

### **Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision (the Decision) of the Ministry of Children and Family Development (the Ministry) dated June 1, 2023. The Ministry determined that the Appellant was not eligible for the Affordable Child Care Benefit (the Benefit) for the period between October 1, 2022 and February 28, 2023.

### **Part D – Relevant Legislation**

*Child Care Subsidy Act* (the Act), sections 4, 5(1) and 6(1) and (3)

Child Care Subsidy Regulation (the Regulation), sections 4(1), 12, and 13

*Employment and Assistance Act*, section 22(4)

***A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below***

**Part E – Summary of Facts**

According to the Decision, the Ministry provided the following summary of key dates and information related to the Appellant's request for reconsideration (the Reconsideration Request):

- **On December 7, 2022**, the Ministry received a completed Child Care Arrangement Form (the Arrangement Form). The Ministry attempted unsuccessfully to contact the Appellant by telephone *"to assist (him) with (his) application"*, and a voice mail was left for the Appellant asking for a return call. The Ministry had no record of contact with the Appellant either before the Arrangement Form was submitted, on December 7, 2022, or between that date and February 14, 2023, when a new Arrangement Form was submitted by the Appellant to the Ministry;
- **On March 1, 2023**, the Ministry received the Appellant's Affordable Child Care Benefit Application (the Benefit Application), signed and dated March 1, 2023. Additional information was required by the Ministry to assess the Appellant's eligibility for the Benefit, and a message was sent to the Appellant using the Ministry's electronic message portal (the Ministry Portal);
- **On April 13, 2023**, the Appellant contacted the Ministry to find out what was required to complete the Benefit Application and the additional information requirements were explained to him;
- **On May 9, 2023**, the Ministry determined that the Appellant was eligible for Benefit and issued the Benefit for the period beginning March 1, 2023;
- **On May 11, 2023**, the Appellant contacted the Ministry to ask about Benefit eligibility for the months from October 2022, through February 2023, which he had not received;
- **On May 17, 2023**, the Ministry sent the Appellant a letter saying that the Appellant was not eligible for the Benefit for the period between October 1, 2022, and February 28, 2023;
- **On May 24, 2023**, the Appellant submitted the Reconsideration Request to the Ministry;
- **On May 25, 2023**, the Ministry received the Reconsideration Request; and,
- **On June 1, 2023**, the Ministry completed its review of the Reconsideration Request, and determined that the Appellant was not eligible for the Benefit for the period between October 1, 2022, and February 28, 2023.

The evidence the Ministry had when it made the Decision included:

- The Reconsideration Request, in which the Appellant's spouse said:
  - The Appellant and his spouse completed *"the online portion of the (Benefit) Application in November 2022. The (Arrangement Form) instructs, "Once completed, fax or mail to (the Ministry)" As per these instructions (the Appellant's spouse) mailed (the Arrangement Form to the Ministry) ... (They) have included an email sent on November 21<sup>st</sup> (2022) to (the Appellant's family's) daycare provider regarding confirmation that (they) had mailed (the Arrangement Form) to (the Ministry)."*;
  - Realizing that there might be delays in postal delivery time and Ministry processing time because *"December is a heavily celebrated month"*, the Appellant also faxed the Arrangement Form to the Ministry to make sure it was received;
  - Because the Appellant had not received approval from the Ministry, the Arrangement Form was resubmitted by mail on February 3, 2023;
  - Having heard nothing from the Ministry by the end of February 2023, the Appellant's spouse decided to start the application process again, and discovered that a Benefit Application could be submitted online, which the Appellant's spouse did on March 1, 2023.

