

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Education and Child Care (the Ministry) reconsideration decision (the Decision), dated August 15, 2023, which determined that the Appellant is not eligible for the Affordable Child Care Benefit (the Benefit) beginning on March 22, 2021.

Part D – Relevant Legislation

Child Care Subsidy Act (the Act), sections 4, 5(1), 5(3)(a), and 6(1) and (3)

Child Care Subsidy Regulation (the Regulation), sections 4(1), 12, 13 and 17(1)

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below

Part E – Summary of Facts

According to the Decision, the Ministry provided the following summary of key dates and information related to the Appellant's request for reconsideration:

- **On April 30, 2021**, the Ministry received the Appellant's affordable Child Care Benefit Application (the Application Form), signed and dated March 10, 2021, via My Family Services (MyFS). Included with the Application was a signed form in which the Appellant consented to the Ministry collecting tax information (the Consent Form) from the Canada Revenue Agency (CRA), a completed child care arrangement form (the Arrangement Form), and identification information about the child under care (the Child);
- **On May 20, 2021**, the Ministry contacted the Appellant by phone to confirm custody arrangements for the Child. The Appellant was told that a completed income declaration form might be required to determine her eligibility for the Benefit once the Ministry of Children and Family Development (MCFD) had confirmed custody details for the Child. The Appellant told the Ministry during the course of that phone conversation that she had not filed income taxes for the previous two years;
- **On May 25, 2021**, after contacting the Child's social worker, the Ministry determined that the Child had been placed in the Appellant's care under a safety plan while an extended family plan was being explored. In addition, the Ministry said *"The social worker confirmed the placement would be long term and that daycare is supported to enable (the Appellant) to continue working while (the Child was in her custody)"* and *"The Ministry determined (the Appellant's) eligibility for the Benefit would be assessed based on (the Appellant's) income and that a completed income declaration form was required because (she) had not filed (her) income taxes for the preceding two years."* Also on this date the Ministry sent the Appellant a letter asking her to submit a completed income declaration form (the Declaration Form);
- **On June 8, 2021**, having not received the Declaration Form, the Ministry sent the Appellant a second letter asking her to submit the Declaration Form;
- **On December 1, 2021**, the Ministry closed *"(the Appellant's) file"*, having received no further communications *"via mail, telephone, MyFS or fax"* from the Appellant;
- **On March 14, 2023**, the Appellant submitted:
 - A completed Application Form;
 - A completed Consent Form;
 - A completed Arrangement Form;
 - Seven daycare receipts for the Child;

- Three CRA statements of remuneration paid (T4s) for the years 2019 through 2021 inclusive; and,
- Identification for the Appellant, the Child and another person.

The Ministry also noted that *"all documents submitted had been signed by (the Appellant) in 2021"*;

- **On March 27, 2023**, having been contacted by the Ministry by phone, the Appellant said the Child was no longer attending day care and had not done so since the Child started school in September 2021. The Ministry sent the Appellant a letter on March 27, 2023 telling her she is not eligible for the Benefit *"for the period between March 22, 2021 (stet)"*; and,
- **On June 28, 2023**, the Appellant submitted a completed Application Form signed and dated by the Appellant on June 27, 2023, an Arrangement Form, a letter from the Ministry, and identification for the Child. The Ministry also says *"(The Ministry) attempted unsuccessfully to contact (the Appellant) by phone to discuss the documents submitted."*

The evidence the Ministry had when it made the Decision included:

- The reconsideration request, signed by the Appellant on July 23, 2023, in which the Appellant wrote:
 - *"Note that I did not receive this "Request for reconsideration" form until July 24th, 2023. I'm not sure why the date signed by the adjudicator in section 2 of this form is dated April 25th, 2023."*;
 - *"The fax number 1-250-953-3319 does not connect ... it simply rings and rings"*;
 - *"The phone number 778-698-7750 is a message machine. I left a message to call me back 7/25/23"*; and,
 - *"I am mailing this to the address on page 3 (of the request for reconsideration form) ..."*

