

**Part C – Decision Under Appeal**

The decision under appeal is the Reconsideration Decision of the Ministry of Children and Family Development (“ministry”) dated April 13, 2022, in which the ministry decided that, based on the appellant’s application dated February 9, 2022, the appellant was eligible for the Affordable Child Care Benefit under the Child Care Subsidy Act (“CCSA”) from February 1, 2022, but was not eligible for the benefit for the period July 1, 2021 to January 31, 2022 because the benefit could not be backdated before February 1, 2022.

The appellant appeals the decision that the benefit could not be backdated for the period July 1, 2021 to January 31, 2022.

**Part D – Relevant Legislation**

Child Care Subsidy Act (“CCSA”) sections 4 and 6  
Child Care Subsidy Regulation (“CCSR”) sections 4, 12 and 13

**Part E – Summary of Facts**

The hearing took place by teleconference on May 13, 2022. The appellant attended the hearing with a support person who assisted in the hearing as an advocate.

The ministry told the panel that the reconsideration decision contained an error, in that it said the ministry sent the appellant a message through My Family Services (“MyFS”) on August 16, 2021. In fact, the message was sent on September 16, 2021, and in these reasons the panel will refer to the corrected date.

Evidence Before the Ministry at the Reconsideration:

The appellant was in receipt of the Affordable Child Care Benefit under the CCSA from March 2021 to June 30, 2021. On May 17, 2021, the Child Care Subsidy Centre (“CCSC”) sent the appellant a message stating that the benefit would end “in approximately 30 days” and giving the appellant instructions about how to renew the benefit online.

The appellant says that she did not see the May 17, 2021 message, and she did not take steps to renew the benefit before it ended on June 30, 2021.

On August 12, 2021, the daycare told the appellant that no benefit was paid for July or August 2021. On August 16, 2021, the appellant submitted an online application for the benefit (“the August application”) through MyFS.

On September 16, 2021, CCSC sent the appellant a message through MyFS stating:

“We require additional information to assess your eligibility for the Affordable Child Care Benefit. Please see the attached letter for details.

Subject to s. 5(1)(a) of the Child Care Subsidy Act, we have received your submitted request for Affordable Child Care Benefit, however we are unable to determine your eligibility for benefits. Please send us the information requested within 60 days or you will be deemed ineligible for benefits and/or we may require a new application. If you require more time to obtain this information, please contact [phone number].”

On the same day, CCSC left a voice message for the appellant, asking her to contact them, and also sent a letter stating:

“We are unable to process your request for Affordable Child Care Benefit without the following:

- Your schedule of employment detailing the days of the week as well as the hours per day. You may provide this information by contacting the Child Care Service Centre.

Subject to s. 5(1)(a) of the *Child Care Subsidy Act*, we have received your submitted request for Affordable Child Care Benefit, however we are unable to determine your eligibility for benefits. Please send us the information requested within 60 days or you will be deemed ineligible for benefits and/or we may require a new application. If you require more time to obtain this

information, please contact [phone number].”

The appellant did not contact CCSC or provide any additional information in response to the message or the letter.

Between August 2021 and February 2022, the appellant, a single parent, was dealing with full time attendance at school as well as difficult child custody and access issues. The appellant’s child continued to attend the daycare. The daycare did not give invoices to the appellant and did not tell the appellant until January 2022 that they were not receiving the benefit. By that time, daycare fees of \$5,194 were in arrears. The appellant does not have the resources to pay that amount.

On February 7, 2022, the appellant called CCSC to ask about the status of her file. CCSC told her that her file was “closed due to inactivity over 4 months” and her benefit had ended on June 30, 2021. CCSC noted that the appellant had submitted an application on August 16, 2021 “and your work schedule times were required.” CCSC told the appellant to complete a new application through MyFS, along with an Affordable Child Care Benefit Care Arrangement form and school registration. The appellant asked about backdating the benefit to July 1, 2021, and CCSC told the appellant that backdating was not possible because her file was closed.

