

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry for Children and Family Development's ("ministry") reconsideration decision dated March 6, 2019. The ministry found the appellant is not eligible for the Affordable Child Care Benefit ("ACCB") for the period September 1 - December 31, 2018, because under the Child Care Subsidy Regulation (sections 4(1) and 13), the benefit may only be paid from the first day of the month in which the parent completes an application. The ministry found that the appellant did not submit a complete application package in September 2018.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act - section 4

Child Care Subsidy Regulation - sections 4(1) and 13

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that:

- On January 25, 2019, the ministry received the appellant's new application form. The application was signed and dated on January 16, 2019.
- On February 13, 2019, the ministry sent the appellant a letter advising that she is not eligible for the ACCB for the period September 1 - December 31, 2018.
- On February 21, 2019, the appellant submitted her Request for Reconsideration ("RFR") to the Child Care Services Centre. The ministry received the RFR on February 26, 2019 and completed its review of the request on March 6, 2019.

Upon reviewing the RFR, the ministry found that:

- On April 10, 2018, the appellant submitted a Child Care Subsidy application, signed and dated on April 6, 2018.
- On April 23, 2018, the Child Care Subsidy Service Centre found the appellant ineligible for a subsidy due to her income.
- On September 14, 2018, the Child Care Service Centre received a faxed copy of the appellant's *Consent to Collect CRA records*. The consent form was dated September 14, 2018. The ministry states that no other documents were provided and at the time the consent was received, the appellant's file was closed.
- On January 25, 2019, the Child Care Service Centre received (via My Family Services), a copy of the appellant's ACCB application that was signed by the appellant on January 16, 2019 and by her spouse on January 21, 2019.
- On February 13, 2019, the ministry sent a letter advising the appellant that she is eligible for the ACCB beginning January 1, 2019. In this letter, the ministry also informed the appellant that she is not eligible for the ACCB for the period September 1 - December 31, 2018.
- The ministry indicates that on reconsideration, the appellant provided a copy of an ACCB application that was signed in September 2018. The ministry states that the information was not provided to the Child Care Service Centre at any time, including when the appellant submitted her *Consent to Collect CRA records* on September 14, 2018.

2. The RFR, signed by the appellant on February 21, 2019, in which she states the following:

- She sent the CRA consent form on September 14, 2018.
- She provided a care arrangement form and all other supporting documents.
- She sent an application form dated for April 2018 on the understanding that she could re-send the application as none of her information had changed.
- She opened an on-line account on October 26, 2018 in order to have her application process through the client service portal as she had not received any information about the status of the ACCB.

3. A copy of an ACCB *Consent to Collect CRA Records*, signed by the appellant and her spouse on September 14, 2018.

4. A letter from the Child Care Service Centre dated February 13, 2019, advising that the appellant is not eligible for the ACCB for the period September 1 - December 31, 2018. The letter indicates that subsequent to the application completed on January 21, 2019, the appellant is eligible for the ACCB from January 1, 2019. The letter states that the appellant is responsible for paying her child care costs prior to January 2019.

5. A letter from the Ministry of Children and Family Development - Child Care Service Centre dated January 25, 2019, indicating the appellant is eligible for the ACCB from January 1 - June 30, 2019. Based on the appellant's family size and CRA assessed income, the approved benefit is \$225 per month for the child's preschool.

6. An ACCB application form (signed by the appellant and her spouse (on January 16, 2019 and January 21, 2019 respectively), consenting to the collection of CRA records.

7. A *Child Care Subsidy Child Care Arrangement* form, signed by the appellant on April 6, 2018.

8. A fax cover page from the appellant dated April 10, 2018, addressed to the Child Care Subsidy office and indicating that a subsidy application for preschool is attached. Instructions on the cover sheet request the applicant to call the Child Care Subsidy office in 10 business days to confirm they have received the fax. Two *Child Care Subsidy* application forms accompany the fax cover sheet:

- an application signed by the appellant and her spouse on April 6, 2018 with attached pay stub from the spouse's employer; and
- an application signed by the appellant and her spouse on either "2018/04" or "2018/09" [date not fully legible] with attached identification for the appellant and her spouse.

Additional information

Subsequent to the reconsideration decision, neither party provided any new evidence requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act*. The appellant filed a Notice of Appeal with hand-written statement which the panel accepts as argument. At the hearing, the appellant and the ministry provided further argument.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant is not eligible for the ACCB for the period September 1 - December 31, 2018 under sections 4(1) and 13 of the Child Care Subsidy Regulation is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant did not submit a complete application for September 2018?

The ministry based the reconsideration decision on the following legislation:

Child Care Subsidy Act

Child care subsidies

4 Subject to the regulations, the minister may pay child care subsidies.

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.

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.

Analysis and panel's decision

Under section 4 of the Child Care Subsidy Act, the minister may pay child care subsidies where the requirements set out in the Regulations are met. Section 4(1) of the Child Care Subsidy Regulation lists specific eligibility requirements including the requirements to complete an application in the form prescribed by the minister and supply identity and other documents.