The reconsideration request also included a one-page note signed by the Appellant and dated July 25, 2023 (the July 25 Note). The July 25 Note provides the Appellant's history of events relating to her Benefit application. There are no differences between the Appellant's history of events and the Ministry's history relating to the documents provided to the Ministry by the Appellant and the dates of contact between April 30, 2021 and March 27, 2023, as provided by the Ministry and summarized above. The following additional comments are included:

- *"(After receiving the Ministry's June 8, 2021 letter about not filing tax returns for 2019 and 2020 and estimated income for the previous 12 months) I was aware of the process with the understanding that my income details would be required." The*

Appellant also explains why her taxes hadn't been filed and why she needed the Benefit; and,

○ *"(On) May 1, 2023 I called (the Ministry) again ... I didn't understand why I received the duplicate letter of declination rather than the form for reconsideration ... The person I was speaking with explained that my file was put in auto-closure after 4 months [I was not aware of this until now] and if I re-applied with current signatories and got a social worker to confirm (the Child) was put in my care my file would be re-opened for reconsideration. I had the daycare fill out another Arrangement Form with no changes other than the current Date Signed to June 7, 2023. I also went to MCFD and had the social worker write a letter dated June 19, 2023 confirming my claim was valid."*

- A copy of the Application Form in the name of the Appellant, signed and dated by the Appellant on April 30, 2021;
- A copy of the two-page Arrangement Form signed and dated by the childcare provider on March 9, 2021, and signed and dated by the Appellant as applicant on March 10, 2021;
- Copies of three receipts indicating that money was received from the Appellant by the daycare service provider as follows: a receipt dated March 24, 2021 in the amount of \$215.65, a receipt dated May 10, 2021 in the amount of \$620.00 for "April Fees", and a receipt dated June 8, 2021 in the amount of \$1,240.00 for May 2021 and June 2021 fees. Corresponding invoices for all three payments are also included;
- Copies of T4s in the name of the Appellant for tax years 2019, 2020, and 2021;
- Identification in the form of the Child's birth certificate, the Appellant's drivers licence, and another person's drivers licence;
- A copy of a letter from the Ministry to the Appellant, dated May 25, 2021, in which the Ministry says it is unable to process the Appellant's request for the Benefit without a Declaration Form;
- A copy of a letter from the Ministry to the Appellant, dated June 8, 2021, in which the Ministry says it is unable to process the Appellant's request for the Benefit because she has not filed taxes for 2019 and 2020, and asking her to declare her estimated income for the previous 12 months on the Declaration Form; and,
- A copy of the Consent Form, signed by the Appellant on April 30, 2021.

Additional Evidence After Reconsideration

In the notice of appeal, the Appellant says the Ministry's details of communication between the Ministry and the Appellant aren't accurate.

Evidence Presented at the Hearing

Both the Appellant and the Ministry attended the hearing.

At the hearing, the Appellant relied on the evidence in the appeal documents, noting that copies of the new Application Form she prepared in March 2023 were missing from the appeal record. The Appellant also stressed that she had been told by the Ministry that they could backdate her application once they had received all of any required additional information, which in this case would have been information about her taxable income in the period leading up to her original application submitted in April 2021.

The Appellant also referred to the problems she had experienced in trying to contact the Ministry by phone and fax in March 2023, and said that on March 31, 2023 when she was able to talk to the Ministry she asked for the request for reconsideration form and was sent another copy of the March 27, 2023 letter.

In response to a question from the Panel, the Appellant said she had not completed any other applications between March 2021 and March 2023.

At the hearing, the Ministry relied on its Decision, explaining that the Ministry has an information sharing agreement with the federal government, under which the Ministry can access tax information from the CRA. In this case, the tax information wasn't available. In those circumstances, the legislation allows for the option of having an applicant declare their income, and for that the Ministry needs a Declaration Form, completed by the applicant. The Ministry said it had asked the Appellant to complete a Declaration Form "*but it was not provided at the time*".