The Appellant's spouse also explains the reasons why *"the application process wasn't further prioritized"* by the Appellant. The given reasons include: the Appellant's spouse's health issues, difficulties the Appellant's family is experiencing managing the daycare costs without the Benefit, and the passing of an extended family member and ongoing health issues affecting other members of the Appellant's extended family;

- An email message from the Appellant's daycare service provider to the Appellant's spouse, dated November 1, 2022, in which the daycare service provider apologizes for *"(missing the Arrangement Form) for you"*. The email also says *"Please rest assured that we will retroactively claim whatever is available against your first payment so we will apply a credit to your future fees. (The Ministry) absolutely allows for this so there's no fear of missing the subsidy as paperwork is being processed"*. Attached to the email is a PDF file titled *"2022-11-01 Child Care Arrangement Form (name of child).pdf"*. The PDF file could not be accessed by the Panel in the appeal documents;
- A response from the Appellant's spouse to the daycare service provider, dated November 21, 2022, thanking the daycare service provider, with the additional comment *"We mailed the form"*;
- A copy of a completed Arrangement Form, identifying details of the day care service provider's services, and the name and age of the child. The Arrangement Form was

signed by the day care service provider on November 1, 2022, signed by the Appellant on November 10, 2022, and stamped by the Ministry on December 7, 2022;

- A copy of another completed Arrangement Form, also identifying details of the day care service provider's services, and the name and age of the child. The Arrangement Form was signed by the day care service provider on November 1, 2022, signed by the Appellant on February 3, 2023, and stamped by the Ministry on February 14, 2022;
- A copy of a five-page Benefit Application. The Benefit Application provided in the appeal documents does not include any information in "*Section 3 - Income*", but otherwise appear to be complete. It is identified as having been completed by the Appellant and is dated March 1, 2023;
- A copy of a third completed Arrangement Form, also identifying details of the day care service provider's services, and the name and age of the child. The Arrangement Form was signed by the day care service provider on April 27, 2023, and signed by the Appellant on April 13, 2023. It is not stamped by the Ministry and appears to have been submitted electronically; and,
- A three-page letter from the Ministry dated May 9, 2023, identifying the maximum amount the Appellant is entitled to receive in a month. The letter indicates that the Appellant is entitled to receive \$1,130.73 for the month of March 2023, \$958.86 for April 2023, and \$958.86 for May 2023.

### **Additional Evidence After Reconsideration**

In the Appellant's Notice of Appeal, the Appellant says he is appealing the Decision because "*The Ministry's primary reason for declining our (Reconsideration Request) is that I had signed and dated (the Benefit Application) for March 1, 2023. We were not advised, or directed by anyone (at the Ministry) that the date of the signature needed to be back dated, even when we called to ask for guidance for our application.*"

On August 1, 2023, the Appellant's spouse made a twenty six-page submission (the First Submission). In the first page of the First Submission, the Appellant writes "*I had requested my mobile provider to provide me with my call log for December, as I believe that I did make several attempts to reach out to the Ministry. Due to a combination of long wait times and my daughter and I both being sick, I was unable to speak with someone. Unfortunately, (my mobile provider has) not yet supplied this information to me.*" The other documents included in the First Submission include:

- An undated one-page letter from the Appellant's employer providing details of the Appellant's work schedule during the week of December 12-16, 2022 (the Letter);

- Several texts between the Appellant's spouse and the daycare provider about the Appellant's child's inability to attend daycare due to the illness of the Appellant's child, and sometimes the Appellant's spouse, on nine different occasions between November 25, 2022 and February 24, 2023;
- Medical test results from a health service provider concerning the results of tests performed on the Appellant's child on February 5, 2023; and,
- Several emails between the Appellant's spouse and her educational institution, dated between November 21, 2022 and December 6, 2022, relating to the Appellant's spouse's inability to take exams due to her illness.

On August 1, 2023, the Appellant made a three-page submission (the Second Submission). The Second Submission contains a second copy of the Letter bearing the Appellant's employer's signature, and a note from the Appellant's spouse explaining that a signed copy of the Letter is being provided because the previous copy of the Letter was sent to the Employment and Assistance Tribunal (the Tribunal) in the First Submission without a signature.

