

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (“ministry”) dated May 31, 2023. The ministry determined that the appellant was not eligible for the Affordable Child Care Subsidy for the period between September 1, 2022, and March 31, 2023 because the ministry found no record of an application being received or a service request being initiated in September.

Part D – Relevant Legislation

Child Care Subsidy Act (“Act”) sections 4, 5 and 6

Child Care Subsidy Regulation (“Regulation”) sections 4, 9, 9.1, 12, 13, and 17

Full text of the legislation is provided in the Schedule of Legislation after Part F – Reasons for Panel Decision.

Part E – Summary of FactsEvidence Before the Ministry at Reconsideration

On April 18, 2023, the appellant submitted an Affordable Child Care Benefit Application, CF2900 to the Child Care Service Centre. This application was dated April 18, 2023.

- 2 dependent children are listed on the application.
- Child 1, born in 2020, does not require childcare.
- Child 2, born in 2018, requires childcare.

On May 12, 2023, the ministry sent the appellant a letter, indicating the start date of the Affordable Child Care Benefit was April 1, 2023.

On May 11, 2023, the ministry noted the appellant enquired about backdating the Affordable Child Care Benefit to September 2022. The ministry denied her request and sent her a letter advising her that she was not eligible for the Affordable Child Care Benefit for the period between September 1, 2022, and March 31, 2023.

In Section 3 of the Request for Reconsideration form the appellant wrote:

I originally submitted an application in September 2022. I got a document checklist that had the additional documentation I needed checked off. My apologies, when I saw this document I assumed that I submitted everything that was required. i was in shock when the daycare now advised how much money I owe because the subsidy was not coming in.
If I knew that my application had not gone through I would have followed up or done something.
This was a complete misunderstanding, This is my first child in child care, I am living and learning.
I am asking for this one time reconsideration please with the rising cost of everything this is very difficult to afford.
Thank you in advance for your time and consideration,

In its reconsideration decision the ministry noted that a review of the appellant's file found no record of an application being received or a service request being initiated in September 2022.

The case ID number on the reconsideration decision is 1-6XXXXXXXXX9.

Additional Evidence:

In her Notice of Appeal dated June 6, 2023, the appellant wrote: "The ministry's decision does not consider my original application made September 26, 2022, service request number 1-6XXXXXXXXX8 ... the documents were submitted in Sept 2022 as requested."

On appeal the appellant provided a 1-page document titled "British Columbia Affordable Child Care Benefit Document Checklist." [the "September document"]

This document includes the following information:

- The contact's name is the appellant's name.
- The service request number is 1-6XXXXXXXXX8. [The panel notes that this service request number differs from the case number quoted in the reconsideration decision]
- The submitted date is Sept 26, 2022.
- Documents Provided: 2 checked boxes indicate that a Childcare Arrangement Form and another child's government-issued ID have been provided by the appellant.
- "A decision on the appellant's eligibility cannot be made until all required documents on the checklist are submitted." The panel notes that this document does not include information on any required documents still to be submitted.

At the hearing, the appellant said that when she found out about her denial, she called the ministry at their 1-800 number and told them that she had applied for the childcare subsidy in September 2022. According to the appellant, the ministry could not find this application, but during a subsequent conversation acknowledged the existence of this earlier application. The ministry advised her to fill out a new backdated application.

The appellant reported that this was the second year of her child being in daycare. For the first year she had received help from the daycare to fill in the application for the subsidy. She thought that now she would be able to fill in the form herself, and she completed her September 26, 2022 application online. The ministry then provided her with the "September document" in her electronic account.

She thought everything was fine until the day care informed her in April 2023 that no subsidy payments had been received from the ministry since September. Childcare subsidies are paid directly to the childcare facility.

The appellant stated that the ministry did not inform her of the outcome of her September application nor of the reasons why it was denied nor why her file was closed. She has to log in to her online account each time to check for new information.

The ministry did not attend the hearing.

Admissibility of Additional Evidence:

The panel finds that the additional evidence relates to the appellant's Affordable Child Care Benefit application and is therefore reasonably necessary for full and fair disclosure of all matters relating to the decision under appeal. Therefore, the panel finds that the evidence is admissible under section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision that the appellant was not eligible for the Affordable Child Care Subsidy for the period between September 1, 2022 and March 31, 2023 was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Appellant's Position

The appellant argues that she had submitted her original application in September 2022 and therefore should be eligible for the subsidy from the beginning of September onwards. The appellant felt that the ministry failed to inform her of the outcome of her September application or why her file may have been closed.

Ministry's Position

The ministry determined that the appellant was not eligible for the Affordable Child Care Benefit for the period between September 1, 2022, and March 31, 2023, because her application was signed and submitted in April 2023.

Panel Analysis

Under section 13 of the Regulation, the ministry may pay a subsidy starting on the first day of the month in which the parent completes an application under section 4. Section 4 sets out that, to be eligible for a childcare subsidy, a parent must complete an application in the form required by the ministry and supply the ministry with certain documents and proofs. The panel notes that the commencement of this subsidy is linked to the date of the application, not to the date when all required documents are submitted.

While the ministry argues that they have no record of a September 2022 application the panel finds that there is sufficient evidence that the appellant submitted her application on September 26, 2022. The "September document" shows that an application for the British Columbia Affordable Child Care Benefit was submitted on September 26, 2022 by the appellant, and a service request number was quoted. The appellant explained that in September she was applying for her child's second year in daycare which the child has been attending since 2021. She reported that when the daycare informed her in April 2023 that no subsidies had been paid by the ministry since September she contacted the ministry and was told she should fill out a new application and backdate it, which led her to fill out a new application dated April 18, 2023.

Section 12 of the Regulation sets out that the ministry must notify an applicant as to whether an application is approved. If the application is not approved, the notification must be in writing and must include the ministry's reason for refusing to pay a childcare subsidy. The panel finds that there is no evidence of a ministry decision of approval or rejection of the appellant's September 26 application, and that there is no evidence that the ministry notified the appellant in writing of reasons for a refusal. The panel finds that the ministry did not comply with section 12 by not concluding the appellant's September 2022 application and making a decision about approval, instead leaving it "hanging in the air" and advising the appellant to fill in a new application in April 2023. The ministry then applied section 13 of the Regulation to the April application and determined that the appellant was only eligible from April 1 onwards.

Based on this analysis the panel finds that the ministry's decision that the appellant was not eligible for the Affordable Child Care Subsidy for the period between September 1, 2022 and March 31, 2023 was not reasonably supported by the evidence and was not a reasonable application of the legislation in the appellant's circumstances.

The panel notes that closing a file without notifying the applicant of a final decision on an application deprives the applicant of their time-sensitive reconsideration and appeal rights that are set out in section 6 of the Act.

Conclusion

The panel rescinds the Ministry's decision that the appellant is not eligible for the childcare subsidy between September 1, 2022 and March 31, 2023. The ministry failed to consider the appellant's September 26, 2022 application, which the ministry did not conclude in accordance with section 12 of the Regulation but instead advised the appellant to fill in a new application. The panel finds that the ministry's decision that the appellant was only eligible for the subsidy from April 1, 2023 onward is not a reasonable application of the legislation in the appellant's circumstances. The appellant is successful in her appeal.

CHILD CARE SUBSIDY ACT

Child care subsidies

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

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.

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

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.

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.

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.

APPEAL NUMBER 2023-0160

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

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

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/06/23

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2023/06/26

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2023/06/26