

APPEAL NUMBER
2021-0146

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (the Ministry) reconsideration decision (RD) dated July 5, 2021, which determined that the Appellant is not eligible for the Affordable Child Care Benefit (ACCB) for the period between February 1, 2021 and April 30, 2021.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA) Sections 4 and 6

Child Care Subsidy Regulation (CCSR) Sections 4(1), 4.1 and 13

Employment and Assistance Act (EAA) Section 24(2)

Interpretation Act Sections 2(1) and 8

The relevant legislation is provided in Appendix A

PART E – SUMMARY OF FACTS

The Appellant is a new applicant for the ACCB.

The evidence before the Ministry at the time of the reconsideration decision (the RD) included:

1. Affordable Child Care Benefit Child Care Arrangement form (the CF2798 Form), signed by the Appellant on March 19, 2021, indicating the days and times child care is provided to the Appellant's child and signed by the child care provider on March 3, 2021;
2. Affordable Child Care Benefit Application form (the CF2900 Form) naming the Appellant as the applicant, the applicant's declaration and consent dated May 27, 2021, and the spousal CRA (Canada Revenue Agency) consent, dated May 30, 2021; and,
3. Request for Reconsideration (RFR), dated June 24, 2021, in which the Appellant stated that:
 - Her child started preschool in February 2021;
 - On March 3, 2021 she was told by her child's preschool (the Preschool) that she could apply for the ACCB by completing the CF2798 form. She was not told by the Preschool that any other forms were required, and, as only a mailing address was provided on the CF2798 form, she mailed the form to the Ministry, not realizing that an online application process was available. She provided all the information requested on the CF2798 form and included everything that her child's preschool told her was required;
 - Even though she applied for the ACCB in March 2021 by mail, it took 3 months for the Ministry to approve her application; and,
 - If she had received a timelier response from the Ministry, she would have been able to *"prepare all the documents (that) were missing in March"*, adding *"During the pandemic, especially in the winter, we could not see friends and family resources were not opened, so new families without any family members surrounding like us were not able to get enough information."*

The key dates, some of which are in dispute, are as follows:

- According to the Appellant, she signed and mailed it to the Ministry's Child Care Service Centre (CCSC) on March 19, 2021.
- According to the Ministry's RD, the CCSC received the CF2798 form on April 26, 2021.
- According to the Ministry's evidence contained in the RD, *"immediately"* upon receipt of the CF2798 Form (i.e., on April 26, 2021), the CCSC contacted the Appellant by telephone and left a *"general message"* asking the Appellant to contact the CCSC. According to the Ministry's evidence provided in the RD, the general message included advice to the Appellant of her *"need to complete an application to be assessed for the benefit"*.
- According to the Ministry's RD, on May 17, 2021, in a telephone conversation between the CCSC and the Appellant initiated by the Ministry, the Ministry advised the Appellant of some additional information it required to assess the Appellant's eligibility for the ACCB. The RD says that the Ministry told the Appellant in that telephone conversation that to receive the ACCB she would

have to complete an additional application form (the CF2900 form) and recommended that the Appellant complete the CF2900 form online to decrease the processing time.

- On May 26th or May 27th, the Appellant was finally able to speak directly with the Ministry by phone. In that conversation, the Appellant said that she learned for the first time that she could apply for the ACCB online.
- On May 30, 2021, the Appellant submitted the CF2900 form to the CCSC, signed by the Appellant on May 27, 2021 and by the Appellant's spouse on May 30, 2021, using the Ministry's online application process (MYFS).
- On June 14, 2021, the Ministry determined that the Appellant and her spouse were eligible for the ACCB, effective May 1, 2021.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In the Notice of Appeal signed by the Appellant and dated July 18, 2021 (the NOA), the Appellant states that:

- She mailed the CF2798 form that the preschool had told her in March 2021 was required for an ACCB application;
- The Ministry said that they received the application over a month after she sent it, and she doesn't know if the delay was because the Ministry was understaffed or because Canada Post took a long time to deliver it;
- Contrary to the information provided by the Ministry in the RD, she did not have a telephone conversation with the Ministry on May 17, 2021. She writes "*(The Ministry) left a voicemail to call back. I could not reach out because of high volume, I was not even put into a queue, the phone line just said "Goodbye" and hung up the call. I called every day and sometimes I could get (the Ministry) to call me back and they again left a voicemail to call back ... Finally, I (was able to talk to Ministry) staff May 26th or 27th and (was told) that there is a website and we could apply online. So we did it right away that night. (submitted May 27th at night and my husband did May 30th)*";
- If the CF2798 form had included the website URL for online applications she would have applied online; and,
- She could not go to "*Family Resources*" for assistance because it was closed due to the pandemic and she "*could not talk about this with parents who maybe know because we could not see anybody*" due to the pandemic.