On August 3, 2023, the Appellant made a twelve-page submission (the Third Submission). The Third Submission contains cross-referenced phone bills for the Appellant and the Appellant's spouse, together with a cover-note from the Appellant's spouse saying, "*I recalled why I didn't call back in December (2022) - I had lost my voice when I got sick.*"

On August 4, 2023, the Appellant made a four-page submission (the Fourth Submission). The Fourth Submission comprised a print-out of four messages between the Appellant and the Ministry as follows:

- A one-page message from the Ministry to the Appellant, dated March 17, 2023. The message says, in part, "*In order to complete the assessment of your eligibility, please resubmit your ... Arrangement (Form)*". The message indicates what information is missing from the Arrangement Form, adding "*The ... Arrangement (Form) must be completed correctly in order to be processed*". The message also says "*Subject to (section) 5(1)(a) of the Child Care Subsidy Act, we have received your submitted request for... (the) Benefit, however, we are unable to determine your eligibility for benefits. Please send us the information requested within 60 days or you will be deemed ineligible for benefits and/or we may require a new application*", and includes the Ministry's contact phone number (1-888-338-6622) and a link to the Ministry's website;
- A one-page message from the Ministry to the Appellant, dated April 12, 2023. The message says that the Ministry requires additional information to assess the Appellant's eligibility for the Benefit, refers to an "*attached letter*" for the details of what is required, and includes the statement "*You may reply to this message and upload documents*". The message also includes the same contact information

provided in the March 17, 2023 message as described above. The referenced *"attached letter"* is not included in the Fourth Submission;

- A one-page message from the Appellant to the Ministry, dated May 9, 2023. The message thanks the Ministry for processing the Appellant's *"application"*, and says *"The months of November 2022 and December 2022 were not addressed in the letter - I was told that our benefits would be backdated. Could you please check for me?"*; and,
- A one-page message from the Appellant to the Ministry, dated May 16, 2023. The message says *"I'm sorry I'm confused as our first application was done in November (2022). We ... had some issues understanding the ... (Benefit) application process. When I called ... last month I was assured that we would receive payments from our start date in November. What can we do to back date to November?"*

#### Evidence Presented at the Hearing

Both the Appellant and the Appellant's spouse attended the hearing. The Ministry did not attend the hearing.

At the hearing, the Appellant summarized the information contained in the appeal documents, making specific reference to the Appellant's spouse's and their child's illnesses in November and December 2022, and the illnesses suffered by extended family members at that time. The Appellant's spouse also explained that she lost her voice *"many times"* in December 2022, and that her *"executive functions were affected"*. She explained that for all of these reasons she had been unable to focus on the Benefit application process at the time and communicate with the Ministry to ensure that the Benefit application documents were complete.

The Appellant and the Appellant's spouse also said that they didn't understand why the Ministry had allegedly only tried to reach them by telephone in December 2022 because there was also a Ministry Portal and the Ministry had not posted a message to them asking for additional documentation using the Ministry Portal at that time.

Referring to the information in the Third Submission, the Appellant's spouse said that when the Ministry said it had called the Appellant on December 7, 2022, the phone number showed up on their devices as a daycare facility in a different BC community (the Other Daycare Facility), and after the Appellant's spouse searched online using the name of the and phone number of the Other Daycare Facility, *"it seemed to be a spam call"*.

The Appellant and the Appellant's spouse also said that when the Ministry sent a message to them via the Ministry Portal on March 1, 2023, indicating that additional information was required by the Ministry to assess the Appellant's eligibility for the Benefit, the Ministry didn't say what information was missing. The Appellant's spouse said that she had been told by the Ministry that she had to provide details about her class schedule at

the school she was attending, and after providing that information she had been told that the information had to be confirmed by the educational institution via an “*enrollment letter*”, which the Ministry didn’t say would be required the first time she spoke to the Ministry about it.

The Appellant said that he had been told by the Ministry that their application for Benefits could be backdated to November 1, 2022 once they had received all of the necessary application information. Referring to his May 9, 2023 and May 16, 2023 messages to the Ministry included in the Fourth Submission, the Appellant said he did not receive a message in response to either of his messages on the Ministry Portal, but that he had received a letter from the Ministry, dated May 17, 2023, telling him he was not eligible for the Benefit for the period between October 1, 2022, and February 28, 2023. The Appellant said that the Ministry had not responded to his May 9, 2023 and May 17, 2023 messages on the Ministry Portal on a timely basis and he had “*no information on how to contact the Ministry other than by mail or fax*”.