The Ministry said there are provisions in the legislation that allow it to backdate an application, but only for a month and only when the Ministry makes an administrative error, which was not the case in the Appellant's circumstances. The Ministry said that it empathised with the Appellant, but "*we have to follow the legislation*".

In response to a question from the Panel, the Ministry said the Arrangement Form, which has to be partially completed by the daycare service provider, is considered not to be part of the Application Form.

Admissibility of Additional Evidence

Section 22(4) of the *Employment and Assistance Act* says a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must

determine if the new information is relevant to the decision. If a panel determines that new evidence can be admitted, it must decide if the decision was reasonable considering the new evidence.

The Panel finds that there was no new evidence in the notice of appeal or the information provided at the hearing.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Decision, which determined that the Appellant is not eligible for the Benefit beginning on March 22, 2021, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that the Ministry should have approved her Benefit application in March 2023 because the Ministry told her that she could apply again for the Benefit, after she had gathered the income verification information, by backdating the Application Form and submitting it again, which she had done in March 2023.

The Appellant never received notification from the Ministry that her application had been denied in 2021, and didn't realize that her file was put into auto-disclosure in December 2021. She also doesn't understand why she received "*a duplicate letter of declination*" in March 2023, and not the request for reconsideration form she had asked for when she found out that her Benefit application had been denied. In addition, the Appellant was unable to contact the Ministry when she tried to follow-up on her request for reconsideration because she couldn't get through when she called the Ministry's fax and phone numbers.

Ministry's Position

The Ministry's position is that it did not receive a completed application from the Appellant with all supporting documents required to assess her eligibility for the Benefit for the period beginning March 22, 2021. As a result, her eligibility for the Benefit could only be assessed as of March 1, 2023, which was the first day of the month in which the application was completed with all supporting financial information.

In addition, the Ministry holds that, as set out in section 13 of the Regulation, payment of a child care subsidy may only be backdated 30 days from when the parent completes the application under section 4 of the Regulation if there has been an administrative error, which was not the case in this instance.

Panel Decision***The Date the Application was Completed***

The Panel notes that there are several dates referred to in the Decision regarding when the Appellant signed the first Application Form. Specifically, those dates are identified as March 11, 2021, March 22, 2021, and July 6, 2022 in different parts of the Decision. Having reviewed all the available evidence, the Panel notes that the Application Form included in

the appeal record shows the hand-written date "2021/Mar/10" beside the Appellant's signature. Therefore, the Panel finds that it is reasonable to conclude that the Application Form was signed by the Appellant on March 10, 2021.

Both parties agree that the Application Form was not *received* by the Ministry until April 30, 2021. So when was the application "*completed*" by the Appellant?

In context, the terms "*complete an application*" and "*completes an application*" are not defined where they appear in sections 4.1 or 13(1) of the Regulation respectively. The Panel notes that eligibility for the Benefit would reasonably begin in the month in which an application is signed, if, as is the case in this instance, daycare costs were incurred by the applicant in that month.

The Panel further notes that if the legislation was intended to start Benefit coverage in the month in which the application was *received* by the Ministry, the language in the legislation would make that clear, as it's reasonable to assume that some applications might be signed by the Appellant near the end of one month and received by the Ministry the following month. In those cases, without a definition of "*complete*" in the legislation, whether the Benefit is payable for the month in which the Application Form is signed (in circumstances where an applicant has paid for daycare service fees in that month), or the date the Ministry receives it, is open to interpretation. For these reasons, the Panel finds that the Appellant completed the application on March 10, 2021.

Application and Eligibility under the Act and Regulation

Section 13(1) of the Regulation says a Benefit may be paid from the first day of the month in which the parent completes an application. The Application Form was completed on March 10, 2021, as determined by the Panel for the reasons set out above, and received by the Ministry on April 30, 2021.

