

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (“Ministry”) (formerly MCFD) dated June 16, 2023, in which the Ministry determined that the Appellant was not eligible for backdated child care benefits for the period September 2022 to March 2023.

The Ministry decided that the Appellant was ineligible for the benefit based on the Ministry not receiving application for the benefit until April 2023. This was determined under Section 4 of the Child Care Subsidy Act, and Sections 4 and 13 of the Child Care Subsidy Regulation.

Part D – Relevant Legislation

Child Care Subsidy Act (Act), Section 4
Child Care Subsidy Regulation (Regulation), Sections 4 and 13

Part E – Summary of FactsEvidence Before the Ministry at Reconsideration:

The Appellant applied to the Ministry on April 5th, 2023, via their online portal (MyFS) for Affordable Child Care Benefit, using the Affordable Child Care Benefit Application form. The Application was for the benefit for child care from September 2022. On May 31st, 2023, the Ministry responded and informed the Appellant that benefits would be provided from April 2023 going forward, but denied benefits for the period September 2022 through March 2023. The Ministry also outlined the procedure to be followed if the Appellant wanted to request reconsideration of their decision.

In their response, the Ministry noted that the previous authorization for the child care benefit ended on August 31, 2022, and that the Appellant was advised of this. On January 1st, 2023, the Appellant's file was closed automatically, because there had been no activity on it for over four months. File closure in this case is directed by Ministry policy.

On January 3rd, 2023, the Appellant contacted the Ministry to inquire about the status of their account and was advised that their file was closed. The Ministry recommended that the Appellant submit a completed Affordable Child Care Benefit Application as soon as possible, in order to have benefits in place starting January 2023.

On April 5th, 2023, the Appellant submitted form an Application to the Ministry, and later that day phoned the Ministry regarding the status of their application. The Appellant stated that they had completed a Child Care Arrangement Form, but the Ministry did not have that on record. While on the phone, the Ministry attempted to assist the Appellant to re-submit the document electronically, but the attempt was unsuccessful. So, the Ministry initiated an e-request to assist the Appellant to submit the document.

On May 18th, the Appellant contacted the Ministry about a technical problem submitting documents. In this request the Appellant said that they had been attempting to submit an income declaration form without success and had been attempting to apply for the child care benefit since September 2022. The Appellant then submitted screenshots of the Ministry's income declaration form, signed April 17th, 2023.

On May 31st, the Ministry determined that the Appellant was eligible for the benefit and issued a Benefit Plan for the period beginning April 1st, 2023. The Appellant contacted the Ministry by telephone on that date and indicated that they had been told previously that their benefits would be backdated to September 1st, 2023. The Appellant noted that this was an urgent request, as they were in danger of losing their child care, so the Ministry

assigned the case a high priority. The backdated benefits were denied.

On June 1st, 2023, the Appellant contacted the Ministry and requested a reconsideration of the denial of back benefits from September 2022 through March 2023, and on June 2nd, the Appellant submitted a reconsideration package. The Reconsideration Branch received this request on June 6th.

Additional Evidence:

Prior to the hearing, the Appellant sent a 17-page submission, with information on phone conversations they said took place with Ministry staff between January 3 and June 1, 2023.

Admissibility of Additional Evidence:

Neither party objected to the admissibility of any of the additional evidence.

The Panel finds that the additional evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal, and therefore 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 was reasonable in determining that the Appellant was not eligible for backdated child care benefits.

Appellant's Position:

The Appellant stated that they applied for renewal of the Child Care Benefit Plan in September of 2022, via fax, sent from a local office services agency. They were advised by their day care at the end of December 2022 that payment for daycare services had not been made for the previous 4 months. The Appellant contacted the Ministry in January to inquire about this and to ask what to do, and they were told to fax the form again, which they did. The Appellant stated that the Ministry representative they spoke to said that the benefits would be backdated. In April, after the Appellant gained access to their online account, they submitted their application again, and then called to inquire about the status of their account. The Appellant stated that again they were assured that the benefits would be backdated.

The Appellant is of the opinion that they sent in the applications and information as required, and that they were advised that backdated benefits would apply. Also, the Appellant feels that they were given incorrect information regarding backdated benefits multiple times, and that they should not be penalized for this error in information.

Ministry's Position:

The Ministry maintains that the Appellant's previous authorization ended August 31st, 2022, and that they submitted an application for benefits on April 5th, 2023. The benefits that the Appellant qualifies for begin April 1st, 2023. The Ministry is under regulations that state that backdating benefits take place only if and when there has been an administrative error, and only for a maximum of 30 days. There is no evidence to confirm that Ministry staff told the Appellant that back pay would apply.

Panel Decision:

The Reconsideration Decision under appeal is the decision about the Appellant's application for backdated child care benefits for September 2022 – March 2023.

The Regulation set out the criteria for Child Care Benefits to be provided, and the Appellant meets authorization criteria. However, Section 13 (1) of the Regulation specifies that the benefit may be paid from the “from the first day of the month in which the parent completes the application”, and Section 13 (2) specifies that if an administrative error is made, benefits can be paid for the previous 30 days only. The Ministry stated that no Applications from the Appellant are on file until April 2023, and that they have no evidence that misinformation was provided.

The Panel finds no evidence that there were any administrative errors on the part of the Ministry and therefore the appellant’s benefits cannot be backdated for 30 days under section 13(2) of the Regulation. Further, there is no evidence or confirmation of any Applications sent by the Appellant to the Ministry until April 2023. For these reasons, the Panel finds that the Ministry was reasonable to decide that they had not received an Application sent by Appellant before April 2023, and that under section 13(1) of the Regulation, eligibility began on April 1, 2023

Conclusion:

The Panel finds that the Ministry’s reconsideration decision that the appellant is not eligible for backdated child care benefits is a reasonable application of the legislation in the Appellant’s circumstances.

The Panel confirms the Ministry’s reconsideration decision. The Appellant is not successful in the appeal.

Schedule of 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 childcare subsidy may be paid for childcare provided in the 30 days before the parent completes an application under section 4.

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

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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:

Child Care Subsidy Act – Section 4

Child Care Subsidy Regulation - Section 4 & 13

Part H – Signatures

Print Name

Carla Gail Tibbo

Signature of Chair

Date (Year/Month/Day)

2023/08/14

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023/08/14

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2023/08/14