

APPEAL NUMBER  
2021-00024

**PART C – DECISION UNDER APPEAL**

Under appeal is the January 11, 2021 decision of the Ministry of Children and Family Development (the ministry) which determined that the appellant was not eligible for the Affordable Child Care Benefit (the benefit) for the period between September 1, 2020 and November 30, 2020. The ministry determined that the eligibility requirements of section 4(1)(a) of the Child Care Subsidy Regulation (the Regulation) were not met because the appellant did not complete an application and provide the required social insurance numbers, proof of identity, and proof of eligibility for a child care subsidy until December 4, 2020. Therefore, in accordance with section 13 of the Regulation, the appellant was eligible as of December 1, 2020, the first day of the month in which the parent completes an application under section 4.

**PART D – RELEVANT LEGISLATION**

*Child Care Subsidy Act*, section 4

Child Care Subsidy Regulation, sections 4 and 13

*Interpretation Act*, section 8

**PART E – SUMMARY OF FACTS**

**Background information in the appeal record**

The appellant is a new applicant of the ACCB.

- September 24, 2020 the Child Care Service Centre (CCSC) received by mail an ACCB Child Care Arrangement form, signed by the daycare provider on September 1, 2020 and by the appellant on September 4, 2020. The form identified the daycare, the appellant's child's name and a start date of September 1, 2020. No additional information or other forms were provided to the ministry at this time, including the ACCB Application form, the ACCB Consent to Collect CRA Records, and valid ID for everyone in the household.
- Ministry records indicate that on October 19, 2020 the CCSC attempted to contact the appellant via telephone to advise the appellant of the missing information required to apply for the benefit. The ministry was unable to reach the appellant.
- December 4, 2020, through the online portal MYFS (My Family Services), the CCSC received an ACCB Application from the appellant signed and dated December 4, 2020, along with all of the documents required to assess eligibility for the ACCB. The appellant was found eligible for the benefit beginning December 1, 2020.
- In the December 30, 2020 Request for Reconsideration, the appellant explains as follows. The daycare provider told the appellant that the ACCB Child Care Arrangement form was the application for the benefit, so the appellant submitted it by mail on the day that daycare began, September 1, 2020. The appellant states that she did not hear anything from the ministry until December when the appellant followed up. The appellant argues that there is evidence that the ACCB Child Care Arrangement was received in September but there is no evidence of the ministry calling the appellant in October 2020 or of it having left a message. The appellant requests that the benefit be backdated to include September 1 through November 30, 2020.

**Information provided on appeal and admissibility**

January 19, 2021 Notice of Appeal, the appellant writes: "I never received a phone call or message on Oct 19 that my submission was incomplete."

The appellant attended the hearing with an employee of the daycare, who was advocating on behalf of the appellant, and also provided testimony. The appellant confirmed that the daycare provided the form and did not indicate that anything else was required to apply. The appellant accepts that the ministry did call in October 2020 but feels that a message should have been left and that the ministry is responsible for following up with applicants, stating that while the ministry may not have erred, there is a gap in its process that resulted in the appellant not being made aware that anything more than the submitted form was required. The appellant explained

that she had been paying the daycare fees as of September 1, 2020 and believed that she would be reimbursed once approved for the benefit. The daycare employee confirmed being unaware of requirements other than submitting the ACCB Child Care Arrangement form and that, pre Covid-19, payment to the daycare from the ministry could take 1½ -2 months following submission of that form.

At the hearing, the ministry stated that the application referred to in section 4(1)(a) of the Regulation is a particular form. The ACCB Child Care Arrangement form sent in was not that form and doesn't give the necessary information or confirmation of identity. The ministry confirmed that its file notes say that a call was made to the appellant but a message was not left. The ministry stated that there is no obligation for the ministry to contact the appellant but because the ACCB Child Care form was received by mail, the ministry could see that there was no application form, so the follow-up call was made (no message is left if the answering device does not identify the person). The ministry further explained that there are two processes depending upon how information is received by the ministry. Submission of an ACCB Application online generates a file for adjudicators to assess eligibility but a file will not be created by an ACCB Child Care Arrangement form and there would be no follow-up. However, if received by fax or mail, the physical receipt of any document submitted alerts staff who will attempt to contact the applicant and advise that more is needed.

The ministry stated that it did not make an administrative error and that it sounds like an unfortunate misunderstanding between the applicant and care provider. The ministry acknowledged that the ACCB Child Care Arrangement form doesn't say that it is not the application, though it would be helpful if it did, as this situation has occurred before. The ministry acknowledged that the appellant is not alone in thinking that the one form was enough and stated that by submitting it by mail it might have been corrected if the attempted contact had succeeded.

The panel admitted the additional information provided at the hearing as evidence required for the full and fair disclosure of all matters related to the appeal under section 22(4) of the *Employment and Assistance Act*. The panel accepted the balance of the parties' submissions as argument which is set out in Part F of this decision.