The hearing was conducted by video conference. The Appellant was joined at the hearing by her spouse (the Appellant's Spouse), acting as her representative.

At the hearing, the Appellant provided a summary of the evidence included in the RFR and the NOA, emphasizing that the first contact she had received from the Ministry regarding the ACCB application was a telephone voice message she received on May 17, and that she had tried every day after May 17, 2021 to return the call, but had been unable to speak to anyone at the Ministry or leave a voice message until she was finally able to make contact by telephone on either May 26 or May 27, 2021. She completed most of the CF2900 form and applied her electronic signature to the form on May 27, 2021, and her spouse completed the CRA (Canada Revenue Agency) consent portion of the form on May 30, 2021, following which she submitted the CF2900 to the Ministry electronically.

The Appellant also said that hers was a “*new family*”, and this application was for her only child, so she had had no previous experience with applying for the ACCB. She also stated that she didn’t understand why the Preschool didn’t tell her that there was another application form she had to complete in addition to the CF 2798 form, and that if she had known that she could apply online she would have done so, because she was comfortable with using a computer for this type of thing. She pointed out that she was not appealing a decision not to provide the ACCB for February 2021, even though her child was attending the Preschool in that month, but she felt that her family should have been eligible for the ACCB benefit starting in March 2021 because she had signed and mailed what she understood to be the application form in early March of 2021.

In response to a question from the Panel, the Appellant said that she had put the CF2798 form in a Canada Post mailbox on the same date that she signed it (i.e., on Friday, March 19, 2021).

In response to another question from the Panel, the Appellant’s Spouse said that they had a telephone call log of the date, time, and phone numbers called to and from the Appellant’s phone, provided by the family’s telephone service provider (the Telephone Call Log). The Telephone Call Log was presented at the hearing, which was held by videoconference, and the Panel and the Ministry were able to see that there were no incoming calls to the Appellant’s phone from a Ministry phone number on April 26, 2021, or over the following few days, and that there were many outgoing calls to a phone number identified by the Ministry as a Ministry phone number, beginning on May 17, 2021 and continuing for several days, the first of which were made at approximately one hour intervals starting on the morning of May 17, 2021.

At the hearing, the Ministry relied on the RD, offering that “*perhaps (the Ministry had not provided) the best service*”. The Ministry emphasized that the legislation requires a complete application before it can establish an applicant’s eligibility and provide the ACCB, and that the additional information to establish eligibility under the CCSA and the CCSR are contained in the CF2900 form, which the Ministry acknowledged was completed by the Appellant on May 30, 2021.

The Ministry also said that on reconsideration it had determined that an administrative error had not been made by the Ministry. The Ministry noted that, as the application was completed on May 30, even if an administrative error had been made, under CCSR Section 13(2) the Ministry can only pay the ACCB for 30 day prior to completion of the application, which would have been May 1, 2021, the same effective date from which the ACCB benefit was paid based on the Appellant’s application. The Ministry also said that in these circumstances (i.e., when the application is completed on the 30th or the 31st of the month), where an administrative error has occurred, “*in practice (the Ministry) would have gone back a month (in this case paying the ACCB for the month of April 2021) because it’s the fairest way to interpret the legislation*”.

In response to a question from the Appellant, the Ministry said that it did not know why the Preschool had not indicated to the Appellant that there was another application form that had to be completed, and that it could not “*speak to why the Ministry is not responsible for training preschools*”, adding that program information is available to the public at Ministry offices and online.

