

Appeal Number 2025-0094

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (“Ministry”) dated February 25, 2025 in which the Ministry determined that the Appellant was not eligible to receive the Affordable Child Care Benefit (“Benefit”) between July 1, 2022 and September 30, 2024.

The Ministry had approved the Appellant’s request for the Benefit starting on the first day of the month in which the most recent application was submitted. The Ministry determined that it was not able to backdate the Benefit to July 1, 2022, the first day of month the Appellant submitted her first application, because the Appellant’s file had been automatically closed on July 1, 2024 due to inactivity.

Part D – Relevant Legislation

Early Learning and Child Care Act (“Act”), section 4

Early Learning and Child Care Regulation (“Regulation”), section 1, definition of “applicant”, sections 9, 14, 17, 20 and 23

The full text of this legislation is in the Schedule of Legislation at the end of the Reasons for Panel Decision.

Part E – Summary of Facts

The hearing took place in person on April 22, 2025. The Appellant attended in person, with her sister attending by phone as support person and advocate. The Ministry and one Panel Member also attended by phone.

Evidence Before the Ministry at Reconsideration

On July 8, 2022, the Appellant submitted an online CF2900 Affordable Child Care Application form (“CF2900”) with a handwritten CF2900 and Child Care Arrangement form (“CF2798”) attached, for Child #1, born in 2020. On December 6, 2023, the Appellant added a request for the Benefit for Child #2, born in 2022.

Between July 8, 2022 and February 21, 2024, the Ministry notified the Appellant about errors and missing information in those forms, and other forms submitted by the Appellant. The Ministry also asked for additional information the Ministry required to determine eligibility for the Benefit. Requests were made through MyFS and over the phone. The Ministry also sent the Appellant letters on November 8 and 23, 2023, confirming requests for additional information. Each letter included a paragraph stating:

“Subject to s. 5(1)(a), we have received your submitted request for Affordable Child Care Benefit, however we are unable to determine your eligibility for benefits.

Please send us the information requested within 45 days or you will be deemed ineligible for benefits and/or we may require a new application.”

The Appellant submitted additional information, and CF2900 and CF2798 forms between July 8, 2022 and January 25, 2024. The MyFS printout shows entries for “Application Submitted” on July 12, 2022, October 25, 2023, November 3, 2023 and October 28, 2024. At reconsideration, the Appellant said that she submitted or updated the July 8, 2022 application seventeen times since July 12, 2022.

On January 17, 2024, the Appellant submitted one CF2798 form for both children, for licensed group child care and licensed preschool. The form contained complete information for Child #1 but was missing the start date for child care for Child #2. The Ministry sent the Appellant a letter dated January 17, 2024, asking the Appellant to provide the start date for Child #2, with new signatures and dates on the CF2798. The January 17, 2025 letter also included the paragraph:

“Subject to s. 5(1)(a), we have received your submitted request for Affordable Child Care Benefit, however we are unable to determine your eligibility for benefits.

Please send us the information requested within 45 days or you will be deemed ineligible for benefits and/or we may require a new application."

On January 25, 2024, the Appellant submitted a replacement page for the CF2798 with the start date added for Child #2, but did not provide a second page with new signatures and dates. On February 21, 2024, the Appellant called the Ministry and was told that the Ministry was waiting for a further CF2798 form. The Ministry then told the Appellant to submit two new CF2798 forms with new signatures. The Appellant said she understood and would submit the forms in the next day or two, but the forms were not received by the Ministry.

On July 1, 2024, the Ministry's system auto-closed the Appellant's file because there had been no contact from the Appellant for four months.

On October 11, 2024, the Appellant called the Ministry and was told that her file had been auto-closed due to four months inactivity. The Ministry told the Appellant that she would have to submit a new CF2900, with a CF2798. The Appellant submitted an application through MyFS on January 14, 2025. The Ministry approved the Benefit, backdated to October 1, 2024.