The appellant submitted the new application on February 9, 2022 (“the February application”). In her application she indicated that she worked in paid employment one day each weekend and had been attending school fulltime on the weekdays since January 31, 2022.

The ministry determined that the appellant was eligible for the benefit as of February 1, 2022. On March 24, 2022, the ministry sent a letter to the appellant stating that the appellant was not eligible for the benefit for the period “between July 1, 2021 and January 31, 2023.” In the reconsideration decision the ministry confirmed that the “January 31, 2023” date was incorrect, and the correct end date for the period of ineligibility was January 31, 2022. The letter goes on to state the reason: “The Affordable Child Care Benefit may only be paid from the first day of the month in which the parent completes the application. The application you submitted was completed on February 9, 2022. Therefore, you are only eligible to receive the benefit from February 1, 2022.”

#### Additional Evidence:

The appellant submitted 2 letters as additional evidence:

1. Letter dated April 26, 2022, from a case manager at the government- funded training program the appellant attends. The case manager states:
  - that the appellant has been a client of the program since the fall of 2021, and she is attending classes and using her best efforts to complete the program successfully;
  - the training program pays the appellant’s tuition, tools and supplies as well as “communing supports” as long as she attends and fulfills program requirements;

- clients have only one chance to complete a training program, and if the appellant has to quit the program because of the daycare debt, she will not have a second opportunity;
- the appellant told them that “she had submitted all the documentation she needed to her child’s daycare in August 2021”;
- the appellant is a single parent on income assistance who does not have the resources to pay the arrears, and because of the debt she may not be able to complete the training program;
- the appellant has put great care into her job search and the case manager believes that the daycare arrears are the result of an oversight on the part of the daycare, not the appellant.

2. Letter dated April 27, 2022, from the program manager at a “transitional housing program for single young mothers facing multiple barriers and in need of safe housing and counselling to move beyond homelessness and trauma experiences.” The program manager states:

- the appellant has participated in multiple programs to move towards the educational plan she is now pursuing through the training program;
- the appellant may not have realized the importance of checking her online mail, voicemail or regular mail from CCSC;
- the appellant did not understand that she had not yet already addressed the concerns for which CCSC was contacting her and assumed the August application had not yet been updated, especially because the daycare did not tell her for 5 or 6 months that they were not receiving the benefit payment;
- the appellant struggles with paperwork completion, which can be typical of women recovering from abusive relationships and trauma;
- in the fall of 2021 the appellant was focussed on “completing a pre-employment” and planning with the training program, as well as dealing with legal issues around custody and support, all as a single parent;
- the appellant was also applying for disability benefits due to a chronic health condition and the impact of trauma;
- the daycare debt is causing additional and significant anxiety, particularly because the appellant might have to quit the training program and take an entry-level job to pay the arrears.

Evidence at the Hearing:

*Appellant:*

The appellant said that she does not really know why she missed the messages and letter from the CCSC, except that she was overwhelmed with having to complete paperwork for multiple agencies, police involvement due to intimate partner violence, an ill child and a disability application, all while attending school full time and one day of paid employment on weekends. She also thought she had provided all the necessary information in the August application. She cannot imagine having to drop out of school to pay this debt.

The appellant also understood from the ministry communications in September 2021 that the ministry was asking for her “schedule of employment.” In the August application she had already provided information about her occasional weekend employment, for which she had childcare through an informal exchange arrangement with a friend. The program she was attending was work-readiness and she did not think that was the same as “employment.”

The advocate stated that, if the appellant has to quit the training program to work in an entry-level job to repay the debt, she may not be able to afford the rent at the supportive housing where she lives now.

*Ministry:*

The ministry advised that the appellant’s August application was closed automatically by the system, due to inactivity, on February 1, 2021. The ministry confirmed that the only notification to the appellant about refusal of benefits payable between July 1, 2021 and January 31, 2022 was the March 24, 2022 letter about the outcome of the February application.

Additional Evidence:

Neither party objected to any of the additional evidence.

