

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Education and Child Care (the “Ministry”) reconsideration decision, dated October 4, 2022 (the “Reconsideration Decision”), which determined that:

- the Appellant was not eligible for the Affordable Child Care Benefit (the “ACCB”) for the period between June 1, 2022 and July 31, 2022, by operation of section 13(1) of the *Child Care Subsidy Regulation* (“CCSR”), having not submitted an application for the ACCB until August 15, 2022 and having signed the application for the ACCB on August 10, 2022; and
- in the case of the Appellant, no administrative error on the part of the Ministry had taken place which could have permitted the Ministry to pay the ACCB prior to the first day of the month in which the Appellant’s application for the ACCB was completed.

**Part D – Relevant Legislation**

*Child Care Subsidy Act* (“CCSR”)- section 4  
CCSR- sections 4, 4.1, and 13

## Part E – Summary of Facts

The Appellant is an applicant for the ACCB, who filed an application on August 15, 2022 and signed the application on for the ACCB on August 10, 2022.

The Information before the Ministry at the time of the Reconsideration Decision included:

- the Appellant’s Affordable Child Care Benefit Child Care Arrangement Form (the “CCAF”) dated May 9, 2022, which was signed by both the Appellant and the child care provider on May 9, 2022;
- the Appellant’s ACCB application (the “Application”), which was dated August 10, 2022 and had the spousal consent portion of the Application completed on August 15, 2022;
- the Ministry’s letter to the Appellant, dated September 2, 2022, explaining that the Appellant was ineligible for the ACCB between June 1, 2022 and July 31, 2022 because the Application was completed on August 10, 2022, making the Appellant eligible only from August 1, 2022;
- the Appellant’s Request for Reconsideration, dated September 2, 2022, to which was attached:
  - an undated note from a doctor indicating that the Appellant was unable to work due to caring for an unwell family member for two weeks (clarified as having been dated April 1, 2022 at the Appeal by the Appellant);
  - photograph of a hospital bracelet for the Appellant’s child (Appellant couldn’t remember date at hearing);

In the Appellant’s Notice of Appeal, the Appellant indicated that “I would like to say my case could be exceptional if my explanation for reconsideration is reasonable” in the section of the Notice of Appeal where the Appellant was asked to explain why she disagreed with the Reconsideration Decision.

The Appellant also subsequently provided a submission (the “Submission”), which included a discharge report from hospital in respect of a hospital visit on September 23, 2022, indicating that the Appellant’s child had suffered a seizure.

At the hearing of the appeal, the Appellant explained that the application for the ACCB was difficult for a number of reasons, including because the Appellant and her spouse are immigrants and English is not their first language. The Appellant also explained that, because of her child’s health, the application for the ACCB was not front and center on the minds of her or her spouse. The Appellant described asking a friend for some help with applying for the ACCB and that she had thought that the child care provider would be completing the application for the ACCB. The Appellant stated that the ACCB was very important to her and her spouse and that she hoped that her circumstances would be taken into account.

The Appellant’s spouse stated that he and the Appellant were first time parents and confirmed that they were both distracted by the health issues that the child was having. The Appellant’s spouse also pointed to cultural differences between their home country and Canada.

The Ministry pointed to section 13(2) of CCSR and pointed out that it is the only provision that allows the Ministry to pay the ACCB on a retroactive or back dated basis and only where there has been an administrative error on the part of the Ministry. The Ministry stated that the delay in the submission of the Application was not the result of an administrative error and the Ministry has no discretion to back date the ACCB for any reasons other than administrative error, even where the Ministry may be sympathetic to an applicant's particular circumstances.

The Ministry highlighted the differences between the CCAF and the Application, highlighting that the CCAF is used to confirm eligibility and it is the Application that must be submitted before the ACCB can be provided under the provisions of the CCSR. In the case of the Appellant, the Ministry considered the Application complete on August 15, 2022 when the final portion of the Application was completed by the Appellant's spouse. Finally, the Ministry noted that, ultimately, the responsibility for submitting an application for the ACCB rests with an applicant and while an applicant can certainly have help in preparing an application for the ACCB, such an arrangement is between an applicant and whomever was helping them. In the case of the Appellant, that would be a matter between the Appellant and the child care provider.

The panel admits the Submission and the oral evidence given at the hearing of the appeal as evidence that was not part of the record which the panel considers reasonably required for a full and fair disclosure of all matters related to the Reconsideration Decision, pursuant to section 22(4) of the *Employment and Assistance Act*.

**Part F – Reasons for Panel Decision**

The issues in this appeal are whether the Ministry was reasonable in its determination that:

- the Appellant was not eligible for the ACCB for the period between June 1, 2022 and July 31, 2022, by operation of section 13(1) of the CCSR, having not submitted an application for the ACCB until August 15, 2022 and having signed the application for the ACCB on August 10, 2022; and
- in the case of the Appellant, no administrative error on the part of the Ministry had taken place which could have permitted the Ministry to pay the ACCB prior to the first day of the month in which the Appellant's application for the ACCB was completed.

***Panel Decision***

Section 13(1) of the CCSR authorizes the Ministry to pay a child support subsidy from the first day of the month in which an applicant completes an application. "Completes" is not a defined term in the CCSR but the Ministry, for the purposes of the Reconsideration Decision and this appeal, has interpreted it as meaning when the Application was fully filled out and not, for example, when it was actually submitted to the Ministry which would invariably be the same day or a later date.

In this case, the last portions of the Application, which contained spousal consents, was dated August 15, 2022. It is not clear when the Ministry actually received the Application but given that the Ministry selected a date that was the same or earlier than the date the Application would have been received, the panel finds that the Ministry reasonably determined that, based on the date the application was "completed", it was authorized to provide a child care subsidy starting only on August 1, 2022.

Section 13(2) of the CCSR provides that the Ministry may provide a back dated or retroactive child care subsidy from no more than 30 days prior to the completion of an application and only where there was an administrative error on the part of the Ministry. There is no further discretion afforded to the Ministry under section 13(2) of the CCSR.

The Appellant described a number of reasons for the delayed completion of the Application but did not suggest that any of those reasons were caused by an administrative error on the part of the Ministry. The crux of the Appellant's submissions was that the Ministry should exercise discretion in favour of the Appellant, due to her circumstances, and that the panel should do the same. Given the wording of section 13(2) of the CCSR, the panel determines that the Ministry reasonably determined that it has no discretion to take into account the Appellant's specific circumstances and that it is confined to making a determination about whether an administrative error on the part of the Ministry had occurred when assessing eligibility for a back dated child care subsidy.

In view of all of the foregoing, the panel confirms the Ministry's decision that the Appellant is not eligible for the ACCB for the period from June 1, 2022 to July 31, 2022.

The Appellant is not successful in this appeal.

***Relevant Legislation***

Section 4 of the CCSA authorizes the payment of child care subsidies:

**Child care subsidies**

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

Section 13 of the CCSR addresses when child care subsidies may be paid:

**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.

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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)

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

**Part H – Signatures**

Print Name

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2022/November/10

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2022/November/10

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2022/November/10