Notice of Appeal**

- In the Notice of Appeal, dated December 10, 2022, the appellant notes under Reasons for Appeal that:
  - They think the ministry did not understand their explanation...

**At the appeal hearing the appellant stated:**

- They had contacted the ministry when denied the ACCB in November 2021 and was told to call back once a new assessment was conducted by the Canada Revenue Agency (CRA).
- They received their CRA re-assessment in October 2022 and provided it to the ministry on November 9, 2022. They were informed, at the time, that they had no right to appeal because their Child Care Application was submitted in November 2021, and they were outside the appeal time period.

**At the hearing the ministry representative stated:**

- An oversight was made by the Reconsideration Officer when they were addressing the appellant's request for reconsideration. The Reconsideration Officer had responded to the denial letter dated November 22, 2021, missing the denial letter issued November 9, 2022. This was an oversight on their part as the decision did not consider the new CRA information, and only went back to the original Child Care Application.
- The ministry is not opposed to having the decision that the appellant's request exceeded the legislative time limit permitted to submit a Request for Reconsideration be rescinded by the appeal panel because the appellant was denied on November 9, 2022, and the appellant submitted a Request for Reconsideration on November 14, 2022, which is within the allowable time frame.

**Admissibility of new information**

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case the appellant had submitted orally they had contacted the ministry to challenge the November 22, 2021, denial letter and had been instructed to wait until evidence of a review by the CRA was complete. The ministry did not object to this evidence. The panel admits the new information under section 22(4) of the Employment and Assistance Act as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. As the information shared orally by the appellant at the time of the hearing supported the appellant's appeal, the panel accepted the evidence provided.

As well, the ministry submitted orally new information that an oversight by the ministry had occurred. The appellant did not object to this evidence. The panel admitted this evidence as it was required for a full and fair disclosure of the matters related to the ministry's decision.

**Part F – Reasons for Panel Decision****Appeal issue**

The issue in this appeal is the reasonableness of the ministry's decision that the appellant was denied a request for reconsideration as the request was past the 20 days time limit required to submit the request.

**Positions**

The appellant argued the ministry did not understand their explanation. The ministry offered oral evidence that a mistake was made by the Reconsideration Officer at the time of the appellant's request for reconsideration wherein the Reconsideration Officer had addressed the wrong document dated November 22, 2021, instead of the correct denial letter of November 9, 2022.

**Panel Finding**

As the new evidence indicates the appellant in addressing a denial letter dated November 9, 2022, and thus submitting a Request for Reconsideration on November 14, 2022, had met the requirement of filing on time as required by Section 17(1)(b) of the Child Care Subsidy Regulation, the panel finds the ministry was not reasonable in not rendering a reconsideration decision.

**Conclusion**

The panel finds the ministry's decision not to render a reconsideration decision was not reasonably supported by the evidence and rescinds the ministry's decision. The appellant is successful in their appeal.

**Applicable Legislation****Child Care Subsidy Act****Reconsideration and appeal rights**

6 (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:

(a) a decision that results in a refusal to pay a child care subsidy to or for the person;

(b) a decision that results in a discontinuance or reduction of the person's child care subsidy.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.

(3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of

the *Employment and Assistance Act*.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

## Child Care Subsidy Regulation

### Reconsideration of decisions

17 (1) A person who wishes the minister to reconsider a decision made under the Act must deliver to the Child Care Service Centre a request for reconsideration that

- (a) is in the form specified by the minister, and
- (b) is delivered within 20 business days after the person is notified of that decision.

(2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Service Centre.

(3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.

(4) If a request for reconsideration is not delivered in the time required by subsection (1),

- (a) the person is deemed to have accepted the decision, and
- (b) the decision is not open to review in a court or subject to appeal to a tribunal or other body.

(5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must

- (a) reconsider the decision, and
- (b) provide the person who delivered the request with a written decision on the request.

(6) If a request for reconsideration is delivered under this section about a decision that results in a discontinuation or reduction of a child care subsidy, that decision is set aside until the minister

- (a) reconsiders the decision, and
- (b) provides the person who delivered the request with a written decision on the request.

(7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister

- (a) reconsiders the decision, and
- (b) provides the person who delivered the request with a written decision on the

request.

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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

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2023/01/08

Print Name

Janet Ward

Signature of Member

Date (Year/Month/Day)

2023/01/08

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2023/01/08