The panel considers parts of each of the 2 letters submitted by the appellant to be argument rather than evidence. However, the panel finds the additional evidence about the appellant’s circumstances and the training and work preparation programs in which she participated to be admissible under section 22(4) of the Employment and Assistance Act. The evidence provides additional information about the appellant’s circumstances, which are part of her reasons for requesting backdated benefits, and therefore that evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal.

The panel finds that the additional evidence about the ministry’s treatment of the August application is admissible under section 22(4) of the Employment and Assistance Act because it provides additional detail about the ministry’s decision-making process for the appellant’s applications, and therefore is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision that, based on the February application, the appellant was not eligible for the Affordable Child Care Benefit for the period between July 1, 2021 and January 31, 2022 because the benefit could not be backdated before February 1, 2022, was a reasonable application of the legislation in the appellant's circumstances.

**Legislation:**

The Affordable Child Care Benefit has replaced the Child Care Subsidy and is governed by the CCSA. Where the CCSA refers to the child care subsidy, those provisions also apply to the Affordable Child Care Benefit.

***Date the benefit begins:***

Under CCSR section 4, to be eligible for the benefit, a parent must complete an application in the form required by the minister. CCSR section 13 says that a child care subsidy may be paid from the first day of the month when the parent completes the application. If the ministry has made an administrative error, the subsidy can be provided for the 30 days before the application was completed.

***Notification of decision:***

CCSR s.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.

***Reconsideration and Appeal Rights:***

CCSA s.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.

Appellant's Position:

The appellant asks that the benefit for which she applied in February 2022 be backdated to July 1, 2021 on compassionate grounds, because the consequences of having to pay a debt of \$5,194 are severe. She faces losing her place in the training program, which she would be unable to get back. If she has to leave the training program and take an entry level job to pay the arrears, she might not be able to earn enough to continue paying even the subsidized rent in her current transition housing. More importantly, she would lose the opportunity for a more stable financial future for herself and her child, in a career about which she is passionate.

The appellant maintains that the process for applying for the benefit before February 2022 was confusing. In addition, she had extenuating circumstances, with work and life stresses, illness, disability and trauma, that made it difficult for her to navigate the process. She asks the ministry to make an exception to the legislation about backdating payments, on compassionate grounds.

Ministry Position:

The ministry says that, while it sympathizes with the appellant's situation, it must follow the legislation and it does not have discretion to backdate payments, other than the 30 days permitted by CCSR section 13, and then only if the ministry has made an administrative error. There is no such error in this case. Therefore, the ministry is only permitted to provide the benefit from the first of the month when the appellant submitted her application.

Majority Panel Decision:

When the ministry approves an application for the Affordable Child Care Benefit, under CCSR section 13, the ministry may pay the benefit starting from the first day of the month when the parent completed the application. The reconsideration decision under appeal is about the February application. Considering that application, which shows the training program starting January 31, 2022, the ministry determined that the appellant was eligible to receive the benefit starting February 1, 2022. Pursuant to CCSR section 12, the ministry notified the appellant in writing, on March 24, 2022, that the February application had been approved.

The appellant was in other pre-employment and work preparation programs in the summer and fall of 2022, which would likely have made her eligible for the child care benefit during that time. She asks that the benefit be backdated to July 1, 2021 on compassionate grounds, considering her extremely stressful life situation and the many serious and challenging demands on her energy and attention when she failed to respond to the ministry's communications of September 16, 2021. The appellant's advocate has argued for a compassionate and trauma-informed consideration of the appellant's situation.

If the ministry approves an application, CCSR section 13 allows the ministry to backdate the benefit for 30 days before the application is completed, if the ministry has made an

administrative error. The legislation does not give the ministry discretion to backdate the benefit for any longer period or for any other reason.

