

Part C – Decision Under Appeal

The issue under appeal is the Ministry of Education and Child Care (“the Ministry”) Reconsideration Decision of May 10, 2024. The Ministry held the Appellant was not eligible for the Affordable Child Care Benefit (“ACCB”) for the period between July 1, 2022 and February 29, 2024.

Specifically, the Ministry held that section 13 of the Child Care Subsidy Regulation permits it to back date subsidy to the first of the month in which it receives an application. It has no latitude to provide benefits prior to this date, other than if an administrative error has been made. In that case, the subsidy may be paid for child care provided in the 30 days before the parent completes an application.

Part D – Relevant Legislation

Child Care Subsidy Regulation, Section 4 and 13 (the “Regulation”).

Full text of the legislation is in the Appendix.

Part E – Summary of Facts

The hearing took place by teleconference on June 11, 2024. At the beginning of the hearing, no one from the Ministry was present on the teleconference. The Panel confirmed the Ministry had been notified of the hearing, and the Ministry was contacted. The Panel was informed that no Ministry representative was assigned to attend the hearing. The Appellant was asked whether she wished to request an adjournment so that the Ministry representative could attend. She did not wish to do so. The Panel proceeded with the hearing in the absence of the Ministry representative as permitted by section 86(b) of the Employment and Assistance Regulation.

Evidence before the Ministry at Reconsideration

The Appellant is part of a family unit of two. The Appellant was in receipt of the ACCB for her daughter in 2022 and since March 2024.

In July 2022, the Appellant supplied the Ministry with updated information in support of her application for the ACCB, as she switched day care providers.

On July 28, 2022, the Ministry advised the Appellant she was not eligible as her income was more than the financial eligibility criteria. This was based on her 2021 income tax assessment. The Appellant was notified via the My Family Service online message portal.

On July 29, 2022, the Appellant contacted the Ministry to advise she disagreed with the income amount used to assess her eligibility stating her 2021 income was based on selling a condo and that her annual salary is less than indicated on her 2021 CRA assessment. The Ministry advised the Appellant to request an income review and if she was approved, her eligibility would continue the month after her application was received. The Appellant did this.

On August 16, 2022, the Ministry reviewed the Appellant's application and sent her a message requesting information about her projected income for the period of August 1, 2022, to July 31, 2023.

On September 23, 2022, the Appellant requested clarification of the information required. The Ministry sent her a letter which stated:

"If you wish to proceed with your Income Review request, we will require you to declare your estimated decreased annual income for the 12-month period beginning the month

after the month in which you are requesting an Income Review (Aug 1, 2022, to Jul 31, 2023). Income Declaration form (CF2933)."

The Ministry notes there was no further contact from the Appellant by phone, fax, email or My Self Serve and after a period of 4 months of inactivity, the Ministry closed her file.

On March 15, 2024, the Appellant contacted the Ministry by phone stating she was receiving \$200 childcare and did not think she qualified for the ACCB, so did not reapply when her previous benefit plan expired. The Appellant asked to be assessed for back dated ACCB. The Ministry advised the Appellant she must reapply and once her eligibility was established, she could be assessed for backdating of her application.

On March 15, 2024, the Ministry received via My Family Services the Appellant's ACCB Application, CF2900, dated March 15, 2024.

On March 28, 2024, the Ministry sent the Appellant a letter advising her that she was not eligible for the ACCB for the period between July 1, 2022, and February 29, 2024.

On April 26, 2024, her Request for Reconsideration was received by the Ministry. The Appellant provided the following statement:

In August 2022 I was in the process of applying for the affordable child care benefit (the benefit). At the time, my CRA assessed income was \$132,996.00, so I was not eligible for funding. The daycare switched to the \$10 day program and I was told I could not apply for the benefit once the daycare was receiving government funding through the \$10/day initiative. My assessed income was only \$94,014.00 in 2022, so I thought I would be eligible for funding but was informed otherwise so I did not apply.

If I was not provided incorrect information, I would have submitted an application for the benefit in January 2023. I would be very grateful if my application could be reconsidered to include a retroactive payment from January 2023 to April 30, 2024.

