

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children & Family Development's (ministry) reconsideration decision dated November 26, 2019, finding that the appellant is not eligible for the Affordable Child Care Benefit (ACCB) for the period between April 1, 2019 and September 30, 2019 as the appellant's application was made in October 2019, and the ACCB may only be paid from the first day of the month in which the parent completes the application as is required by the Child Care Subsidy Regulation (CCSR) Sections 4 and 13.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Regulations Sections 4 and 13

PART E – SUMMARY OF FACTS**Evidence before the ministry at the time of reconsideration:**

- A Request for Reconsideration of ACCB dated November 8, 2019 in which the appellant stated:
 - a notice to get a renewal of the subsidy had been received back in March, and as it was the first time using the online system it was presumed that all had been done properly;
 - the daycare provider had been out of the country for several months and it was only recently they noticed there had been no payments from the ministry for six months; and
 - if not approved, the job will be lost as the daycare spot will be given away due to non payment of daycare fees
- A letter dated October 16, 2018 from the CCSC to the daycare provider confirming that ACCB had been authorized for the benefit period September 1, 2018 to March 31, 2019.
- An ACCB Application form dated October 22, 2019.

In the Notice of Appeal received on December 9, 2019 the appellant questions why a different case number, (who are from the same daycare centre, similar circumstance as the appellant and who also had been inactive) had been approved, yet the appellant's file hadn't, and wonders why this person was treated nicely and work was done without any issues, yet they are getting a run-around.

At the hearing, the appellant explained that the child has been attending the daycare centre for four years and a childcare benefit has been received all that time, so is aware of the application process, however this year the ministry switched to an online application. The appellant stated receiving a notification of expiry of childcare benefits effective March 31, 2019, having gone online as a result and thought the application had been completed. The daycare provider notified them in May that they had not received payment for April or May so the appellant called the ministry and was told that there was a backlog and to call back in a week or so. The appellant states no call back was made, but assumed that everything was complete.

The appellant asked the daycare provider to join the hearing to help explain the time frame and what had occurred. The daycare provider explained that the appellant had told her in April that the online application had been done, however she noticed after about a month and a half that they had not received payment since April. She instructed the applicant to contact the ministry, which was done, and she was told by the appellant that the ministry indicated that there was a backlog and to call back. However, in July the daycare provider had a family emergency and she left the country for several months and it wasn't until mid August she noticed that payment from the ministry for the applicant as well as another of her childcare parents had not been received. One parent had done the application but had not faxed in documentation, and the other parent (the appellant) had not clicked the correct box. Both parents had not received benefits since April 2019. The daycare provider requested that the parents contact the ministry, which resulted in the other parent's application being processed and backdated for the six- month period. In the appellant's situation, eligibility was determined and was initially informed that the benefits would be backdated to April, however one hour later the ministry called back to say the effective date would be October 1, 2019 as that was when the applicant 's application was completed. The daycare provider explained that she had been doing the bookkeeping for the past fifteen years and finds that most parents need assistance in completing the applications and that many of them do not understand the online system so she assists them to ensure they are completing everything necessary, however, this year she was not available for a period of time and was not there to follow up on the appellant's benefits.

The appellant went on to explain that in the past a letter would be sent to them, as well as the daycare, confirming the childcare benefits, however no letter was received this year and assumed that because it was online that the process of notification had changed. The appellant has been paying their portion of the childcare expense and just didn't realize that the daycare had not been receiving the benefits from the ministry.

At the hearing, the ministry reviewed the reconsideration decision and emphasized that childcare benefits are issued for the month in which the application is completed and that there is no evidence that the appellant completed the application until October 2019, which is when childcare benefits were approved. The ministry explained that there is a record that the appellant did apply to the ministry's online system in March for portal

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access and that the system had been accessed twice, however no application was completed and also argued that there are no comments on the file between October 2018 and October 2019. The ministry explained that the online system came into effect in July 2018 and that initially there were some systems issues so they did contact some clients who were having difficulty completing the application process. The ministry notes that there is no record that the appellant called the ministry in May and the appellant confirmed that the person on the phone did not ask for the file number, just provided generic information that the system was backlogged and to check back in a week or so. The ministry explained that there is no procedure in place for people who apply for portal access but do not follow through with an application, that they only follow up when a person initiates an application and then do not complete the process. When asked whether the legislation regarding administrative error could apply, the ministry noted that there is no definition provided in legislation as to whether it refers to an administrative error on the ministry's part or the appellant's part.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant was not eligible for the Affordable Child Care Benefit for the period between April 1, 2019 and September 30, 2019, pursuant to CCSR Sections 4 and 13, was a reasonable application of the legislation.

Relevant Legislation**Child Care Subsidy Regulation****How to apply for a subsidy**

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(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?

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(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.

Appellant's Position

The appellant's position is that they thought that an application had been completed when the online system was accessed and a profile set up back in March and because childcare benefits had already been in pay for four years that no further documentation was required.

Ministry's Position

The ministry's position is that childcare benefits can only be issued from the first day of the month that an application is completed, pursuant to sections 4 and 13 of the CCSR, and that the appellant did not sign the application until October 22, 2019 therefore childcare benefits are effective October 1, 2019. The ministry did not consider that they had made an administrative error because the appellant received notification of the expiry and no actions were taken by the appellant to submit an application or any necessary documents for renewal of the benefits.

Panel Decision

Section 4 of the CCSR legislates that in order to be eligible for a child care subsidy an application must be completed, in the form required by the minister, and section 13(1) of the CCSR legislates that the subsidy may be paid from the first day of the month in which the parent completes an application. Section 13(2) allows for backdating a payment of child care subsidy in the 30 days before the application is completed if there has been an administrative error.

The appeal record includes an application for childcare benefits, completed by the appellant, on October 22, 2019. The panel notes that the appellant has been recipient of child care subsidy for a number of years, with annual applications and the required documentation being submitted yearly, so the process is not unfamiliar to the appellant. What was different this year for the appellant was the requirement to complete an online application and although the panel recognizes that an attempt to complete the online application was made in March 2019, the appellant did not follow up to ensure that the renewal process had been completed successfully which resulted in

no benefits being issued and the file being closed. The panel saw no evidence in the appeal record that an application was completed, as required by legislation, for the period April 2019 and September 2019, which would allow the ministry to authorize childcare benefits for that period of time, so therefore finds that the ministry decision to not issue benefits for that period of time was reasonable.

The panel reviewed whether an administrative error had occurred pursuant to section 13(2) CCSR because the appellant had indicated an attempt to apply, and find that the term "administrative error", although not defined in the definitions of this legislation, is referred to in other legal definitions as meaning an error committed by an agency or the department in determining benefits. The panel finds that it was the appellant's error in completing the application process which resulted in non payment of child care benefits for April 2019 to September 2019, not the ministry's, so therefore finds that the ministry was not authorized to issue a payment for the thirty days prior to the application in October.

Conclusion

The panel finds that the ministry reconsideration decision, which determined that the appellant was not eligible for child care benefits for the period April 2019 to September 2019, was a reasonable interpretation of the legislation and therefore confirms the decision. The appellant is not successful in the 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)

and

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

PART H – SIGNATURES

PRINT NAME

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 January 1

PRINT NAME

Marcus Hadley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 January 1

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 January 1