The majority panel finds that the ministry was reasonable in its consideration of the February application. The ministry does not have the choice, under the CCSR, to backdate a child care benefit before the first of the month in which the application is completed, unless the ministry has made an administrative error. There was no such error, therefore under the legislation the ministry cannot backdate the benefit from the February application, no matter how much sympathy the ministry or the majority panel may have for the appellant's very difficult and unfortunate situation.

Therefore, the majority panel finds that the ministry's decision, that under the February application the appellant was not eligible for the Affordable Child Care Benefit between July 1, 2021 and January 31, 2022, was a reasonable application of the legislation in the appellant's circumstances.

*The August Application:*

This appeal only addresses the reconsideration decision arising from the February application. While the outcome of the August application is not the subject of this appeal, and the August application form is not included in the Appeal Record, the ministry included information about the earlier application in its reconsideration decision by way of background, to explain the history of the appellant's receipt of child care benefits.

The majority panel notes that the child care benefit for the period between July 1, 2021 and January 31, 2022 would have been the subject of the August application. The appellant may have been eligible to receive the benefit during all or part of that period, and it does not appear that the August application was concluded in accordance with section 12 of the CCSR.

Further, the majority panel notes that the communication from the ministry on September 16, 2021 was unclear and somewhat confusing in the information requested. The ministry asked for the appellant's "schedule of employment" with days of the week and hours per day. It is understandable that the appellant might not have thought of the fall pre-training program as "employment" and that she believed that she had already given the details of her sporadic weekend employment.

The appellant readily admits that she was overwhelmed and distracted in the fall, and she now realizes she should have followed up with the ministry when they sent 3 separate inquiries on September 16, 2021.

The September 16, 2021 letter from the CCSC sets out potential consequences: if the requested information was not provided within 60 days "you will be deemed ineligible for benefits and/or we may require a new application." It appears that neither the CCSC nor the ministry sent any further notification to the appellant when the 60 days were up, either to confirm that the ministry had in fact deemed her ineligible, or to tell her that she needed to make a new application, or both.

The appellant was told verbally, on February 7, 2022, that she should make a new application. Meanwhile, the August application was open on the ministry's system until February 1, 2022, only closed by the automated system a week before that conversation took place.

CCSR section 12 says that the ministry must notify the appellant about whether an application is approved. If the application is not approved, the ministry must notify the appellant in writing, including the reason for refusing to pay the subsidy. Closure of the August application file apparently meant that the ministry did not approve the August application, apparently due to insufficient information. However, it does not appear that the ministry notified the appellant in writing or at all. Therefore, the August application may not have been concluded as required by the legislation.

Simply closing the August application without written notification of the outcome under CCSR section 12 deprives the appellant of rights of reconsideration and appeal under the CCSA. Under CCSA section 6, a person may request reconsideration of "a decision that results in a refusal to pay a child care subsidy." If a person is dissatisfied with the reconsideration decision, they may appeal that decision, as the appellant has appealed the decision about the February application. The appellant would have the opportunity to present additional information on reconsideration, or additional evidence on appeal, that might establish her eligibility for benefits during all or part of the earlier period.

The majority panel finds that, while the ministry's March 24, 2022 letter to the appellant addressed eligibility between July 1, 2021 and January 31, 2022, it was a notification under CCSR section 12 only for the February application. The majority panel makes no findings about eligibility under the August application, the outcome of which is not the subject of this appeal.

Conclusion of the Majority Panel:

The majority panel confirms the ministry reconsideration decision that, based on the February application, the appellant is not eligible for the child care benefit between July 1, 2021 and January 31, 2022. The appellant is not successful in the appeal.