At the hearing, the Panel noted that the CF2798 Form contains information provided by a preschool regarding fees and a child’s attendance, whereas the CF2900 Form contains information about the child’s family, including family income and CRA consent, and asked the Ministry why a single form could not be used to obtain all the required information. The Ministry could not explain why two application forms were required, why neither of the two forms indicated that the other form was also required, or why the information about the option of applying for the ACCB online was not provided on the hardcopy version of the CF2798 Form.

In response to another question from the Panel, the Ministry said that the Ministry’s date stamp appearing on the CF2798 Form (in this case, April 26, 2021) would have been the date that the application was delivered by Canada Post to the Ministry, and that mail-in applications are expected to be opened and reviewed by Ministry staff on the date that they are delivered. The Ministry also confirmed that the Ministry’s phone system does not provide a call-back option, and that if the phone lines were all engaged, callers would be asked to call back later.

Admissibility of New Evidence

The Panel considered the written information in the NOA to be admissible as it was reasonably required for a full and fair disclosure of all matters relating to the decision under appeal.

The Panel considered the new visual evidence provided by the Appellant’s spouse at the hearing in the form of the Telephone Call Log to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted the additional information in accordance with Section 22(4) of the EAA and gave it full weight.

The Ministry did not object to the admissibility of any of the new evidence.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for the ACCB for the period between February 1, 2021 and April 30, 2021, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Ministry's Position

The Ministry's position is that the Appellant was not eligible for the ACCB for the period February 1, 2021 through April 30, 2021 because the application was completed on May 30, 2021 and therefore eligibility began on May 1, 2021 pursuant to Sections 4 and 13 of the CCSR.

The Ministry determined that, pursuant to CCSR Section 4(1), to be eligible for the ACCB, a parent must complete an application in the form required by the Ministry. Under Section 13(1) of the CCSR, the ACCB may be paid from the first day of the month in which the parent completes the application under Section 4. In the case of the Appellant, the application was completed on May 30, 2021, and therefore the Appellant is eligible from the first day of May 2021.

While CCSR Section 13(2) says that a child care subsidy may be paid for child care provided in the 30 days before the parent completes an application if an administrative error has been made, the Ministry determined that there is no evidence that it made an administrative error.

Appellant's Position

The Appellant's position is that she was led by the Preschool to believe that there is a single application form for the ACCB, and that she sent the application to the Ministry by mail, which she understood to be the only option, on March 19, 2021.

The Appellant did not receive a response from the Ministry for over two months, and when a voicemail message was left on her phone from the Ministry on May 17, 2021, she was not given any detailed information about her application, other than that she should return the call. She tried to speak to someone at the Ministry by phone every day for the next 10 days (without success because there was no answer when she phoned, and no call back option was available). She finally was able to talk to the Ministry about her application on May 26 or 27, 2021, at which point she learned that there was a second application form required, and that she could submit it online, which she did on May 30, 2021.

Because it took so long to get her application in, through no fault of her own, the Appellant feels that she is entitled to a back-dating of the ACCB for the months of March and April 2021.

Panel's Decision

CCSR Section 4(1) sets out what must be provided by a parent to be eligible for a child care subsidy, which includes the ACCB. 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 the social insurance numbers of the applicant and their spouse, proof of identity of family members, and proof of eligibility for the benefit, the latter of which presumably includes financial information, given that consent to confirm the applicant's family income with the CRA is required and that the benefit is provided based on financial need. Section 13(1) says the ACCB can be paid from

the first day of the month in which the application is completed. The Ministry has determined the Appellant's eligibility based on applicant information it received in May 2021, as the Appellant's ACCB was paid starting on May 1, 2021. The Panel finds that the Ministry reasonably determined that the application requirements set out in Section 4(1) were met in May 2021 and confirms that part of the decision.

CCSR section 13(2) says the ACCB may be paid for 30 days before the application is complete if there is an administrative error. The Panel notes that "*administrative error*" is not a defined term in the CCSA or the CCSR. Section 2(1) of the *Interpretation Act* says that the *Interpretation Act* applies to the CCSA and the CCSR. Section 8 of the *Interpretation Act* says that the provisions of the CCSA and the CCSR "*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.*" Therefore, as the purpose of the CCSA is to provide child care subsidies (including the ACCB), the meaning of the undefined term "*administrative error*" must be given a fair, large, and liberal interpretation.

