

Part C – Decision Under Appeal

The Ministry of Education and Child Care (the ministry) reconsidered a decision to grant an Affordable Child Care Benefit (ACCB) for the Appellant’s child starting November 2022. In its reconsideration decision of April 27, 2023 (the Reconsideration Decision) the ministry decided that due to administrative error causing delay that the Appellant was eligible to be assessed for ACCB beginning October 1, 2022 (having already been determined to be eligible from November 1, 2022).

The Appellant had sought that reconsideration, and also appeals here, seeking to have the start month be September 2022, as the month that she claims to have applied.

Part D – Relevant Legislation

Child Care Subsidy Act (the “CCSAct”)

Section 4

Child Care Subsidy Regulation (the “CCSReg”)

Sections 4 and 13

(See attached Appendix for copies of the above)

Part E – Summary of Facts

The ministry began its decision saying that it had found that the Appellant was “not eligible for the Affordable Child Care Benefit for the period between September 12, 2022, and October 31, 2022.” However, in the second to last (penultimate) paragraph, it revised that to conclude that the Appellant was eligible to be assessed for the ACCB for the period beginning October 1, 2022 due to administrative error (while continuing to deny eligibility for September 2022). The ministry’s cover letter to the decision more clearly describes this outcome.

The following is a summary of the key dates and information related to the Appellant’s Request for Reconsideration:

On or about February or March 2022, after 4 months of inactivity, the Appellant’s “file” (using her birth name) was closed. Under this file she had had approval of ACCB for her child (Child A). The approval had expired on October 31, 2021.

In July 2022 the ministry says the “file” was reopened after an ACCB application. The details in the record are opaque as to who was the subject child.

In September 2022:

The Appellant unsuccessfully attempted to use the government’s MyFS to submit an ACCB Application (CF2900) for her Child B. She called the Child Care Service Centre (CCSC) and was told to paper file.

On September 4, 2022 the Appellant signed an ACCB Child Care Arrangement form, CF2798 (the “CCA Form”) for Child B for submission by the Appellant’s daycare provider. She signed under her married name that corresponded to the last name of her children.

On October 3, 2022, the Appellant’s daycare provider faxed the CCA Form to the CCSC for care of Child B.

On November 16, 2022:

The CCSC contacted the Appellant (by phone) to say that her “case” had been closed. [The ministry representative at the hearing advised that “case” is synonymous with “file”.]

The Appellant submitted an ACCB Application (CF2900) for Child B using the government’s MyFS portal. It was completed by the Appellant using her birth name, and by her spouse.

On December 4, 2022, the CCSC requested identification to match her identity because the last name on the application did not match her last name on file.

On January 9, 2023, the Appellant inquired about the status of her application. The CCSC confirmed ID for the birth and married last names were on file.

On February 8, 2023, the CCSC established the Appellant's eligibility for the ACCB beginning November 1, 2022 for Child B.

On March 1, 2023, the Appellant contacted the CCSC to request the benefits be backdated to September claiming that she applied in September. The CCSC explained the CCA Form was received by fax on October 3, 2022, and confirmed the Appellant did not submit the completed application until November 16, 2022.

On March 24, 2023, the CCSC told the Appellant that she was not eligible for the ACCB for the period between September 12, 2022, and October 31, 2022, and denied the request to backdate the benefits from those starting November 1, 2022.

On April 21, 2023, the Appellant submitted the Appellant's Request for Reconsideration to the Child Care Service Centre (dated April 13, 2023) seeking to have September as the start month instead of November. Under the "Reasons for Request for Reconsideration" the Appellant states:

I'm asking for reconsideration regarding backdating preschool subsidy. I had applied September 2022. My account had been dormant so I phoned to seek assistance. The lady I spoke with said to send in a paper application. The paper application was faxed along with the preschool forms. Due to a legal last name change I had to reapply in November in order to proceed. The subsidy arrangement starts in November even though I had sent applications twice in September. I feel because I was told to apply by fax it should count as the initial application. The faxed papers were sent Sept 11th 2022. For a better Explanation please phone me

On April 27, 2023, the ministry completed its reconsideration ultimately allowing ACCB from October due to administrative error. That decision states:

The ministry finds that you are not eligible for the Affordable Child Care Benefit for the period between September 12, 2022, and October 31, 2022. You submitted an application on November 16, 2022, which was signed and dated by you and your spouse on November 16, 2022. ...