Section 13 of the Regulation governs the ministry's payment of the subsidy. Under subsection 13(1), the subsidy may be paid from the first day of the month in which the parent completes the application. Subsection 13(2) of the Regulation sets out an exception in the case of an administrative error. If an administrative error has been made, a child care subsidy may be provided in the 30 days before the parent completed the application.

The specific issue to be determined is eligibility for the ACCB under section 13(1) of the Regulation for the 4 month period from September 1 - December 31, 2018. Eligibility for this period will depend on whether the appellant provided the ministry with an application in the form required by the minister dated in September 2018.

The ministry's evidence is that the appellant submitted applications on April 10, 2018 and January 25, 2019. Based on the application received in April, the ministry determined that the appellant was not eligible for the subsidy for the period April 1 - August 31, 2018 because her family income exceeded the threshold for the subsidy. The appellant does not dispute the ministry's finding that she was ineligible for the ACCB based on her April 2018 application.

The ministry approved the application received in January 2019 and advised the appellant by letter dated February 13, 2019 that the ACCB is approved for the period starting January 1, 2019. In the same letter, the ministry informs the appellant that she is not eligible for the ACCB for the period September 1 - December 3, 2018.

The appellant acknowledges that she is currently receiving the ACCB based on her January 2019 application but argues that she should receive the subsidy for the September 1 - December 31, 2018 period because her child is in the same preschool and nothing has changed from 2018 - 2019. The appellant emphasizes that she can provide proof of her child's enrolment from September and December 2018 and that she relied on a community service provider to help her navigate the application process and submit the required documents.

The appellant's understanding was that she could use the application she submitted in April 2018 to apply for the ACCB effective September 1, 2018 ("re-send" the application through the child care services portal) as none of her information had changed. The appellant argues that the ministry should honour her application as she "did submit documentation back in September 2018."

The ministry argues that it did not receive a complete application from the appellant for September 2018. The ministry's evidence in the reconsideration decision is that on September 14, 2018, the Child Care Service Centre received a copy, via fax, of the ACCB *Consent to Collect CRA Records* and that no additional documents were provided. The ministry argues that it was unable to process the appellant's application without a copy of all of the required documentation because the appellant's file was closed. In response to questions at the hearing, the ministry explained that it does not have any policy requirement to follow up with an applicant to request missing documents. The ministry could not confirm whether any follow-up would occur where an applicant's file was still open at the time they submitted an incomplete application.

In the reconsideration decision, the ministry states that the appellant provided a copy of an ACCB application "that was signed September 2018" but that the information was not provided to the Child Care Service Centre at any time, including when the appellant submitted her *Consent to Collect CRA records* on September 14, 2018. The panel notes that a document with a date of either "2018/04" or "2018/09" [date not fully legible], was included with the appellant's faxed cover page addressed to the Child Care Subsidy office on April 10, 2018. The date on the application is comprised of year and month and the day of the month is not indicated.

In response to questions about this application, the ministry argues that it is more reasonable to conclude that the date is 2018/04 rather than 2018/09 because the application was faxed with a cover sheet dated April 10, 2018, and the fax includes another application with a complete date (April 6, 2018). The ministry confirmed as well that no application form or other documents were included with the CRA consent form that was faxed separately on September 14, 2018.

Based on the ministry's clarification, the panel finds as fact that the second application form provided with the April 10, 2018 fax cover sheet is dated 2018/04. In that case, and considering all of the documents in the record, there is insufficient evidence to confirm that the appellant submitted an application for September 2018. The appellant clearly had difficulty with the application process and does not feel she received clear instructions or adequate assistance from the community service provider she had approached for help.

The panel is sympathetic to the appellant's circumstances but is unable to find that the ministry's reconsideration is an unreasonable application of the legislation. Subsection 13(1) of the Child Care Subsidy Regulation directs the ministry to pay the subsidy from the first day of the month in which the parent completes an application under section 4. The record includes applications signed in April 2018 and January 2019 but there is no application for September 2018 and the only document received by the ministry in September was the CRA consent form.

Subsection 13(2) sets out an exception under which the ministry is authorized to pay a subsidy for child care that was provided in the 30 days before the parent completes an application, if an administrative error has been made. The panel finds that there is insufficient evidence to establish that the ministry made an administrative error. The ministry did not follow up with the appellant when it received only her CRA form in September 2018 but there is no legislative requirement for follow-up and the ministry indicates it has no policy requirement either. Under section 12 of the Child Care Subsidy Regulation, the minister must notify the applicant as to whether or not the application is approved and the appellant was notified accordingly in the ministry's letter of February 13, 2019.

Conclusion

Based on the information in its entirety, in particular, that the only document received by the ministry in September 2018 is the CRA consent form, the panel finds that the ministry's reconsideration decision, which determined that the appellant is not eligible for the ACCB for the period September 1 - December 31, 2018 is a reasonable application of the legislation. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

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)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-04-05

PRINT NAME

Wayne Reeves

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-05

PRINT NAME

Nancy South

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-05