The Panel notes that no evidence has been presented to suggest that the Appellant did not mail the CF2798 Form on March 19, 2021. Indeed, as the Appellant's child had been attending the Preschool since the beginning of the previous month, the Panel notes that the Appellant had every incentive to get the application for the ACCB to the Ministry as soon as possible after receiving what the Appellant understood at the time to be the only necessary application form (i.e., the CF2798 Form) from the Preschool in early March 2021. The Ministry has stated that the Appellant's CF2798 Form was delivered by Canada Post to the Ministry on April 26, 2021, 38 days (24 business days) after it was mailed. No explanation for the exceedingly long delivery time has been provided, but the Panel concedes that it is possible that the delivery of the application was unreasonably delayed by Canada Post.

However, the Panel also notes that the Ministry said in the RD that it contacted the Appellant to advise her of the need to complete the CF2900 Form immediately after it received the CF2798 Form on April 26, 2021. The Appellant denies this, and the Panel was presented with reliable evidence at the hearing to indicate that no telephone contact with the Appellant was attempted by the Ministry on or around that date. The available evidence, supported by both the Appellant's statements and the Telephone Call Log, indicates that the Ministry first attempted to contact the Appellant on May 17, 2021, twenty one days (15 business days) after the Ministry said it received the CF2798 Form. These processing delays were compounded by several other problems: neither of the two forms indicates that there are two application forms that must be completed, no information is provided on either of the forms about the online application option, no one from the Ministry answered any of the many calls made by the Appellant after she received a voicemail message on May 17, 2021, and there was no option for the Appellant to leave a message asking for a call-back from the Ministry.

The Panel finds that all these problems (delay, the application process, difficulty in contacting the Ministry by phone), taken together, reasonably represent an "*administrative error*" made by the Ministry, particularly considering Section 8 of the *Interpretation Act* and the purpose of the legislation, which is to provide child care subsidies to those who qualify for them.

Conclusion

Having reviewed and considered all the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that no administrative error was made by the Ministry, was not a

reasonable application of the CCSA and the CCSR in the circumstances of the Appellant, and therefore rescinds that part of the decision.

While the Appellant's appeal, is successful, EAA Section 24(2) says that if a decision of the Ministry is rescinded and the decision of the Panel cannot be implemented without a further decision as to the amount to which the Appellant is entitled, the Employment and Assistance Appeal Tribunal must refer the decision on amount back to the Ministry. The Panel notes that the amount to which the Appellant is entitled as determined by the Ministry might be different from the amount that the Appellant is seeking.

APPENDIX A - LEGISLATION

CHILD CARE SUBSIDY ACT

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; ...

(3) ... 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.

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.

Authorizations required

4.1 (1) To be eligible for a child care subsidy ... an applicant and the applicant's spouse ... must supply the minister with authorizations for

- (a) the disclosure to the Canada Revenue Agency of the full name, birth date and social insurance number of the person,

(b) the disclosure by the Canada Revenue Agency of the personal information of the person that is relevant to the person's income, and that the minister needs for the purposes of sections 9 [*calculation of family's adjusted annual income*] and 9.1 [*income review*], for the 2 years previous to the current calendar year, in accordance with the MOU For Income Verification between the Canada Revenue Agency and the minister, regardless of whether the person completed an income tax return for those years, and

(c) the indirect collection by the minister of the information described in paragraph (b).

(2) To be eligible for a child care subsidy ... ,

(a) an applicant must supply the minister with authorizations for the disclosure to the applicant's spouse ... of personal information of the applicant used in determining the family's adjusted annual income, and

(b) an applicant's spouse ... must supply the minister with authorizations for the disclosure to the applicant of personal information of the applicant's spouse ... used in determining the family's adjusted annual income.

(3) To be eligible for a child care subsidy for a child, an applicant and the applicant's spouse ... must supply the minister with authorizations for

(a) the disclosure by a third party of the personal information of the person that the minister needs for the purpose of determining or auditing the applicant's eligibility for a child care subsidy, and

(b) the indirect collection by the minister of the information described in paragraph (a).

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.

EMPLOYMENT AND ASSISTANCE ACT

(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.

INTERPRETATION ACT

Application

2 (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/08/09

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/09

PRINT NAME

Effie Simpson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/09