**PART F – REASONS FOR PANEL DECISION**

**Issue on Appeal**

The issue on appeal is whether the ministry's decision that the appellant was not eligible to receive the benefit for September through November of 2020 was reasonably supported by the evidence or a reasonable application of the legislation. That is, was the ministry reasonable in concluding that because the appellant had not completed the Regulation section 4(1)(a) application until December 4, 2020, eligibility for the benefit, in accordance with section 13 of the Regulation, did not start until December 1, 2020?

**Panel Decision**

*Positions of the Parties*

The appellant's position is that eligibility for the benefit should begin as of September 1, 2020 because the ministry received the ACCB Child Care Arrangement form on September 4, 2020 because she believed this was the application for benefits. The appellant also notes that she never received a phone call or message from the ministry advising of the requirement to provide additional information and that the ministry should be obliged to advise an applicant that additional information is required when it is in receipt of a document that indicates someone is applying for the benefit.

The ministry's position is that, unless there has been an administrative error by the ministry which allows for backdating of the benefit by 30 days, section 13 of the Regulation provides that eligibility is effective the first day of the month in which the parent meets the requirement of section 4 that an application be completed. As the ministry assessed the appellant's eligibility for the benefit in accordance with section 13 of the Regulation based the information required under section 4 being provided on December 4, 2020, an administrative error did not occur and the appellant is not eligible prior to December 1, 2020.

*Panel Analysis*

Section 4(1) of the Regulation sets out what must be provided by a parent to be eligible for the benefit. Paragraph (a) states that a parent must "complete an application in the form required by the minister." Paragraphs (b) and (c) describe additional information that a parent must provide to be eligible, including social insurance numbers, proof of identity of family members and proof of eligibility for the benefit, the latter of which presumably includes financial information given that the benefit is provided on the basis of financial need. The information described in paragraphs (b) and (c) is separate from that in (a) and therefore not required for the form under (a) to be "complete."

Section 13 provides that the date on which the benefit may be paid is “the first day of the month in which the parent completes an application under section 4.” Therefore, the date payment may begin is not dependent upon the date that information required under paragraphs (b) and (c) of section 4 is provided, likely reflecting the intention to allow a parent time who has indicated the intention to apply for the benefit to gather the information without losing any entitlement during the information gathering period.

The ministry’s position is that the ACCB Application is the application referenced in section 4(1)(a) and the appellant’s position is that the ACCB Child Care Arrangement form should be considered as meeting the requirements of this section. The form is not specified other than by the description that it be “an application in the form required by the minister.” While the ACCB Application is an “application in the form required by the minister”, the panel’s view is that the ACCB Child Care Arrangement form, which the ministry also requires to determine eligibility, is also reasonably viewed as “an application in the form required by the minister” under section 4(1)(a) and “an application under section 4” under section 13.

The word “application” is not defined in the Act or Regulation. “Applicant” is defined in the Regulation but the definition - a parent who applies under section 4 for a child care subsidy – does not clarify what is meant by “an application in the form required by the minister.” Neither the Act nor the Regulation refer to either form specifically, perhaps because the legislation does not require the minister to “specify” one or more forms for the purposes of applying for this benefit or that it be a form composed of separate parts.

While the ACCB Child Care Arrangement form does not include the word “application” in its title, it repeatedly, and exclusively, refers to the parent completing the form as “the applicant” and, unlike the ACCB Application, states that “The purpose of this form is to establish eligibility for Affordable Child Care Benefits and indicates the applicant’s child care arrangement.” Additionally, the ACCB Child Care Arrangement form does not state that it is not the initial form or otherwise alert an applicant completing the form that failure to provide additional forms will result in ineligibility for the benefit. The panel recognizes that the ministry’s internal processes for dealing with the receipt of various documents, as described at the hearing, distinguishes between those two ministry forms, and possibly others, but finds that the legislative language does not.

The Panel considers that, as expressed in s.8 of the *Interpretation Act*, “Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.” The panel finds that the purpose of the Act is to support persons in the circumstances of the appellant, and that there is no evidence that she was disentitled from benefits in September except for the ministry’s expectation that a certain form was to be received. For the reasons previously provided, the panel found that in completing and submitting the ACCB Child Care Arrangement form, the appellant had completed “an application in the form required by the minister” in compliance with section 4(1)(a) and section 13.

The panel finds no need to consider administrative error as this is relevant only to backdating an application for 30 days. No such backdating is required here as the panel finds that the

September 4, 2020 ACCB Child Care Arrangement form was an “application in the form required by the minister notwithstanding later steps or forms were required and only completed in December.

*Conclusion*

Therefore, the panel finds that the ministry’s decision that the appellant was not eligible for the benefit from September through November 2020 was not a reasonable application of section 4 and section 13 of the Regulation. The ministry’s decision is rescinded and the appellant is successful on appeal.

**Relevant 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.

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.

**Interpretation Act**

Enactment remedial

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

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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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/02/22

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/22

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/02/22