Ministry' Determination

On May 10, 2024, the Ministry completed its review of the Request for Reconsideration. The Ministry found the Appellant was not eligible for the ACCB for the period between July 1, 2022 and February 29, 2024. Her previous authorization ended July 1, 2022 and she submitted an application on March 15, 2024. Per Section 13 of the Regulation, the Appellant's eligibility for the benefit began on March 1, 2024, that is, the first day of the month on which the application was completed.

On May 22, the Appellant submitted her Notice of Appeal to the Tribunal. In support of her Appeal, she provided the following information for 2022:

- She switched daycare providers in July 2022. At this time, she provided an update to the Ministry.
- Her application for 2022 was denied as her income was too high in 2021 (\$132,996.00). She explains that her income was higher than normal as she had sold a condo.
- She notes that there were some exchanges with the Ministry about this decision, but she did not appeal this.
- She planned to reapply for funding in the following year.

Her information for 2023 is as follows:

- Her completed 2022 tax return showed her income to be \$94,014.
- She contacted the Ministry by telephone and was advised she could not apply for funding as her day care was a \$10/day daycare. As she understood she was ineligible for the ACCB, she did not apply.
- She notes the Ministry contends they have no record of this conversation.

Her information for 2024 is as follows:

- In March 2024, someone from her day care advised her was eligible for the ACCB.
- She made her application and was granted funding for \$200/month as of March 1, 2024.
- On March 28, 2024, she submitted a request for Reconsideration to include a retroactive payment from January 23, 2023 to April 2024.
- She emphasizes she never asked for retroactive payment for July 1, 2022 to February 29, 2024, which were the dates the Ministry used in denying her request.
- It is unclear to the Appellant why the Ministry chose these dates as they are unrelated to her request.

Information presented at the Hearing.

At the hearing, the Appellant reviewed the content provided in her Appeal application. In addition, she noted that when she sought clarification from the Ministry about whether to apply for the ACCB in 2023, she was advised that this would be double dipping as her day care is a participant in the \$10/day child care program. She did not submit an application at that time because she believed it would not be accepted. She noted she had some exchanges with the Ministry about her income, but she believes the Ministry did not communicate clearly with her and she was misinformed.

In March 2024, the Appellant's day care provider told her she should be eligible for the ACCB. Stemming from this, she applied for the ACCB and asked the Ministry about having the benefit backdated to January 2023. She was advised to proceed with her current application and then to ask to have the benefit backdated. She believes the lack of clear accurate information from the Ministry caused her to lose out on receiving a benefit to which she would otherwise be entitled.

When asked regarding the events following July 2022, the Appellant noted there was back and forth with the Ministry regarding her income. She did not pursue the income review in 2022 as she believed her income would be in excess of the amount that would make her eligible for the ACCB. She expressed no interest in determining a revised 2022 income. She did not receive any final notification from the Ministry regarding her 2022 application to advise her the file was closed.

As noted above, the Ministry did not send a representative to attend the hearing.

Admissibility of New Evidence

The Panel is authorized under Section 22(4) of the *Employment and Assistance Act*, to consider evidence in addition to the information the Ministry had at the time of the Reconsideration Decision if it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In this case the Appellant provided additional evidence only at the hearing. No new evidence was submitted by the Ministry before the hearing and no one was sent to represent the Ministry at the hearing. The Panel admits the Appellant's additional evidence as it meets the above criteria.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision, which found the Appellant is not eligible for a retroactive ACCB was reasonably supported by the evidence or was a reasonable application of the applicable provision in the circumstances of the Appellant. Under Section 4 and 13(2) of the Regulation, the minister may provide retroactive ACCB backdated up to 30 days (from when the Ministry receives the ACCB application) when the parent meets all the following requirements:

- completes an application in the form required by the minister;
- supplies the minister with the social insurance number of the parent and parent's spouse, if any;
- supplies the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy;
- only one parent applies for the child care subsidy;

AND

- *there has been an administrative error.*

Appellant's Position

According to the Appellant:

- In August 2022, when she was applying for the ACCB, her assessed income was \$132,996.00 therefore she was not eligible for funding.
- The day care she used switched to a \$10 a day program. She was advised she could not receive ACCB if her day care was participating in this program.
- Her income was \$94,014 in 2022, so she thought she would be eligible for funding, but when she contacted the Ministry to confirm this, she was told she would not be eligible as she was already in a \$10 per day program. As a result, she did not apply in 2023.
- In 2024, the Appellant learned those with children attending her day care are eligible for the ACCB and she submitted her application on March 15, 2024.
- She states she would have applied for ACCB in January, 2023 had she been given the correct information.
- The Appellant requests that her application be reconsidered to include a retroactive payment for January 2023 to April 2024.