Additional Evidence:

Appellant:

At the hearing, the Appellant stated:

- Since July 1, 2022, she has sent 34 messages to the Ministry, all related to her application for the Benefit.
- All the application forms she has submitted look the same, the information has not changed since July 2022, except that when she began the application she had one child and then she had a second child.
- Some of the reasons that the Ministry said the forms were not complete were about minuscule details, such as clicking on "Mrs." rather than "Miss", or the Ministry being unable to read the first letter of a signature.
- She has provided all the information the Ministry asked her to provide.
- She provided the work schedules that the Ministry requested in July 2022, although she does not know when she submitted the information online.
- She has phoned the Ministry repeatedly over the past three years, talked to Ministry staff, done what they tell her to do, including sending forms directly to the person's

email rather than uploading to MyFS, and still the Ministry would tell her to re-submit the application.

- She submitted an application again in October 2024, but when she had not heard anything from the Ministry, she phoned in January 2025 and was told that the Ministry had not received that application.
- There are documents missing in the Ministry's system.
- The forms on MyFS do not indicate when the person filling them out has missed a field, which is a flaw in the system.

Ministry:

At the hearing, the Ministry stated:

- When the Appellant submitted the new application in January 2025, initially the Ministry approved the Benefit starting January 1, 2025.
- After the Appellant contacted the Ministry and told them that she had submitted an application in October 2024, the Ministry reviewed its system and determined that the October 2024 application had been cancelled within the system because some information from the child care provider was missing.
- After that review, the Ministry revised the start date of the Benefit to October 1, 2024, based on the October 11, 2024 application.
- If the Appellant's file had not been auto-closed on July 1, 2024, and if the Ministry had obtained all the information requested, the Ministry could have backdated the Benefit to the start of the initial application in July 2022.

In answer to questions from the Panel, the Ministry stated:

- The Ministry determined that it had cancelled the October 11, 2024 application due to an error by the child care provider and therefore the Ministry determined that the Appellant was eligible for the Benefit from October 1, 2024. The Ministry was not giving the Appellant a "bonus" of three months' Benefit.
- The auto-closure of client's files is a case management practice that happens automatically within the system. No individual is involved in making that decision, and the Ministry representative is not aware of any communication from the Ministry to applicants telling them that their file is being auto-closed due to inactivity.
- Once a file has auto-closed, there is no opportunity to add more information to the file.
- The Ministry did not send the Appellant written notification of the outcome of her applications submitted before October 2024, under section 17 of the Regulation, because the Ministry did not have enough information to determine eligibility.

Therefore, the Ministry says that it did not have an obligation to send a written notification under section 17 of the Regulation.

Admissibility

Neither party objected to the admissibility of the additional oral evidence of the other party at the hearing. The Panel finds that the additional evidence provided by both parties is reasonably required for the full and fair disclosure of all matters in the appeal.

Therefore, the Panel finds that the additional evidence is admissible under the *Employment and Assistance Act*, s. 22(4).

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision, in which the Ministry determined that the Appellant was not eligible to receive the Benefit between July 1, 2022 and September 30, 2024, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances. The Ministry had approved the Appellant's request for the Benefit starting on the first day of the month in which the most recent application was submitted. The Ministry determined that it was not able to backdate the Benefit to July 1, 2022, the first day of month the Appellant submitted her first application, because the Appellant's file had been automatically closed on July 1, 2024 due to inactivity.

Appellant's Position

The Appellant submits that the Ministry's decision is not reasonable because, since July 2022, she has tried to provide all the information the Ministry has requested, but the Ministry's systems are flawed, the Ministry has made mistakes in its processing of her applications and the Ministry has lost documents she submitted. The Appellant says that it is not reasonable that the Ministry's forms do not highlight fields that are missed, or obviously incorrect, when the parent is filling them out. The Appellant also maintains that the Ministry has not approved her applications or has rejected documents because of very minor details. However, the Appellant says that the information in her applications has been the same since July 2022, except that when her second child was born, the application changed from child care for one child, to child care for two. There was also one change of child care provider. However, the Appellant says that if the information in all the applications forms and her many calls, messages and emails with the Ministry is combined, she has given the Ministry all the information it needed to determine her eligibility.

The Appellant submits that the letters from the Ministry, stating that the Ministry "may" require a new application, are confusing and unclear about the consequences of not providing information.