On May 20, 2021, the Ministry contacted the Appellant by phone to confirm that she had legal custody of the Child, and told the Appellant that it would contact MCFD to confirm custody details. The Appellant told the Ministry she had not filed income taxes for the previous two years. The Ministry said in those circumstances a completed income declaration form might be required to determine the Appellant's eligibility for the Benefit.

At the time, the Appellant hadn't filed recent income tax returns due to personal circumstances, which included her ongoing divorce proceedings and efforts to arrange to obtain legal custody of the Child, who was in the temporary custody of MCFD.

Section 4 of the Regulation says a parent must complete an application in the form required by the Ministry. If the Ministry determines that the applicant is eligible, then under section 13 of the Regulation the Ministry may pay a Benefit, as noted above. The form required by the Ministry under section 4 on the *Act* is the Application Form. The

Appellant submitted that form on April 30, 2021, and the Ministry acknowledged receipt of the application on that date.

The *Act* and Regulations contemplate that the Ministry may require additional information to determine eligibility for the Benefit. Under section 5(1)(a) of the *Act*, the Ministry may direct an applicant to supply any required additional information within the time and in the manner specified by the Ministry. The Panel finds that, once the parent has completed the application form required under section 4(1)(a) of the Regulation, they have applied for the Benefit. The Ministry can then request the additional information it needs to determine eligibility.

The Ministry conducts an income review under section 9.1 of the Regulation. Under that section, the Appellant was a “*new applicant*”, which is defined in section 9.1 of the Regulation as “*a parent who ... is not currently receiving a child care subsidy and ... **has applied for a child care subsidy under section 4** but no determination has yet been made whether the parent is eligible for a child care subsidy*” (emphasis added).

If the income review results in an increase in the amount of the child care subsidy for which a new applicant is eligible, the subsidy may be paid “*from the first day of the month in which the parent completes an application under section 4.*” Under section 4, the application that the parent must complete is the Application Form. The Panel notes that any amount to which a new applicant is entitled in Benefits will “*(result) in an increase in the amount of the Benefit*” the parent receives, as prior to applying for a new Benefit the applicant will have received no child care subsidies.

Sections 5(1)(a) of the *Act* and section 9.1(1) of the Regulation both refer to the Ministry’s requests for information from a parent “*who has applied for a child care subsidy.*” Under both sections, the Ministry is dealing with a parent who has completed the application form but has yet to provide all the information the Ministry needs to determine eligibility. Section 9.1 in particular covers requests for income information. The Panel finds that the wording of sections 5(1)(a) and 9.1 confirms that the parent has applied for the subsidy when they complete the Application Form.

Notification of Outcome under Section 12 of the Regulation

Section 5(3) of the *Act* says that if a person does not provide information requested under section 5(1), the Ministry may declare the person ineligible for a child care subsidy. The Panel notes that two letters were sent to the Appellant, on May 25, 2021 and on June 28, 2021 which the Appellant has acknowledged receiving. Both letters indicate that the Ministry required the Appellant’s completed Declaration Form to assess “*to process (her) request for the Benefit*”. The Panel notes that neither of the letters provided a deadline by

which the Declaration Form must be received by the Ministry, and that the Appellant did not provide that information until June 28, 2023, which the Appellant has acknowledged.

Section 12 of the Regulation says the Ministry must notify an applicant as to whether or not an application is approved, and if it isn't approved, that notification must be in writing and must include the Minister's reason for refusing to pay the Benefit.

When the Appellant did not provide the Declaration Form, the Ministry could have declared her ineligible for the subsidy under section 5(3) for failing to comply with a direction under section 5(1). The Ministry could then have notified the Appellant, in writing, of the outcome of her application, under section 12 of the Regulation. However, the Panel notes that the Ministry did not notify the Appellant, in writing or at all, as to whether or not the March 10, 2021 application was approved. Instead, the Appellant's file was closed by the Ministry on December 1, 2021. The next communication from the Ministry to the Appellant was on March 27, 2023, when the Ministry told the Appellant by letter, after receiving a new Application Form on March 13, 2023, that eligibility could not be backdated to March 2021.

