

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Education and Child Care (the ministry) Reconsideration Decision dated October 3, 2022, in which the ministry denied the appellant’s request for Affordable Child Care Benefit (ACCB) for the period between July 1, 2022, and July 31, 2022.

Part D – Relevant Legislation

Child Care Subsidy Act (CCS Act), Section 4.
Child Care Subsidy Regulation (CCS Regulation), Sections 4 and 13.
Employment and Assistance Regulation (EAR), Section 86(b)

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the minister at reconsideration included the following:

- On August 10, 2022, the appellant submitted an ACCB Application, CF2900, to the Child Care Service Centre (CCSC) via MyFS that was signed and dated on August 10, 2022. The CCSC found the appellant eligible for subsidy and issued her a Benefit Plan for the period beginning August 1, 2022.
- On August 30, 2022, she contacted the CCSC to inquire about her subsidy for the month of July. The CCSC advised the appellant that she is not eligible for the ACCB for the month of July because her application was signed on August 10, 2022 and was received at the ministry on that date. Therefore, her subsidy began on August 1, 2022. The appellant requested to speak with a Team Lead who advised the same and a letter outlining the denial of backpay for the period between July 1, 2022 and July 31, 2022, was sent to her.
- On September 7, 2022, the appellant contacted the CCSC by telephone to request a reconsideration of the decision to deny backpay of her subsidy for the month of July.
- In Section 3 of the Request for Reconsideration form the appellant had submitted two pages of handwritten reasons in which she advised in part;
 - She wants the benefit to start the beginning of July as that is when her child started daycare and when she is eligible based on last year's income,
 - The application was submitted in August; however, the appellant was unaware that submitting it in August would be punitive,
 - She only met with the director of the child care facility on 29 July 2022 as the person had been away on vacation,
 - Following receipt of the affordable child care benefit application form she made arrangements to meet with a representative of the government child care referral specialists to receive support in completing the forms, as she did not want to make any errors, and wanted it processed quickly,
 - The appellant stated that neither herself, the child care director who has been running a daycare for 18 years, or the referral specialist, had any knowledge that applications had to be signed in the month the daycare started and penalized if beyond this date. This piece of information is vital for families, daycares [and] family support agencies to know so parents receive their full benefit when applying,
 - After she was denied for July, she asked the ministry centre why this very important piece of information for daycare, government family resource centres, families, etc, is not clearly outlined on its website; the application; or told to families when they called ministry services for support to prevent these situations of appeal?
 - Although the information is on the FAQ section of the webpage, it is difficult to find and it should be included on the application form or the arrangement form,
 - The appellant has returned to work from maternity leave however is only working part-time as she could not find child care until July, and
 - She does not have monies for this unintentional error and if she had known she would have submitted the application in July, no questions asked.

Additional Information Submitted after Reconsideration

Hearing

The hearing was held as a teleconference. The ministry did not attend the hearing. Section 86(b) of the Employment and Assistance Regulation permits a panel to hear an appeal in the absence of a party if the party was notified of the hearing. Section 85(2) of that Regulation requires the chair of the tribunal to notify the parties of the date, time and place of a hearing at least 2 business days before the hearing is to commence.

Tribunal records confirm that the ministry was notified of the date and time of the teleconference hearing by email on 16 March 2022, and a delivery receipt was obtained by the tribunal. The tribunal contacted the ministry and was advised they would not attend the meeting as they were short of staff. Therefore, the panel being satisfied that the ministry was notified of the hearing in accordance with the requirements of section 85(2), the hearing proceeded without the ministry.

Appellant

At hearing the appellant called the director of the child care centre as a witness, who provided her own testimony as to her knowledge of the appeal. The witness testified that she has been involved in child care for 30 years and this is the first time she has seen child care denied because of a late application. The loss of this benefit affects the child care centre as well, as they are a not-for-profit organisation.

The witness stated that the appellant had been waiting for a long time for child care and was offered a position in early July 2022. The director confirmed that she was away and only met with the appellant on 29 July and at that time provided the appropriate forms for submission with the application to her. She is aware the appellant took the forms to a referral specialist to make sure the application was correct.