Ministry's Position

The Ministry maintains that the Appellant has repeatedly submitted applications and forms that are incomplete or incorrect, and each time, the Ministry has told the Appellant what information is needed. The Ministry says that it is reasonable to auto-close the Appellant's file after four months of inactivity, and once the Appellant's file was auto-

closed, she had to re-apply. The Ministry says that it has approved the Benefit starting on the first day of the month when the Appellant submitted the most recent application.

The Ministry says that, under section 20 of the Regulation, it would only be authorized to backdate the Benefit for thirty days before the application is submitted, and then only if the Ministry has made an administrative error. The Ministry says that, as there is no evidence that the Ministry made an administrative error, it is not authorized to backdate the Benefit for thirty days under section 20 of the Regulation.

The Ministry says that it was not required to give the Appellant written notice of its decision about any application the Appellant submitted before October 2024, under section 17 of the Regulation, because the Ministry did not have all the information it needed to determine the Appellant's eligibility to receive the Benefit. The Ministry maintains that it is not required to give written notice of a decision about whether or not an application is approved, until it has all the information it needs to determine eligibility.

Panel Decision

Relevant Legislation

The Appellant first submitted her application for the Benefit under the *Child Care Subsidy Act* on July 8, 2022. On September 1, 2024, the *Child Care Subsidy Act* was repealed and replaced with the *Early Learning and Child Care Act* ("Act"). Under section 23 of the Act, an application for the Benefit under the *Child Care Subsidy Act* in respect of which a determination has not been made is deemed to be an application for the Benefit under the Act.

Under section 4 of the Act, the Ministry may pay the Benefit to an eligible parent "on application by a parent and subject to the regulations." Under section 9 of the Regulation, a parent applies for the Benefit "by completing and submitting to the minister an application in the form required by the minister." The application forms required by the Ministry under both the *Child Care Subsidy Act* and the Act are the CF2900 Affordable Child Care Benefit Application and the CF2798 Child Care Arrangement form.

Under section 20 of the Regulation, the Ministry may pay the benefit from the first day of the month when the parent completes an application under section 9. The Ministry may backdate the Benefit for thirty days if there has been an administrative error.

Under section 17 of the Regulation, the Ministry “must give to an applicant written notice of the minister’s decision about whether or not the application under section 9 [*applications and eligibility for child care benefits*] is approved.” “Applicant” is defined in section 1 of the Regulation as “a parent who applies under section 9...for a child care benefit.” If the Ministry’s decision results in a refusal to pay the Benefit, the notice must include the reasons for the refusal. If the Ministry decides not to approve an application, the applicant may request reconsideration of that decision, and the reconsideration decision may be appealed to the Tribunal. Both reconsideration and appeal rights are subject to time limits set out in the legislation governing those processes.

Notification Requirement

The Ministry maintains that, under section 17 of the Regulation, it is not required to give an applicant written notice of its decision about whether or not the application is approved, until it has all of the information it needs to determine eligibility. The Panel finds that the legislation does not place this limitation on the Ministry’s obligation to provide written notification of a decision to an applicant. The Panel finds that, once a parent has applied for the Benefit under section 9 of the Regulation, by completing and submitting an application in the form required by the Ministry, the Ministry is required under section 17 of the Regulation to give the parent written notice of its decision about whether the application is approved. An application may not be approved because the Ministry does not receive all the information it needs to determine eligibility, some of which is not contained in the application forms. However, once a parent has submitted the application forms under section 9 of the Regulation, they are an “applicant” as defined under section 1 of the Regulation, and therefore they are entitled to receive written notice of the outcome of their application, even if the reason for refusal is that the applicant has not provided all the information the Ministry needs to determine eligibility.

The MyFS printout shows entries for “Application Submitted” on July 12, 2022, October 25, 2023, November 3, 2023 and October 28, 2024. The Ministry also acknowledges an application that was “completed” on October 11, 2024, and a new application on January 14, 2025. There were many communications, on the MyFS portal and over the phone, between the Appellant and the Ministry, from July 2022 onwards, as the Ministry requested corrections and additional information, and the Appellant tried to meet those requests.

On July 1, 2024, the Ministry’s system “auto-closed” the Appellant’s file because there had been no activity on the file for four months. The Ministry advises that auto-closure is an automatic case management practice, and the Ministry does not send any notice to an

applicant that their file has been closed. The Ministry did not notify the Appellant that her file was auto-closed.

