Part C – Decision Under Appeal

The Appellant appealed the Reconsideration Decision of the Ministry of Education and Child Care (the "Ministry") dated February 25, 2025. The Ministry decided that the Appellant was ineligible for Affordable Child Care Benefit under Section 20(1) of the Early Learning and Child Care Regulation for the 10 month period March 1, 2024, to December 31, 2024.

The Appellant had an application for that period automatically closed by the Ministry. The Ministry stated that the Appellant's file or application was closed for inactivity without a decision, and because no decision was made written notice was required. On filing a new application the Appellant sought backdating to cover the period since the first application.

Part D – Relevant Legislation

This decision cites:

Early Learning and Child Care Act (the "*Act*"):

Section 1 [Definitions – "applicant"]

Section 4 [Child care benefits]

Section 23 [Transition – child care grants and child care subsidies]

Early Learning and Child Care Regulation (the "*Regulation*"):

Section 9 [Applications and eligibility for child care benefits]

Section 17 [Notice to applicant required]

Section 20 [When child care benefit may be paid]

Text of the above legislation is attached at the end of the decision.

Part E – Summary of Facts

Hearing Proceeding

A video hearing was held May 13, 2025 with the Appellant and a Ministry Representative appearing to present their respective cases.

Background

2024 -March-25:

- The Appellant submitted a CF2900 Affordable Child Care Benefit ("ACCB") application form and a CF2798 ACCB Child Care Arrangement form ("Care Arrangement form") via My Family Services (MyFS).
- The application included the Appellant advising that:
    - She had moved to BC and was on leave from her employer in another province while seeking transfer admission into a similar training position in BC, but may still have a shift effective next month, Monday to Friday, 8:30am to 4:30pm.
    - She required childcare to search for transfer admission or for other work.

2024-April-2: The Ministry sent a message via MyFS asking the Appellant to "Please contact the Child Care Service Centre at your earliest convenience". It included contact details but did not state the purpose of the message; but the Ministry states that it wanted to confirm the Appellant's reason for requiring child care.

2024 -August-1: The Appellant's ACCB case was automatically closed due to four months of inactivity.

2025-January-3:

- The Appellant phoned the CCSC and asked about her ACCB benefit plan.
- The Ministry advised the Appellant:
    - that her file had closed due to over four months of inactivity,
    - to reapply for ACCB with a new ACCB application form, and to submit an updated Care Arrangement form, as she had indicated a childcare provider changed in September 2024.
- The Appellant submitted a new ACCB application form and Care Arrangement form.

2025-January-3: The Child Care Service Centre received via MyFS the Appellant's Affordable Child Care Benefit Application, CF2900.

2025-January-16: The Ministry sent the Appellant a letter advising that the Appellant was not eligible for the Affordable Child Care Benefit for the period March 1, 2024 to December 31, 2024.

2025-February 11, 2025, The Appellant requested reconsideration, and in Section 3 of the Request for Reconsideration form the Appellant wrote:

I am asking the Ministry to reconsider my request for back pay of the Affordable Child Care Bene fit (ACCB) to March 2024 based on the following:

- I submitted an application for the ACCB in March 2024. I did not hear anything back and decided to investigate what had happened.
- I found a single message when I logged into myfamilyservices.gov.bc.ca, dated April 2, 2024, stating:

  "Thank you for contacting the Child Care Service Centre. We have attempted to contact you, however we were unable to reach you by phone. Please contact the Child Care Service Center at your earliest convenience. [Contact details].

- I do not recall receiving any calls, written messages, or letters in regards to my March 2024 ACCB application.
- I contacted ACCB by phone in December 2024 and I was told that my case from March 2024 had been closed due to inactivity. I don't recall receiving any communication about my application being approved, denied, or closed or other communication about thls. I was told I can reapply and make a note that I was requesting back pay from March 2024. However, another representative told me to reapply, and when I am approved, I could apply for back pay to March 2024, which is what I did.
- I believe the Ministry's decision to deny my request for back pay to March 2024 ls incorrect because my Initial application was made In March 2024 and it was closed without my knowledge or communication about this. I was eligible far that period of time for the ACCB as my situation did not change since then to now. The relevant Regulations that apply to this are ELCC Regulations Sections 17 and 20 ...
- [Re: s.17] There was no notice provided regarding my March 2024 application

...

The details of my situation from March 2024-January 2025.

- I was not receiving any Income during this period.
- I last worked in February 2024.
- I was awaiting a transfer for my medical residency from Alberta to BC but unfortunately I was not able to get the transfer.
- I was looking for other employment positions during this time.

The details of childcare arrangements for my [child] from March 2024-January 2025:

- [My child] was enrolled in Licensed Group child care at [facility “A”] prior to March 2024 until the end of Julv 2024. I have attached a copy of the ACCB Child Care Arrangement

from that period. (I understand from an ACCB representative when I called that a copy of this was available on file from my March 2024 application as well).