The Appellant drew the Panel’s attention to the copies of the Arrangement Form and the Benefit Application contained in the appeal documents, and said that they finally realized that they could apply for the Benefit online. A third version of the Arrangement Form (completed electronically and signed by the daycare service provider on April 27, 2023) and an electronic version of the Benefit Application (dated March 1, 2023) were ultimately filed. The Appellant explained that when he signed the electronic Benefit Application, he entered the current date (April 13, 2023) by his signature out of habit. It was only later that he realized that he should have dated his signature November 1, 2022, as he had been told the application would be backdated to that date.

The Appellant and the Appellant’s spouse also disagreed with the Ministry’s assertion that it had not made an administrative error. They argued that the Ministry had made several administrative errors. Specifically, the Ministry:

- Did not provide clear application instructions;
- Used two different methods of communicating with the Appellant (i.e. by phone and by Ministry portal);
- Did not respond on a timely basis with enough information about exactly what was missing in their application;
- Told them that their application would be backdated; and,
- Wrote in the Decision “*Therefore, as per the CCS Regulation (s)ection 13(1), your eligibility for the ... Benefit began on March 1, 2022, which is the first day of the month in which the application was completed*” (**emphasis added**), when the Benefit Application was actually completed on March 1, 2023.

**Admissibility of Additional Evidence**

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must consider if the new information is relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

The new evidence in the Notice of Appeal is the Appellant’s contention that he was not told by the Ministry that he needed to backdate his signature on the Benefit Application. New details regarding the confusion about the application process and communication problems between the Appellant and the Ministry are included in the four Appellant submissions and in the information provided by the Appellant at the hearing. The Panel admits the new information as it is reasonably required for a full and fair disclosure of all matters relating to the appeal.

As the Ministry did not attend the hearing, the Panel could not ask the Ministry whether it objected to the Panel admitting the new information.

Weight given by the Panel to the new evidence is provided in the “*Panel Decision*” section below.



**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's Decision that the Appellant was not eligible for the Benefit for the period between October 1, 2022 and February 28, 2023 was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that the Ministry's process for applying for the Benefit is confusing, with multiple methods of contact, delays in receiving responses from the Ministry to questions posed by the Appellant on the Ministry Portal, and confusion on the Appellant's part concerning the origin of phone voice messages from the Ministry. In addition, the Appellant's spouse faced challenging circumstances as a result of the Appellant's spouse's health issues and the health of other family members at and around the time that the Appellant first tried to apply for the Benefit in November 2022. As a result of these issues, the Appellant wants the Ministry to back-date the application for the Benefit to November 2022.

Ministry's Position

The Ministry's position is that the legislation says the Benefit can only be paid from the first day of the month in which the parent completes an application unless the Ministry has made an administrative error. Because the Appellant's application was completed on March 1, 2023, and because there was not an administrative error made by the Ministry, the Appellant is only eligible for the Benefit starting on March 1, 2023.

Panel Decision*Backdating of the Benefit Application*

The Appellant has asked that their eligibility for the Benefit be backdated to November 1, 2022 on compassionate grounds and because the Appellant said he was told by the Ministry that the application would be backdated to that date once all of the necessary application information had been received.

On the question of backdating the application on compassionate grounds, the Panel acknowledges that the Appellant's spouse faced challenging personal health issues, and several immediate and extended family members were also ill in November and December 2022. In addition, the available evidence shows that the Appellant was extremely busy at work. All of these factors clearly made it extremely difficult for them to follow-up with the Ministry on what else needed to be provided.

Regarding whether the Ministry lead the Appellant to believe that the Benefit would be backdated, the Panel has no written evidence to confirm this. As a result, the new information included in the Appellant submissions and at the hearing concerning backdating is given little weight.

At the hearing, the Appellant's spouse said she had searched online using the name of the and phone number of the Other Daycare Facility, and that "*it seemed to be a spam call*", which was one of the reasons she didn't return the phone call. The Third Submission shows the results of an internet search. The Panel notes that the search results included in the Third Submission are not a search of a standard 11 digit toll-free telephone number. The information in the Third Submission shows that the Appellant searched a 10 digit number, where one of the 8's is missing (1883386622). This search did not return any phone number results, according to the screen print information included in the Third Submission. Accordingly, the Panel assigns no weight to the information in the Third Submission. The Panel also notes that the Ministry contact phone number included in all four of the Ministry Portal messages included in the Fourth Submission is 1-888-338-6622.

