

APPEAL NUMBER
20-00188

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated July 9, 2020 which held that the appellant was not entitled to a reconsideration decision from the Ministry by reason that the Ministry decision did not refuse, discontinue, or reduce the appellant’s Affordable Child Care Benefit (“ACCB”) pursuant to s.6 of the Child Care Subsidy Act.

PART D – RELEVANT LEGISLATION

s. 22(4), s.24(2) Employment and Assistance Act (“EAA”)
s.6 Child Care Subsidy Act (“CCSA”)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

On June 24, 2020 the Ministry made the decision that the appellant would not be able to receive the ACCB because the appellant didn't apply for the ACCB until March 14, 2019.

On June 24, 2020 the appellant submitted her request for reconsideration stating that the program that was caring for her child told her that they would do the paperwork for the ACCB. The program submitted request for funds in two categories: one for November 2018 – Feb 2019 (full time) and a separate one for July 2018 – October 2019 (part time). The paperwork was denied because it was submitted after March 2019. Eventually the appellant was accepted for November 2018- Feb 2019. The appellant requested that payments be made for July 2018 – October 2018 as she was still navigating how to access this new benefit.

On July 9, 2020 the Ministry sent the appellant a letter informing her that after reviewing her request for reconsideration on the Ministry decision that she was not eligible for the ACCB for the period between July 1, 2018 to October 31, 2018; the Ministry is unable to conduct a reconsideration decision. The Ministry reasons were that on October 7, 2019 the appellant was found eligible for the ACCB for the period between July 1, 2018 and October 31, 2018 at the Child Care Service Centre and the ACCB was paid for those months on December 9, 2019.

On August 11, 2020 the Tribunal made an order waiving the appellant's timeline for filing a notice of appeal and permitted the appellant time to file the notice of appeal after the legislated timeline. The appellant's notice of appeal states: "because I erroneously filed an ACC application in March 2019. I based it on youth connections guidance it was an oversight. November – March was reimbursed. Looking for July – October 2018."

The Ministry provided a submission dated August 24, 2020 which included confirmation that the ACCB payments made to the appellant for July 2018 – October 2018 were made on December 9, 2019.

At the hearing, the appellant provided evidence that:

- 1) In July of 2018, the appellant was getting ready to go back to work and decided to enroll her child in a youth program in preparation for her return to work.
- 2) The worker at the youth program centre told the appellant that he would assist with the application for the ACCB at a later date.
- 3) The worker assisted the appellant in making the application on March 1, 2019.
- 4) The appellant later learned from the worker that from July 2018 – October 2018 the funds were still owed to the youth program and that either the appellant needed to pay that account or the account needed to be paid by the Ministry through the ACCB.
- 5) The appellant followed up with the Ministry and in a decision of June 24, 2020 the Ministry refused the appellant ACCB.

At the hearing, the Ministry relied on their reconsideration decision and their additional submission submitted August 24, 2020. The Ministry's additional submission showed that the youth program was paid by Ministry of Children and Family Development Childcare Benefit and Operating Funding Branch for the child's attendance between June 2018 – October 2018 and there were in fact no monies outstanding to the youth program. Based on that new evidence, the Ministry relied on their reconsideration decision to argue that there is no right to reconsideration because there was no refusal, reduction or denial of the ACCB.

At the hearing, the Ministry confirmed to the appellant that she had qualified for the ACCB and that there were no amounts outstanding to the youth program. This information was also in the Ministry submission. The Ministry could not explain why the original Ministry decision, which was made June 24, 2020 refused the appellant her

APPEAL NUMBER
20-00188

ACCB. The Ministry representative confirmed that at the time the refusal was made, the ACCB had actually already been approved and paid to the youth program. At the hearing, the appellant was surprised by that but glad to hear that no amounts remained owing to the youth program and that any amounts owed were paid through the ACCB.

The panel determined the additional documentary evidence submitted by the Ministry was admissible pursuant to s.22(4) of the EAA as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant a reconsideration decision by reason that the Ministry decision did not refuse, discontinue, or reduce the appellant's Affordable Child Care Benefit ("ACCB") pursuant to s.6 of the Child Care Subsidy Act is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

Legislation

Employment and Assistance Act s.22(4)

(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.

Employment and Assistance Act s.24(2)

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

Child Care Subsidy Act s. 6

Reconsideration and appeal rights

6 (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:

- (a) a decision that results in a refusal to pay a child care subsidy to or for the person;
- (b) a decision that results in a discontinuance or reduction of the person's child care subsidy.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.

(3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of the Employment and Assistance Act.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the Employment and Assistance Act and the regulations under that Act.

The panel finds:

The new evidence accepted by the panel and provided by the Ministry shows that there are no funds owing to the youth program and that the appellant did qualify for the ACCB and those funds were issued to the youth program by Ministry of Children and Family Development Childcare Benefit and Operating Funding Branch on December 9, 2019.

As such, given that there were no funds refused, discontinued or reduced from the appellant's ACCB the panel finds that it was a reasonable application of s.6 CCB for the Ministry to determine that the decision was not entitled to reconsideration.

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

MEGHAN WALLACE

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

August 31, 2020

PRINT NAME

Robert Bob Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

August 31, 2020

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

August 31, 2020