Section 6 of the *Act* says a decision that results in refusal to pay a child care subsidy attracts reconsideration and appeal rights. Those rights are time limited. Closing the file without notifying the applicant of a final decision on the application deprives the applicant of those rights under the *Act*.

Section 17 of the Regulation says that a person who wishes the Ministry to reconsider a decision must deliver a request within 20 business days after the person is notified of the decision. The Panel finds that the March 10, 2021 application was not concluded in accordance with the legislation, because the Ministry did not notify the Appellant of the outcome of her application as required under section 12 of the Regulation.

If the Ministry had sent a letter to the Appellant notifying her that her application had been denied, the Ministry would have satisfied the section 12 requirement for notification, and the Appellant's application would not have been approved in the first instance. By not clearly communicating a final decision about the application, the Ministry deprived the Appellant of her rights to reconsideration and appeal of that decision.

In this case, the Appellant provided the Ministry with income verification information in March 2023, which was two years after the Application Form was submitted. The written evidence, as represented by several invoices and receipts, confirms that the Child was in daycare for several days in March 2021, and for 5 days a week for the months of April through June of 2021, over which period the Appellant paid the daycare service provider \$2,075.65 for care of the Child. There is no evidence that child care services were provided in July or August 2021, and the following month the Child began attending elementary school. So beyond June 2021, child care services were no longer required. On March 27,

2023, the Ministry told the Appellant in writing that "*eligibility could not be backdated to March 2021*".

The Panel finds that, although the Ministry closed the Appellant's electronic file on December 1, 2021, the March 10, 2021 application was still awaiting the Ministry's determination of eligibility and notification of eligibility to the Appellant. Therefore, the Panel finds that, as the Ministry has now determined that the Appellant was eligible for the child care subsidy between March 1, 2021 and June 30, 2021, the Appellant is eligible for the child care subsidy from March 1, 2021 (i.e. the first day of the month in which the Appellant completed an application under section 4 of the Regulation) to June 30, 2021.

Conclusion

The Panel rescinds the Ministry's decision that the Appellant is not eligible for the child care subsidy beginning in March 2021. The Panel finds that the Ministry's Decision is not a reasonable application of the legislation in the Appellant's circumstances. The Ministry failed to consider the Appellant's application of March 10, 2021, which the Ministry did not conclude in accordance with sections 5(3)(a) of the *Act* and section 12 of the Regulation.

Accordingly, The Panel finds that the Appellant is eligible to receive the subsidy commencing at the beginning of the month in which she completed the Application Form, which was March 1, 2021, pursuant to section 13(1) of the Regulation, until the date that daycare services were no longer provided to the Child, which was the end of June 2021. The Appellant is successful in her appeal.

Schedule of Legislation

CHILD CARE SUBSIDY ACT

Child care subsidies

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

Information and verification

5(1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

- (a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;
- (b) seek verification of any information supplied by a person referred to in paragraph (a);
- (c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
- (d) collect from a person information about another person if
 - (i) the information relates to the application for or payment of a child care subsidy, and
 - (ii) the minister has not solicited the information from the person who provides it ...

(3) If a person fails to comply with a direction under subsection (1) (a) or (c) ... , the minister may

- (a) declare the person ineligible for a child care subsidy until the person complies ...

Reconsideration and appeal rights

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 ...

(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* ...

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 ...

Applicant must be notified of outcome

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?

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.

Reconsideration of decisions

17(1) A person who wishes the minister to reconsider a decision made under the Act must deliver to the Child Care Service Centre a request for reconsideration that

- (a) is in the form specified by the minister, and
- (b) is delivered within 20 business days after the person is notified of that decision.

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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

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/09/23

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2023/09/23

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/09/23