[However, it then goes on to state]

The ministry notes your CF2798 was received on October 3, 2023 [sic], and you were not contacted until November 16, 2022. The ministry finds that due to a lengthy amount of time between the receipt of your CF2798 on October 3, 2022, and the telephone call from the CCSC on November 16, 2022, you experienced a delay in applying for the ACCB, which impacted the start date

of your eligibility. Therefore, as set out in the CCS Regulation Section 13(2), payment of a child care subsidy may only be backdated 30 days from when the parent completes the application under section 4 if there has been an administrative error. As you completed your application to the ministry on November 16, 2022, and were found eligible for subsidy beginning November 1, 2022, the ministry finds under Section 13(2) of the Regulation, you are eligible to be assessed for the ACCB beginning October 1, 2022.

On May 5, 2023, the Appellant appealed that decision to this Tribunal by filing a Notice of Appeal. In it the Appellant seeks to have the ACCB begin September 1, 2022.

Appellant Submissions

On May 5, 2023, the Appellant appealed that decision, and stated on the form under the heading "Reasons for Appeal" as follows:

I applied Sept 2022. Account was dormant. Told to apply by mail. Preschool sent in. Reapplied Nov 2022 because of last name change mix up. Initial approval came from the Nov. Application not the mailed in Sept application.

In oral submissions the Appellant reiterated those reasons. No evidence was provided to support the claim that applications provided to the CCSA in September 2022. The Appellant described her September applications as the CCA Form that she signed September 4, 2022 but was faxed by the Appellant's daycare provider. She also described asking that provider to fax a completed ACCB Application (CF2900) for Child B. The fate of that last document was unknown and the Appellant provided no evidence of it.

Also described as occurring in September, the Appellant stated that she unsuccessfully attempted to complete an application on the government's MyFS site which she believed was thwarted by her file being closed or her name change not being recognized.

Ministry Submissions

At the hearing, the ministry reiterated the Reconsideration Decision and emphasised that the application was not received until November 16, 2022. The ministry representative stated that eligibility applies from the month of the completed application and the regulations did not allow backdating.

After a query the ministry representative described the dual nature of the Reconsideration Decision as reaffirming that under CCSReg 13(1) the Appellant was only entitled to ACCB from November because that was the month of completion of the application. Under that she was denied coverage for September and October 2022. However, the Reconsideration Decision then also went on to consider CCSReg 13(2). It found an administrative error arose from delay in responding to the Appellant seeking to address concerns about the

name change and closed file status. Based upon this, it granted the permitted 30 days backdating making the Appellant eligible to be assessed for ACCB beginning October 1, 2022.

It is noteworthy that until this point the Appellant thought that both September and October had been rejected. She was not aware that the ministry was awaiting conclusion of this appeal before doing that assessment for October 1, 2022.

Admissibility of New Evidence

The Appellant made statements during the hearing about her attempts to file applications in September 2022 and communications with the CCSC. The panel admits those submissions as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, and the panel has weighed that evidence in making its decision.

Part F – Reasons for Panel Decision

The appeal concerns whether the Appellant is entitled to ACCB for Child B beginning September 2022. As discussed above, the Appellant originally thought that she was seeking a decision for October as well. However, during the hearing it was confirmed that the Reconsideration Decision ultimately allowed backdating coverage for October. The confusion about entitlement for October 2022 was entirely understandable given the Reconsideration Decision started with a statement reaffirmed entitlement was to commence November 2022, but ended with a one month backdate. The panel notes that it also included some clerical errors in dates and some difficult to comprehend facts, all of which the panel found no need to resolve in order to make the decision here.