- [My child] was enrolled in licensed Group child care at [facility "B"] from August 2024 until present. I have attached a copy of the ACCB Child Care Arrangement for this (It was also included In my 2nd application in January 2025).

2025-February-25: The Ministry issued the Reconsideration Decision stating:

> The ministry finds that you are not eligible for the Affordable Child Care Benefit for the period between March 1, 2024 to December 31, 2024. Your application was submitted on January 3, 2025, that was signed and dated on January 3, 2025. Therefore, as per the ELCC Regulation Section 20(1), your eligibility for the Affordable Child Care Benefit began on January 1, 2025, which is the first day of the month in which the application was completed.
>
> As set out in the ELCC Regulation Section 20(2), payment of a child care subsidy may only be backdated 30 days from when the parent completes the application under section 9 if there has been an administrative error. The ministry notes that the intent of Section 20(2) of the ELCC Regulation is to ensure that the ministry follows the necessary procedures to deliver service to an applicant in accordance with the legislation. You advise in Section 3 of your Request for Reconsideration that you feel that your ACCB should be backdated to March 1, 2024. A review of your file indicates that you did submit an ACCB application on March 25, 2024, however, the CCSC was unable to establish eligibility until they confirmed your reason for requiring childcare, as you had stated you might be employed, or you might be searching for work. The CCSC tried phoning you to confirm this information, but there was no answer, so they sent you a message via My Family Services (MyFS) asking you to contact them, which you never did. The ministry notes that Section 17(1) of the ELCC Regulation would apply once enough information to determine eligibility had been received by the CSCC. However, the ministry did not have enough information to determine eligibility, which is why they tried contacting you by phone and via MyFS, and therefore Section 17(1) does not apply. Section 20(1) of the ELCC Regulation does not apply to you as your ACCB application had not been approved. Upon receipt of your application on January 3, 2025, the ministry applied the correct start date of January 1, 2025, in accordance with Section 20(1) of the ELCC Regulation. Therefore, the ministry finds that there is no evidence to establish that the ministry made an administrative error.

Appellant Submissions

The Appellant provided as the "Reasons for Appeal" the same submission made in Section 3 of the Request for Reconsideration.

In oral submissions, the Appellant reiterated that information contending that the Ministry failed to properly notify her about closing her file with the application without notification of a decision. The Appellant stated that she did not get a phone call or any mail, and only when she checked MyFS in December 2024 did she notice an April 2, 2024 message about inactivity, asking her to contact the Ministry at her earliest convenience. The Appellant stated that in January 2025 she was informed that she had to reapply and could ask for backdating.

The Appellant asserted that since she was not informed of the decision the Ministry should backdate the recent approval from the January 2025 reapplication to include the original application.

Ministry Submissions

In oral submissions, the Ministry asserted that the Appellant was ineligible for childcare benefits between March 1, 2024, and December 31, 2024, due to the closure of her initial application following four months of inactivity. Staff tried to alert the Appellant but could not make contact. A phone call was not answered and no voicemail message could be left. The Ministry also did not have a proper email address. The Ministry left a MyFS message leave asking the Appellant to contact the Child Care Service Centre at her convenience.

The Ministry contended that written notice of the closure was not required under Section 17 of the Regulation, as no formal eligibility determination had been made. The Ministry characterized the auto-closure of applications as an administrative policy rather than a discretionary decision on the application.

Admissibility of New Evidence

Under section 22(4) of the *Employment and Assistance Act*, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Any evidence that the Panel admits is admitted on that basis.

No new documentary evidence was submitted by the Appellant or the Ministry.

The Panel heard oral submissions with testimony. None was objected to by either party. Any testimony admitted as relevant to the decision is set out in the decision below.

Part F – Reasons for Panel Decision

Purpose and Standard of Review

The purpose of the Panel is not to redo the Reconsideration Decision under appeal or decide whether it agrees with the Ministry's decision. It is to decide whether the Ministry did, or did not, reasonably come to the decision it made, considering two factors. These are whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances of the Appellant. The standard includes whether any evidence, which might alter the outcome, was overlooked, unreasonably given improper weight, or mischaracterized.

Applicable Legislation

The Appellant first submitted her application for the child care benefit under the *Child Care Subsidy Act* on March 25, 2024. On September 1, 2024, the *Child Care Subsidy Act* was repealed and replaced with the *Act* (the *Early Learning and Child Care Act).* Under section 23 of the *Act*, an application for the child care 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 child care benefit under the *Act*.

Discussion of Issues

The central issue in dispute is whether the Ministry has the authority to backdate the current application or consider it in conjunction with the original application.

The Ministry submits that Section 17 of the Regulation does not apply when it has not completed its evaluative steps to come to a formal decision on the original application. As a result, it asserts that no administrative error occurred under Section 20(2) of the *Regulation* that would justify backdating beyond 30 days—or back to March 1, 2024, to cover the original application period through December 31, 2024.

