

APPEAL NUMBER
2020-00169

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development's (ministry) reconsideration decision dated June 3, 2020 which held that the appellant was not eligible for the Affordable Child Care Benefit for the period between July 1, 2019 and February 29, 2020.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA), section 4.
Child Care Subsidy Regulation (CCSR), sections 4, 12 and 13.

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration consisted of the following:

1. On July 29, 2019, the appellant received an automatically generated email from “Affordable Child Care Benefit” (a ministry email account) stating “Your request has been received. Please see the attached Document Checklist related to your Affordable Child Care Benefit request”.
2. The Document Checklist indicated the appellant had provided four documents: A Child Care Arrangement Form; Proof of ID for the Child; Proof of ID for the appellant and Proof of Citizenship for the Appellant.
3. The Document Checklist stated: “A decision on your eligibility cannot be made until all documentation is submitted...” but the Document Checklist did not indicate that there were any further documents required.
4. On March 12, 2020, the appellant received another copy of the Document Checklist from the ministry. There was no communication from the ministry between July 29, 2019 and March 12, 2020.
5. On March 12, 2020 the appellant submitted an application for the Affordable Child Care Benefit, including the form CF2900.
6. The ministry determined the appellant was eligible for the Affordable Child Care Benefit as of March 1, 2020.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for the Affordable Child Care Benefit for the period between July 1, 2019 and February 29, 2020 was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

On appeal, it was generally agreed by both the appellant and the ministry that the appellant commenced the application for the Affordable Child Care Benefit on July 29, 2019 through the webpage that is maintained and operated by the ministry. However, the ministry did not receive a completed application package and therefore the ministry did not assess the appellant's application until the subsequent application in March 2020.

The Relevant Legislation

CCSA, section 4, permits the minister "to pay child care subsidies" as authorized by the CCSR.

CCSR, section 4 describes the requirements 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.*

CCSR, section 12 describes the actions that the ministry must take once an application has been made:

- 12** (1) *The minister must notify the applicant as to whether or not the application is approved.*
- (2) *If the application is not approved, the notification must be in writing and must include the minister's reason for refusing to pay a child care subsidy.*

CCSR, section 13 provides the ministry with the authority to pay a child care subsidy "from the first day of the month" in which an application is completed and permits the ministry to pay a child care subsidy for 30 before the application is completed if there is an "administrative error."

- 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.*

The Appellant's Position

The appellant on reconsideration and on appeal stated that they thought they had complied with the ministry's requirements and instructions on the website. The appellant stated that they submitted all the supporting documents, and received a message from the ministry that "the request has been received." The appellant stated that they had no way to check the status of their application with the ministry and that they had no notice that the application was deficient.

The appellant emphasized that they received a document from the ministry titled "Affordable Child Care Benefit Document Checklist" and there were checkmarks next to all the documents. It was noted that there is a heading on that document "Documents Provided" but not heading for outstanding or not submitted documents.

The appellant stated that as soon as they were told by the ministry that the July 2019 application was incomplete that they promptly resubmitted the documents and the application was accepted.

The appellant stated that the reason there was a nine-month delay between the initial submission of the documents on July 2019 and the follow up communication with the ministry is because the appellant did not know how quickly the ministry would make a decision.

The Ministry's Position

The ministry stated that the assessment for an application for a Child Care Subsidy is a relatively complex and detailed process. Among other criteria, it is an "income-tested benefit" and that it requires authorization from all parents for the ministry to communicate with the Canada Revenue Agency.

The ministry stated that the "trigger" to start an assessment of an application for a Child Care Subsidy is the form CF2900. Until that form is completed, the file remains unassigned and is not assessed. The ministry has a record of the appellant submitting the "supporting documents" in July 2019 but no record of a CF2900 being completed.

The ministry accepted that it provides several ways for someone to apply for the Child Care Subsidy, including by applying online. The ministry agreed that by creating forms and processes for an applicant to follow that those forms have to meet the legislative requirements. The ministry, on appeal, acknowledged that it is not unusual for an applicant to miss something on an application form. The ministry also recognized that providing the title "Affordable Child Care Benefit Checklist" could be misleading because it is a record of the documents provided to the ministry and does not indicate any documents that are outstanding.