Dissenting Reasons:

In the reconsideration application form initiated by the appellant and signed April 13, 2022 she made the following declaration: "I am requesting a reconsideration for my daycare subsidy. I am requesting this because at the end of January (2022), I went into the office at my daycare to discuss a different issue and was then informed that I have an outstanding bill of \$5,194. I was completely unaware that my subsidy wasn't currently in place and was not billed or informed at all. In August (2021), I was told that my subsidy expired in June. At that point, I went back into my message portal, and submitted new documents. I followed up, and everything seemed to be in order. I continued working, working on my application for my continued education, dealing with legal issues with custody and protection then began attending school. Through all of these months, my daughter attended daycare with no problems. I did not receive any bills or indication that they (*daycare*) weren't receiving payment. When I was finally informed of my debt, my daycare apologized for not telling me sooner and told me they would help in any way to amend this. I immediately began a new subsidy (*February 2022*) and was advised to wait

until it was approved to begin the appeal process. I got a letter of support from the daycare facilitator and have attached it to my message portal. I ask that you please review my file and amend the approved coverage. I am a single mother..." The appellant confirmed this declaration during the hearing and provided additional information, supported by evidence, that she was fully engaged in two separate programs during the period July 1, 2021 through January 31, 2022. The ministry representative accepted this new evidence.

The February application is not in dispute. It is the status of the August application that is in dispute. The ministry told the appellant to wait to apply for reconsideration until after she completed a new application form. The ministry approved the February application to start subsidy payments effective February 1, 2022. The ministry has positioned the February application as the document forming their reconsideration decision that they could not back date subsidy coverage for July 2021 through January 2022 because they can only backdate one month from the date of approved application. The ministry gave little to no weight regarding the August application.

The online August 2021 subsidy application was not part of the appeal record although referenced by the appellant in her reconsideration application.

Evidence provided in the hearing record and at the hearing show that the appellant did not blatantly disregard communication from the ministry made in late May or on September 16<sup>th</sup>, 2021 (not August 16<sup>th</sup> as per the appeal record). The appellant demonstrated that she responded immediately when told in real time (both in August and January) that there were concerns regarding the child subsidy for her 2 ½ year old daughter. It is my view that the appellant was truthful in that she was unaware she needed to respond to the ministry beyond her online application made on August 16, 2021 through the ministry portal.

In my view, the crux of this appeal is the August 16, 2021 subsidy application; not the February 2022 application. On September 16, 2021 the Ministry asked the appellant for additional information specific to her employment. She was not employed. There is nothing in the legislation that states employment is a criterion for child subsidy. It was an error of assumption of the part of the ministry to request this additional information which ultimately held up the process of the appellant's August application.

A final written notice regarding the status of the August 2021 to the appellant did not occur until March 24, 2022; a lag time of more than seven months. A final notice is an obligation by the ministry. The ministry failed to do so as per CCSR section 12. Therefore, in my view, the August application was still open when the ministry advised the appellant in January to apply again. The ministry incorrectly stated to the appellant and in the appeal record that the file was closed because it was dormant, at least to the extent of the legal ramifications of the application, namely, the right to a reconsideration and appeal.

The ministry representative stated that if the August application included the information outlining the reasons for the need for child subsidy as presented at the hearing, then the criteria would have been met and the appellant would be eligible for continued child subsidy for the period July 1, 2021 through to January 31, 2022.

Whether or not “reasonableness” existed is a fundamental principle of the EAAT in making our appeal decisions. Given the problematic management regarding the August application, the dissenting member would find that it is unreasonable for the ministry to deny the appellant child subsidy for the period July 1, 2021 though January 31, 2022.

### Schedule A - Legislation

#### **Child Care Subsidy Act**

##### **Child care subsidies**

s. 4 Subject to the regulations, the minister may pay child care subsidies.

##### **Reconsideration and appeal rights**

s. 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.

#### **Child Care Subsidy Regulation**

##### **How to apply for a subsidy**

s. 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.

(2) Only one parent in the family may apply for a child care subsidy.

**Applicant must be notified of outcome**

s. 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.

**Will a subsidy be paid for child care provided before completion of the application?**

s. 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.

**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)

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

**Part H – Signatures**

Print Name  
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)  
2022/05/26

Print Name  
Robert Kelly

Signature of Member

Date (Year/Month/Day)  
2022/05/26

Print Name  
Diane O'Connor

Signature of Dissenting Member

Date (Year/Month/Day)  
2022/05/26