The Ministry sent letters to the Appellant on November 8, 2023, November 17, 2023 and January 17, 2024 about information and forms that were missing or needed to be re-submitted. In each letter, the Ministry included the statement:

"Subject to s. 5(1)(a) of the *Child Care Subsidy Act*, we have received your submitted request for Affordable Child Care Benefit, however we are unable to determine your eligibility for benefits. Please send us the information requested within 45 days or you will be deemed ineligible for benefits and/or we may require a new application. If you require more time to obtain this information, please contact 1-888-338-6622."

These letters set out potential consequences: if the requested information is not provided within 45 days, the Appellant "will be deemed ineligible for benefits and/or we may require a new application." The Ministry did not send any further notification to the Appellant when the 45 days were up, either to confirm that the Ministry had, in fact, deemed the Appellant ineligible, or to tell her that she needed to make a new application, or both. The Panel finds that, as the Applicant submitted the CF2900 and CF2798 forms, which are the forms required by the Ministry, in July, 2022, the Ministry was required, under section 17 of the Regulation, to provide written notice of its decision about whether the application was approved.

The July 2022 application might not have been approved because the Ministry did not have all the information it needed to determine eligibility. However, the Ministry is required, under the legislation, to send the Appellant written notice of that decision, with the reasons for refusal. The Panel finds that the letters the Ministry sent to the Appellant on November 8, 2023, November 17, 2023 and January 17, 2024 do not meet the requirement for written notice under section 17 of the Regulation, because they do not notify the Appellant that her application has not been approved, only that it may not be approved in future.

The Ministry's letter to the Appellant on January 22, 2025 states that the Ministry has found that the Appellant is not eligible for the Benefit between July 1, 2022 and September 30, 2024, because the Appellant's application was submitted on October 11, 2024. The Panel finds that, while the January 22, 2025 letter addressed eligibility between July 1, 2022 and September 30, 2024, it was written notice of the Ministry's decision about the October 2024 application only, not the July 2022 application. The Panel finds that, as the Ministry did not give the Appellant written notice of its decision about the Appellant's July 2022

application under section 17 of the Regulation, that application was still open under the Act. The Panel finds that it was not reasonable to require the Appellant to submit a new application in October 2024 and then refuse to backdate the Benefit before October 1, 2024.

At the hearing, the Ministry stated that, if the Appellant's file had not been auto-closed, and if the Ministry had all the information it required to determine eligibility, the Ministry could have backdated the Benefit to the start of the original application in July 2022. The Panel finds that the Reconsideration Decision is not a reasonable application of the legislation, because it does not consider the Appellant's eligibility for the Benefit since July 1, 2022 if her file had not been auto-closed. The Panel finds that auto-closure of a file does not eliminate, and is not a substitute for, providing the written notification of a final decision about an application under section 17 of the Regulation.

Eligibility

The Panel is not in a position to determine if the Appellant is eligible to receive the Benefit between July 1, 2022 and September 30, 2024 based on the application and all the information provided since the Appellant submitted the first application on July 8, 2022. The Ministry must determine eligibility, and then give the Appellant written notice of its decision under section 17 of the Regulation. If the Ministry determines that the Appellant is not eligible based on the July 8, 2022 application and the information provided since then, the written notice must include the Ministry's reason for refusing to pay the Benefit. The Appellant will then have the rights of reconsideration and appeal under sections 13 and 14 of the Act, which may include the opportunity to provide additional information as permitted under the Act and the Regulation.

Conclusion

The Panel finds that the Reconsideration Decision was not a reasonable application of the legislation in the Appellant's circumstances, because the Ministry failed to notify the Appellant as to whether or not her application for the Benefit, first submitted on July 8, 2022, had been approved, as required under section 17 of the Regulation. The Panel rescinds the Reconsideration Decision. The Appellant is successful in the appeal.

Early Learning and Child Care Act

Child care benefits

s. 4 On application by a parent and subject to the regulations, the minister may pay a benefit to or for the parent if the parent is eligible for the benefit, for the purpose of reducing or eliminating the cost of child care to the parent.