In this situation, the ministry stated that the forms were available to the appellant to complete correctly. The ministry denied that it had a positive obligation to inform or assist an applicant with the process and that "it is the client that has the responsibility to follow up because they have the most interest in the process."

Majority Panel's Decision

The legislation (CCSR, section 4) is clear that it is the parent that has the obligation to "complete an application in the form required by the minister".

In this situation, the majority panel is satisfied that the appellant in good faith attempted to apply for a Child Care Subsidy in July 2019. The majority panel is also satisfied that the appellant relied, reasonably, on the email from the ministry dated July 29, 2019 that stated, "the request has been received."

The majority panel is sympathetic to the appellant's situation: they applied for a benefit from the ministry using the ministry's website and received an email from the ministry confirming receipt of the request. The panel considers that it was reasonable for the appellant to rely on that representation from the ministry.

However, the majority panel finds that no administrative error occurred; the legislated requirement to be eligible for

a child care subsidy includes the submission of a “complete” application. There was not sufficient evidence before the majority panel to confirm that the appellant did submit a complete application in July 2019. The majority panel notes that the list of documents received in April, 2020 includes the CF2910-Work Search Record Form, which is not listed on the July, 2019 document list.

The majority panel further notes that if an administrative error did occur, CCSR section 13(2) permits that the “subsidy may be paid for child care provided in the 30 days before the parent completes an application.” As stated above, the finding of the panel is that there was not sufficient information to establish that the appellant completed an application prior to March 12, 2020. Consequently, if there was an administrative error, which the majority panel has not found, the ministry is only authorized to pay a child care subsidy for the 30 days prior to March 12, 2020.

Consequently, the majority panel finds that the appellant did not satisfy the requirement of CCSR section 4 in July 2019, despite the appellant’s best efforts to do so. Therefore, ministry’s determination that the appellant was not eligible for the Affordable Child Care Benefit for the period between July 1, 2019 and February 29, 2020 was reasonably supported by the evidence.

Conclusion

The panel finds the ministry decision dated June 3, 2020 is reasonably supported by the evidence.

The panel confirms the ministry’s reconsideration decision and the appellant is not successful on appeal.

Dissenting Panel Member’s Opinion

The dissenting panel member disagrees with the finding that no administrative error occurred. The ministry is responsible for the administration of the Affordable Child Care Benefit; this includes the automated systems that support the processes. The automated system produces a report entitled “Affordable Child Care Benefit Checklist”. As the finding of the majority states, “The panel considers that it was reasonable for the appellant to rely on that representation from the ministry.” However, the report does not provide a complete checklist; it simply provides a list of the documents received with a checkmark beside each one. In the opinion of this member of the panel, the individual who, on behalf of the ministry, certified the online system as acceptable for client usage, despite this significant deficiency, committed an administrative error and, therefore, backdating the eligibility to July 2019 should be considered under section 13(2).

I also disagree with the majority panel’s finding that; “if there was an administrative error the ministry is only authorized to pay a child care subsidy for the 30 days prior to March 12, 2020.” The erroneous “checklist” did not indicate any outstanding items. The outstanding items were items which are submitted via online forms. Had the checklist indicated that these were missing, it is reasonable to assume that the appellant would have immediately followed up, either to correct the missing information or to obtain clarification as to why they were incomplete. Because of the lack of accurate feedback, the application should be considered to have been completed at that time. To do otherwise would not be a reasonable application of the legislation in this instance. While previous hearing decisions do not create precedence, the decision for hearing 2020-00145 takes a similar approach and, in the dissenting panel member’s view, to not rescind the ministry’s decision would be inconsistent. The dissenting panel member would rescind the ministry decision, dated June 3, 2020.

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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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020 Jul 27

PRINT NAME

Jeanne Byron

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020 Jul 27

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER (DISSENTING)

DATE (YEAR/MONTH/DAY)

2020 Jul 27