This position is based on an application that is under review being considered in a state that is neither approved nor denied; and that if the file is closed before a decision is made, it remains in that undecided state. Further, that because it is in an undecided state, written notice would not be required to comply with Section 17(1) of the Regulation.

While this reasoning is mechanically sound, it fails to account for the explicit wording of Section 17(1), as well as the remedial nature of the legislation, which must be interpreted in a large and liberal manner to give effect to the remedial purpose of the legislation.

The Panel finds that section 17(1) of *Regulation* is drafted expansively, requiring notice "of the minister's decision about whether or not the application … is approved"—not merely when an application is approved or denied, but in all cases where its status changes. The Panel further finds that any termination of an application—regardless of the reason—falls within the scope of Section 17(1) and triggers the requirement for written notice. The absence of written notice deprives the applicant of the required notification and the opportunity to seek reconsideration or subsequent appeal. When files are closed without notification, or even closed following notice in MyFS that automated closure may arise from prolonged inactivity, do not satisfy the Ministry's statutory obligation and fail to align with a reasonable interpretation of the legislation.

Additionally, the Panel finds it unreasonable for the Ministry to classify the closure as a non-decision, merely an automated administrative process dictated by policy. Even if such terminations are automated as part of a general policy, the closure still counts as a decision—one that triggers statutory obligations. Notably, the Ministry was unable to cite any legislative authority permitting such closures, nor could it clarify how this practice legally modifies or circumvents the written notice requirement under Section 17 of the Regulation.

While the Ministry did not explicitly raise the issue, the Panel considers the possibility that it implicitly rejected the Appellant's status as an "applicant" or deemed the submission not an "application under Section 9" due to outstanding verification needs. However, the Panel finds that this application was sufficiently complete. As confirmed at the hearing, the Ministry was not seeking material completion. Rather it was seeking clarity on a likely typographical error, and confirmation of the response the Appellant gave identifying why she needed child care. The application was not so incomplete that a reasonable person would consider it unfit for submission or inevitably destined to fail.

Ultimately, whether the Ministry misinterpreted the application status, mischaracterized its termination as "no decision," or applied unreasonable procedural standards, such actions represent misinterpretations of the facts and legislation in the circumstances.

Furthermore, the Panel finds it unreasonable that the January 3, 2025, application review excluded consideration of the original application covering March 1, 2024, to December 31, 2024 or failed to assess both applications jointly. The Panel finds that, as the Ministry did not give the Appellant written notice of a decision about the Appellant's March 2024 application under Section 17 of the Regulation, that application was still open under the *Act.* Although the original file was administratively closed, the MyFS system still contained

relevant records, and the original application was retrievable, as evidenced by it being in the record provided by the Ministry for the hearing. Even if the file was considered "closed", irrespective of whether the application was "closed" or "terminated", by refusing to reopen consideration of it the Ministry treated the closure or termination as final—effectively, this confirmed a decision about finality, or constituted one. In either case this contradicts the Ministry's claim that no formal decision was made.

Finally, the Panel finds no basis to conclude that Section 20(2) of the Regulation overrides or mitigates these deficiencies or allows them to be classified merely as "administrative error," restricting backdating to only 30 days despite a breach of law causing a 10-month deprivation. Accordingly, this was no "administrative error" and the Ministry's invocation of Section 20(2) as preventing backdating beyond 30 days is unreasonable.

The Panel finds that the Reconsideration Decision failed to adequately account for these issues and did not restore consideration of the original application or assess the applications jointly, rendering its conclusion unjustifiable.

The Panel finds that the Reconsideration Decision unreasonably failed to take account of the above and to restore consideration of the original application or jointly consider the applications. As such the Panel finds that the Reconsideration Decision was not reasonably supported by the evidence and the Ministry unreasonably applied the legislation in the circumstances required by the *Employment and Assistance Act*, SBC 2002, c 40 in section 24.

Conclusion

The Appellant is **successful** on appeal, the Panel having found that in the Reconsideration Decision, the applicable laws were unreasonably applied, and the evidence was also unreasonably applied in the circumstances.

Accordingly, the Panel **rescinds** the Reconsideration Decision.

Appendix – Relevant Legislation

Early Learning and Child Care Act

Child care benefits

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

Part 1 — Interpretation and Application

Definitions

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;

Part 2 — Eligibility for Child Care Benefits

Applications and eligibility for child care benefits

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).

...

Notice to applicant required

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.

Part 3 — Administration and Enforcement of Child Care Benefits

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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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 Kent Ashby	
Signature of Chair	Date (Year/Month/Day) 2025/05/14
Print Name Rick Bizarro	
Signature of Member	Date (Year/Month/Day) 2025/05/14
Print Name Susan Ferguson	
Signature of Member	Date (Year/Month/Day) 2025/05/15