Transition – child care grants and child care subsidies

s. 23 On the coming into force of this section,

- (a) an application for a child care grant made under the *Child Care BC Act* but in respect of which a determination has not been made is deemed to be an application for a child care grant as defined in section 1 [*definitions*] of this Act,
- (b) an application for a child care subsidy made under the *Child Care Subsidy Act* but in respect of which a determination has not been made is deemed to be an application for a child care benefit as defined in section 1 of this Act,
- (c) a child care grant that is being paid under the *Child Care BC Act* is deemed to be a child care grant as defined in section 1 of this Act, and
- (d) a child care subsidy that is being paid under the *Child Care Subsidy Act* is deemed to be a child care benefit as defined in section 1 of this Act.

Early Learning and Child Care Regulation

Definitions

s. 1 In this regulation:

"applicant" means a parent who applies under section 9 [*applications and eligibility for child care benefits*] for a child care benefit;

Applications and eligibility for child care benefits

s. 9 (1) Subject to subsection (2), a parent may apply for a child care benefit by completing and submitting to the minister an application in the form required by the minister.

(2) Only one parent in each family unit is eligible to apply for a child care benefit.

(3) An applicant is eligible for a child care benefit only if all of the following apply:

- (a) the applicant is a resident of British Columbia;

- (b) the child care for which the child care benefit is sought by the applicant is received for one or more qualifying reasons set out in section 10;
- (c) the applicant satisfies the citizenship or other requirements set out in section 11;
- (d) unless an exception under section 13 (2) applies in relation to the applicant's child, the applicant's family unit satisfies the income requirements set out in section 12;
- (e) the applicant and the applicant's spouse, if any, supply the minister with the information and records required under section 14;
- (f) the applicant has completed and submitted an application form in accordance with subsection (1).

Information and records requirements

s. 14 (1) For the purposes of section 9 (3) (e), an applicant must submit all of the following information and records to the minister:

- (a) the social insurance number of the applicant and the applicant's spouse, if any;
- (b) proof of the identity of each member of the applicant's family unit;
- (c) proof of the matters set out in section 9 (3) (a) to (d);
- (d) unless an exception under section 13 (2) applies in relation to the applicant's child, authorizations from the applicant, and the applicant's spouse, if any, for
 - (i) the minister to disclose to the Canada Revenue Agency the full name, birth date and social insurance number of the applicant and the applicant's spouse,
 - (ii) the Canada Revenue Agency to disclose to the minister the information described in subsection (3) of this section,
 - (iii) the minister to disclose to the applicant personal information of the applicant's spouse used to calculate the adjusted annual income of the applicant's family unit,
 - (iv) the minister to disclose to the applicant's spouse personal information of the applicant used to calculate the adjusted annual income of the applicant's family unit, and
 - (v) the indirect collection by the minister of the information described in

subparagraph (ii).

(2) In addition to the information and records required under subsection (1), for the purposes of section 9 (3) (e), an applicant must submit to the minister authorizations from the applicant and the applicant's spouse, if any, for

- (a) a third party to disclose to the minister personal information of the applicant and the applicant's spouse that the minister requires to determine or audit an applicant's eligibility for a child care benefit, and
- (b) the indirect collection by the minister of the information described in paragraph (a).

(3) For the purposes of subsection (1) (d) (ii), the information that is the subject of the authorization from the applicant and the applicant's spouse, if any, is the personal information that is

- (a) relevant to the person's income for the 2 calendar years preceding the current calendar year, whether or not the person completed an income tax return for those years, and
- (b) required by the minister to calculate the adjusted annual income of the applicant's family unit.

Notice to applicant required

s. 17 (1) The minister must give to an applicant written notice of the minister's decision about whether or not the application under section 9 [*applications and eligibility for child care benefits*] is approved.

(2) If the minister's decision results in a refusal to pay a child care benefit to or for the applicant, the minister's notice to the applicant must include the minister's reasons for the refusal.

When child care benefit may be paid

20. (1) The minister may pay a child care benefit to or on behalf of a parent from the first day of the month in which the parent completes an application under section 9 [*applications and eligibility for child care benefits*].

(2) If an administrative error has been made, the minister may pay a child care benefit to or on behalf of a parent for child care provided in the 30 days before the parent completes an application under section 9.

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Employment and Assistance Act

s. 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.

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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:

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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2025/04/29

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2025/04/29

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2025/04/29