The witness stated the appellant was approved and started receiving benefits and tried to find out why she was not paid for the month in which the child started child care.

In answer to questions, the witness stated that it has always been her experience that the ministry provides child care for the month the child started receiving child care. The director provided an example of a client whose child started child care in early September, the forms were submitted later in the month of September and payment was delayed for a couple of months. The director feels comfortable that although it is now late October the fees will be paid for the period from the beginning of child care. If an application is submitted one or two days late it should not be a problem.

The appellant provided oral testimony that reflected her letter submitted as part of the reconsideration request, specifically that she is a single mother who lost her full time job as she had no daycare. A representative of the daycare called in July and offered her a place for her child and indicated that the Affordable Child Care Benefit Application would be reviewed when the director returned. The child care started in July.

The appellant stated that she cannot afford the \$700 monthly fee that is now owing as a result of unforeseen circumstances, that her child was sick and started later and that is when the appellant went on the child care company website to find out what to do regarding clothes, post dated cheques etc.

The appellant only met the director of the child care on 29 July 2022. Once she received the form, she made an appointment with the child care specialist and had a telephone appointment on August 10, 2022 to complete and submit the forms.

The appellant stated that the specialist had never seen the situation before where payment was refused because the form was submitted in a following the start of childcare.

Once the appellant had contacted the ministry representative to ask why she was refused, she was told to go on the website. She said that the requirement was stated in the FAQ section of the website, which she did not need to use. The requirement should be on the application form itself.

The appellant's 2021 income means she is eligible for child care and she should only pay \$54 for July. Because of an innocent mistake she is expected to pay \$700 and she does not have this money.

She is seeking the ministry to let it slide this time and "give her a break".

In response to a question from the panel the appellant confirmed that she now knows that the application has to be signed in the month the child starts daycare to receive a benefit for that month.

When asked if the appellant had reviewed page 3 of the CF2900 form, the appellant advised she had not gone through the whole form with the referral specialist and had only spoken with her by phone.

When asked what the parent handbook included and if it contained the application form for the child care benefit, the appellant stated there may have been a link to the application, but it certainly stated the parents make sure they apply.

When asked when the appellant accessed the benefit application the appellant could not directly remember, thinking it may have been on 29 July when she met the director and got the child care arrangement form or perhaps when she talked to the referral specialist. The appellant did not know who gave her the forms or package, but she did submit online understanding from the referral specialist that mail would be slower.

Ministry

The ministry was not at the hearing and did not provide any other information.

Admissibility of new information

Section 22(4) of the Employment and Assistance Act (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 this case the appellant and witness provided oral testimony that supported the evidence in the request for reconsideration.

The panel admits the new information under section 22(4) of the EAA as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Findings of Fact

The panel finds the child care started on 11 July 2022.

The panel finds the ACCB Application was completed and submitted by the appellant on 10 August 2022.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision that denied the appellant's request for ACCB for the period between July 1, 2022, and July 31, 2022.

In particular, was the ministry reasonable in determining the appellant is not eligible for the ACCB for the month of July because the appellant's application was signed on August 10, 2022 and received at the ministry on that date.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant states that neither she nor her advisors were aware that the ACCB application had to be submitted in the month the child starts child care to receive the benefit for that month, that the information is not easily found, and that she was never advised.

The appellant states the delay in submitting the application form was unintentional. She received the required tax/arrangement care form from the day care centre on the last business day of the month of July and then met with a referral specialist to make sure the application would have no errors.

The appellant argues that although she is now aware that the benefit can only start in the month the application is submitted, she was not at the time she submitted the application and is asking the ministry to give her a break.

Ministry Position

The ministry states in the reconsideration decision that the appellant submitted the application on August 10, 2022, that was signed and dated on August 10, 2022, and that in accordance with the legislation the eligibility for the ACCB therefore began on August 1, 2022, which is the first day of the month in which the application was completed.

The ministry notes that on page 3 of the ACCB Application signed by the appellant on August 10, 2022, a Declaration states,

“I understand a benefit may be paid from the first day of the month in which the application is completed, or the date child care begins, whichever is later. I am responsible for child care fees prior to this date.”