While the Panel is sympathetic to the Appellant's circumstances, the legislation does not give the Ministry discretion to backdate the Benefit beyond the first day of the month in which the parent completes an application under section 4 of the Act. The only exception is when the Ministry has made an administrative error. When that happens, the Ministry may pay the subsidy for child care provided in the 30 days before the parent completes the application. This provision is contained in section 13(2) of the Regulation.

The Appellant has argued that the Ministry made several administrative errors, as explained above. Unfortunately, the term "*administrative error*" is not defined in the legislation. Several definitions of "*administrative error*" are available online. In most cases, the definition relates to a clerical mistake made in copying or writing, and specifically "*does not include an actual or alleged erroneous interpretation of applicable law, the giving of erroneous advice, or negligence on the part of an employee or agent of (an organization)*". (The source for this quote is lawinsider.com). While the Ministry takes a broader view of "*administrative error*" to include procedural fairness, the Panel finds that the Ministry did not make a procedural error in this case.

The Panel notes that there were a number of delays in processing the Appellant's Benefit application, some of which were the result of the actions or inactions of the Ministry and some of which were the result of delays on the part of the Appellant. However, the Panel finds that none of the Ministry-caused delays can reasonably be considered "*administrative errors*" as they do not result from a clerical mistake made in copying or writing. With reference to the incorrect year in which the Benefit began, which was identified by the Ministry in the Decision as 2022, the Panel notes that this would be more accurately described as a typographical error, and finds that it can not reasonably be

considered an administrative error because it has no impact on the date on which the Appellant became eligible for the Benefit

#### *Application and Eligibility under the Act and Regulation*

Under section 4 of the Regulation, a parent must “**complete an application in the form required by the minister**” (**emphasis added**). If the Ministry determines that the applicant is eligible, then 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.*”

The Act and Regulations contemplate that the Ministry may require additional information to determine eligibility for the subsidy. Under section 5(1)(a) of the Act, the Ministry may “*direct a person who has applied for the subsidy...to supply the minister with information within the time and in the manner specified by the minister.*” Once the parent has submitted the application form required under section 4(1)(a) of the Regulation, they have applied for the subsidy.

The Ministry can request the additional information it needs to determine eligibility. For example, additional information concerning the daycare service provider is sought in the Arrangement Form. The Panel notes that the Arrangement Form was provided to the Ministry three times (in the first instance received by the Ministry on December 7, 2022, in the second instance received by the Ministry on February 14, 2023, and for the third time in April 2023). However, additional important information that the Ministry requires to assess an applicant’s eligibility for the Benefit is clearly contained in the Benefit Application.

The Panel finds that the “*application*” required by the Ministry under section 4 is reasonably considered to be the Benefit Application, and the date of eligibility is based on the date that the Ministry receives a completed Benefit Application. No evidence has been presented to indicate that the Benefit Application was submitted to the Ministry before the Appellant submitted it electronically on March 1, 2023. Therefore, the Panel finds that the Appellant completed the application on March 1, 2023, which is also the first day of that month.

#### **Conclusion**

The Panel finds that the Ministry’s Decision, which determined that was not eligible for the Benefit for the period between October 1, 2022 and February 28, 2023 was reasonably supported by the evidence, and was a reasonable application of the legislation in the Appellant’s circumstances.

Therefore, the Decision is confirmed and the Appellant is not successful in his appeal.

**Schedule of Legislation**

**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 ...

**Reconsideration and appeal rights**

**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 ...

(3) ... 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* ...

## **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 ...

### **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.

## **EMPLOYMENT AND ASSISTANCE ACT**

### **Panels of the tribunal to conduct appeals**

**22**

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

APPEAL NUMBER 2023-0168

**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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/08/11

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2023/08/11

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/08/11