Ministry's Position

The Ministry determined the Appellant was not eligible for the ACCB for the period between July 1, 2022 and February 29, 2024. According to the Ministry:

- The Appellant's previous authorization ended July 1, 2022.

- Her current application was submitted March 15, 2024.
- According to Section 13(1) of the Regulation, the Appellant's eligibility for the ACCB began on March 1, 2024.
- Section 13(2) of the Regulation says the subsidy may be paid for child care provided in the 30 days before the parent completes an application in the case of an administrative error. The Ministry sees this intent of this provision is to ensure the Ministry follows necessary procedures to deliver service to an applicant in accordance with the legislation.
- The Ministry says no administrative error was made, and it applied the correct start date for the benefit according to Section 13.

Regarding the Appellant's explanation of why she did not apply for the ACCB before March 2024, the Ministry makes the following points:

- They find no evidence to establish that the Appellant was advised by the Ministry that she was ineligible for the benefit.
- The Ministry advised the Appellant of the end date of her benefit in 2022, via message in the My Family Service message centre. Included in this message was a link to submit the required information to assess her eligibility for the upcoming year.
- The Ministry received no further contact from the Appellant after September 2022 and her file was closed.

Panel Reasons

The Panel must consider whether the Ministry was reasonable in determining that the Appellant was not eligible for retroactive child care benefits. In this case, the Appellant emphasized that her Appeal was for retroactive benefits going back to January 2023. This was also clear in her Request for Reconsideration. The Panel, therefore, only considered whether the Ministry was reasonable in finding her not eligible for retroactive payments to January 2023. For this decision, the Panel did not consider the Ministry's evidence regarding the abandoned income review from 2022 and whether the Appellant was eligible for that period of time.

Section 13(2) of the regulation allows for a retroactive payment of 30 days from the time of application to be made where the Ministry has made an administrative error. The Panel must determine whether the Ministry was unreasonable in finding no administrative error had been made.

The Ministry found the Appellant's benefits began on March 1, 2024 which is the first day of the month in which the Ministry received her application, consistent with section 13(1) of the Regulation. The Ministry held that there was no evidence to support the Appellant's claim that she had been given inaccurate information, whereas the Appellant said she was given inaccurate information and relied on this information to her detriment. The Panel must weigh these contradictory pieces of information and determine which to give greater weight.

Reviewing the evidence, the Panel finds the Appellant's version of events to be more likely given that it is consistent with her actions to apply for the ACCB where she thought the application would be successful, which she did prior to 2022 and in 2024. That would explain why she only applied for ACCB again in March 2024.

The Panel finds that the Ministry was unreasonable in finding the Appellant was not the subject of an administrative error. At a point in time in 2023, the Appellant was incorrectly advised about her eligibility by the Ministry which caused this delay in application for ACCB. Accordingly, the Appellant is the subject of an administrative error which would entitle her to retroactive payments of 30 days from when the application is complete, as set out in Section 13(2) of the Regulation. Although the Appellant sought retroactive payment to January 2023, the Panel notes this is not possible as the Regulation clearly limits this type of payment to 30 days.

Concluding Decision

In the Reconsideration Decision, the Ministry found the Appellant met all requirements to be eligible for the ACCB and that her benefit period started on March 1, 2024.

The Panel's determination, in this appeal, is limited to examining whether the Ministry was reasonable in denying the Appellant's retroactive payments for January 2023 to February 2024, as she was not the subject of an administrative error. The Panel found the Appellant's accounting of events, that she was given inaccurate information by the Ministry, to be more plausible and hence an administrative error has been committed. Accordingly, the Panel rescinds the Reconsideration Decision. The Appellant is successful on appeal.

Appendix

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.
- (3) Repealed. [B.C. Reg. 187/2007, s. (b).]
- (4) Repealed. [B.C. Reg. 84/2016, s. 2.]

Authorizations required

- 4.1 (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).

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.

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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

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

Corrie Campbell

Signature of Chair

Date (Year/Month/Day)

2024/06/14

Print Name

Robert Fenske

Signature of Member

Date (Year/Month/Day)

2024/06/16

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

Friday June 14th, 2024