The ministry states in the reconsideration decision that during the telephone conversations between the appellant and the CCSC, the ministry advised on each occasion that the subsidy is paid the first day of the month that the application is completed, in accordance with the CCS Regulation. Further, the ACCB website outlines important information for people to know when applying for the ACCB. Under the heading “Before you apply,” the frequently asked questions explain how the start of subsidy is determined, stating,

“Your benefits will begin on the first of the month in which your full application package is received complete. All documents (ie. Application form, Child Care Arrangement form, supporting documents etc.) must be submitted in order for your application to be complete. Missing or incomplete documents will delay your application.”

The ministry finally argues that upon receipt of the appellant’s application on August 10, 2022, the ministry applied the correct start date in accordance with the CCS Regulation, and therefore there is no evidence to establish that the ministry made an administrative error.

Panel Decision

The relevant legislation is contained in Section 4 of the CCS Regulation which sets out the process for applying for a subsidy. To be eligible for a child care subsidy, a parent must complete an application in the form required by the minister.

Section 13 of the legislation provides for whether a subsidy will be paid for child care provided before completion of the application. It states that a child care subsidy may be paid from the first day of the month in which the parent completes an application under section 4, and 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.

The term administrative error is not defined in the legislation and the ministry has not provided one in the decision. One dictionary definition of administrative error means an error attributable to department staff such as calculating, clerical, procedural, typing, misapplication of policy, failure to take action, or using the wrong benefit amount table.

The ACCB Application, CF2900, is the form the appellant must complete to comply with section 4. This form, in the declaration section, carries an acknowledgement that the benefit may be paid from the first day of the month in which the application is completed, and an applicant is responsible for child care fees prior to this date. The FAQ section on the Ministry’s website states that benefits will begin on the first of the month in which an application is received.

The panel accepts the ministry’s actions regarding both the notification on forms and the information website discussed above, and the acceptance of the appellant’s application through MyFS as a reasonable interpretation of the legislation and, based on the evidence, finds the ministry did not commit an administrative error.

The example the witness gave was for a client who had submitted the application the same month as child care began and is not akin to the appellant’s situation.

The appellant stated that she had the child care tax/arrangement form provided to her by the centre director on 29 July 2022 and therefore the panel finds there were a few days of July still available in which to submit the electronic ACCB Application to the Child Care Service Centre (CCSC) via MyFS.

The panel has found that the date of application is August 10, 2022, and therefore finds the ministry was reasonable in determining the appellant was not eligible for child care provided in the 30 days before the parent completed the application, that being the month of July 2022.

Lastly, the panel notes the appellant seeks an act of forgiveness from the Ministry for submitting a late application. In essence she is asking the Ministry to exercise discretion.

What the panel in this appeal must decide is whether the ministry's decision was a *reasonable* application of the timeline *in the circumstances of the appellant* and whether the ability to exercise discretion was available. The circumstances of the appellant have been described above.

Specifically, she cites her late meeting with the child care facility director and her desire to ensure the application forms were completed without error, and her lack of awareness of the ministry policy.

Was it reasonable for the ministry to insist on the timeline given these circumstances?

As discussed above the legislation specifically addresses the situation whereby a subsidy may be paid for child care *provided before completion* of the application, and limits it to a period of 30 days, and to the circumstances of an administrative error. The ministry cannot contravene the legislation in policy or practice and therefore the panel finds it does not have the ability to exercise discretion in deciding to waive the timeline requirements to backdate eligibility.

Based on this analysis, the panel finds that the ministry reasonably determined that the appellant's request for waiving the time period for submittal reconsideration could not be considered.

Summary

The panel notes that the child care centre is apparently unable to issue the supporting child care tax/arrangement form in the absence of the director. However, it did in fact provide the form to the appellant a full three days before the end of the month in which the child care began. The appellant did not submit the completed application until August 10, 2022. The panel found the ministry did not commit an administrative error and is unable to exercise discretion in waiving the required application timeline. Therefore, on the basis of all the evidence, the panel found the ministry was reasonable in its finding that the appellant is not eligible for the ACCB for the period between July 1, 2022, and July 31, 2022.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision is supported by the evidence and is a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Appendix A

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.

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.

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

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2022/11/02

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2022/11/02

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2022/11/02