While the Appellant began in September 2022 to seek ACCB for the preschool of Child B the application was delayed and not complete until November 16, 2022 using the MyFS portal. Based on this it was a reasonable application of the facts and of CCSReg 13(1) for the reconsideration decision to have been that November was the first month that the subsidy could be paid. CCSReg 13(1) allows payment for ACCB from the first day of the month in which the application is completed.

The cause of the delay to complete that application affects the ultimate decision here.. The evidence is that the CCA Form was received October 3, 2023 but the Appellant was not contacted until six weeks later, on November 16, 2022. The Appellant did not contest the finding in the Reconsideration Decision “that due to a lengthy amount of time between” that receipt and the response telephone call the Appellant “experienced a delay in applying for the ACCB, which impacted the start date of ... eligibility.” The ministry accepted that this delay was caused by, or was itself, an administrative error. The panel finds that applying CCSReg 13(2) to these circumstances was a reasonable assessment of the facts and a reasonable application of the legislation to backdate eligibility (from November back to October 1, 2022). CCSReg 13(2) allows an ACCB to be backdated to a maximum of 30 days before an application had been completed if the completion was delayed due to administrative error. That fits the scenario in this matter and the maximum backdating of 30 days was granted.

The panel empathizes with the appellant concerning the delays and confusion that contributed to inability to complete application in September 2022. Completing the application is required and the panel found no evidence of completion in September, nor any impact on it by administrative error that reasonably would have changed the Reconsideration Decision.

Based on these findings the panel confirms the ministry decision.

Conclusion

The panel finds that the ministry’s Reconsideration Decision was:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Reconsideration Decision in which the ministry determined that the Appellant was not eligible for ACCB in September 2022 but eligible for assessment for ACCB commencing October 1, 2022.

Appendix – 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

Section 4 - How to apply for a subsidy

(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.]

[am. B.C. Regs. 218/2003, s. 1; 187/2007, s. (b); 84/2016, s. 2; 148/2018, App. 1, s. 3.]

Section 4.1 – Authorizations Required

(1) To be eligible for a child care subsidy for a child other than a child described in section 7 (2), an applicant and the applicant's spouse, if any, must supply the minister with authorizations for

- (a) the disclosure to the Canada Revenue Agency of the full name, birth date and social insurance number of the person,
- (b) the disclosure by the Canada Revenue Agency of the personal information of the person that is relevant to the person's income, and that the minister needs for the purposes of sections 9 [*calculation of family's adjusted annual income*] and 9.1 [*income review*], for the 2 years previous to the current calendar year, in accordance with the MOU For Income Verification between the Canada Revenue Agency and the minister, regardless of whether the person completed an income tax return for those years, and
- (c) the indirect collection by the minister of the information described in paragraph (b).

(2) To be eligible for a child care subsidy for a child other than a child described in section 7 (2),

(a) an applicant must supply the minister with authorizations for the disclosure to the applicant's spouse, if any, of personal information of the applicant used in determining the family's adjusted annual income, and

(b) an applicant's spouse, if any, must supply the minister with authorizations for the disclosure to the applicant of personal information of the applicant's spouse, if any, used in determining the family's adjusted annual income.

(3) To be eligible for a child care subsidy for a child, an applicant and the applicant's spouse, if any, must supply the minister with authorizations for

(a) the disclosure by a third party of the personal information of the person that the minister needs for the purpose of determining or auditing the applicant's eligibility for a child care subsidy, and

(b) the indirect collection by the minister of the information described in paragraph (a).

[en. B.C. Reg. 148/2018, App. 1, s. 4.]

Section 13 - Will a subsidy be paid for child care provided before completion of the application?

(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.

[am. B.C. Reg. 337/2008, s. 4.]

APPEAL NUMBER 2023-0135

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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/06/05

Print Name

Effie Simpson

Signature of Member

Date (Year/Month/Day)

2023/06/05

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2023/06/05