

Part C - Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Education and Child Care (“Ministry”) dated March 11, 2024, in which the Ministry determined that the Appellant was not eligible for the Affordable Child Care Benefit (the “Benefit”) between September 6, 2023, and January 31, 2024.

Part D - Relevant Legislation

Child Care Subsidy Act (“Act”), section 4
Child Care Subsidy Regulation (“Regulation”), sections 4(1), 12 and 13
Employment and Assistance Act, section 22(4)

Complete text of the relevant legislation is provided at the end of the decision.

Part E – Summary of Facts

The hearing took place by teleconference on May 3, 2024.

Evidence Before the Ministry at Reconsideration:

The Appellant had been receiving the Benefit for her child. The Benefit Plan dated November 7, 2022, noted that the authorization for the Benefit would expire on June 30, 2023. On May 22, 2023, the Child Care Service Centre (“CCSC”) sent the Appellant a message through her MyFS account, stating:

*Our [ministry] records show you have a Benefit Plan ending in approximately 30 days. You may request to continue your benefit by using the link on your dashboard to renew or report changes.
No action is required if you no longer require a benefit or have already renewed your Benefit Plan.*

The message included a link to renew the Benefit.

On November 1, 2023, the Appellant’s child care subsidy file was closed automatically because there had been no communication from the Appellant between June 30 and October 31, 2023.

The Appellant did not need child care for her child in July and August 2023. The child attended child care again starting in September 2023, when the Appellant returned to full time work. The Appellant knew that she had to apply again to receive Benefit payments from September 2023 onwards. However, she did not know there was a specific time frame for applying and expected that, if she applied after September 2023, she would receive Benefit payments retroactively. In previous years the Appellant had filled in a form online to renew the Benefit.

On November 17, 2023, the CCSC received an Affordable Child Care Benefit Child Care Arrangement form (“November Form CF2798”) for the Appellant’s Child, for child care starting September 6, 2023. The form was signed by the child care provider on September 14, 2023, and by the Appellant on October 23, 2023. The CCSC tried to phone the Appellant when it received the November Form CF2798 but there was no answer. The Appellant’s voice mail was full, so the CCSC could not leave a message. The CCSC could not send a message through MyFS because the Appellant’s file was closed.

On January 15, 2024, the Appellant contacted the CCSC and asked for help to access MyFS. The CCSC told the Appellant that, as her file was closed, she would need to submit a new application.

On February 2, 2024, the Appellant submitted an Affordable Child Care Application ("CF2900") through MyFS, dated February 2, 2024. The Appellant also provided another Form CF2798 signed by the child care provider and herself on January 23, 2024, and a copy of the November Form CF2798. CCSC determined that the Appellant was eligible to receive the Benefit beginning February 1, 2024.

Additional Evidence at the Hearing:

At the hearing, the Appellant stated:

- She had been receiving the Benefit for six years.
- Her MyFS account had never been closed before, and she did not know that it would close automatically after a certain period of time.
- She relies on email notifications from MyFS and did not know that the CCSC had tried to phone her.
- Form CF2798 was always the only form she had to submit, and she would only have to update any information, such as a change in income or employment, online through MyFS, where the information was kept from year to year.
- She usually submitted the form "late", but by the end of October each year, and she always received retroactive Benefit payments.
- She had no reason for submitting the form in November instead of October in 2023, she just gets busy.
- She scanned and faxed the November Form CF2798 to the CCSC from the office of the child care provider. She did not get any response to the fax, but usually has to wait for a MyFS message acknowledging receipt.
- She did not talk to the Ministry in November 2023; she talked to them on January 15, 2024, when they told her that her MyFS account was closed.

Admissibility of Additional Evidence:

The Ministry did not object to the additional oral evidence of the Appellant. The Panel finds that the additional evidence is reasonably necessary to determine the issues in the appeal, and therefore it is admissible under s.22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision dated March 22, 2024, in which the Ministry decided that the Appellant was not eligible to receive the Benefit between September 6, 2023, and January 31, 2024, was reasonable.

Appellant's Position:

The Appellant says that the Ministry should provide the Benefit between those dates because the Ministry did not tell her that there is a time limit for applying for the Benefit, or that her MyFS file would close four months after the Benefit expired if she did not renew the Benefit or contact the Ministry. She points out that the message from the CCSC on May 23, 2023, says that the Benefit will be ending but does not say that her file will be closed automatically if she does not ask to renew the Benefit within four months. The Appellant says that she has been receiving the Benefit for six years, always applying "late" through MyFS and receiving retroactive Benefit payments. She maintains that, if her MyFS account had closed automatically by the time she sent the November Form CF2798, and the Ministry could not contact her by phone, the Ministry should have communicated in some other way, such as sending her a letter by regular mail. She also maintains that, as a general practice, the Ministry should let people know that there is a deadline to re-apply, after which their file will be closed.

Ministry's Position:

The Ministry says that, under the legislation, a parent is eligible to receive the Benefit on the first day of the month in which they complete the application under section 4 of the Regulation. The Ministry says that an applicant must submit both the CF2798 and the CF2900. If the Ministry does not have the CF2900, it does not have an application to approve. They say that the Appellant applied for the Benefit on February 2, 2024, when she submitted the CF2900, and therefore she is eligible to receive the Benefit starting February 1, 2024.

The Ministry notes that the Benefit can be backdated for 30 days if the Ministry has made an administrative error, but they maintain that the Ministry made no administrative error in the Appellant's case. They say that the Ministry told the Appellant in a timely manner, through the message on MyFS on May 23, 2023, that the Benefit would expire on June 30, 2023, and they provided a link to renew the Benefit. The message says that the recipient need take no action if they do not need the Benefit. If the Ministry does not hear from the parent for four months, the Ministry assumes the parent does not need to renew the Benefit and closes the file, which the Ministry says is reasonable.

Panel Reasons:

The Panel finds that the Ministry's determination that the Appellant was not eligible to receive the Benefit between September 6, 2023, and January 31, 2024, was a reasonable application of the legislation in the Appellant's circumstances.

Under the Act and Regulation, the Ministry may pay the Benefit to a parent who is eligible. Under section 4 of the Regulation, one of the eligibility requirements is that the parent must complete an application in the form required by the Ministry. The Appellant had been receiving the Benefit for the previous six years, always re-applying to renew the Benefit online through MyFS. The Ministry provided a Benefit Plan that stated that the Benefit would end on June 30, 2023. On May 23, 2023, the Ministry sent a reminder message through MyFS, stating that the Benefit would end in approximately 30 days, and including a link to renew the application. The message also said that, if the Appellant did not need the Benefit, she did not have to do anything.

In past years, the Appellant had renewed the Benefit online through MyFS. She usually renewed the Benefit after, not before, her child resumed child care in the fall, but always before the end of October. She says she received Benefit payments retroactive to the beginning of September each year, even if she applied in October. In 2023, she did not try to renew the Benefit until November 17, 2023, when she faxed the November Form CF2798. By then, her file and her MyFS account had been closed under Ministry policy that automatically closes files four months after the Benefit expires if there has been no communication from the parent.

When it received the faxed November Form CF2798, the Ministry tried to contact the Appellant by phone, unsuccessfully. The Appellant did not answer the call, and her voice mail was full. The Ministry did nothing further to advise the Appellant that her file was closed due to inactivity, that the November Form CF2798 was not sufficient to renew the Benefit, or that she needed to re-apply with a new CF2900 Form.

The Appellant thought that, by sending the November Form CF2798, she had done what was needed to renew the Benefit, although she did not have any confirmation from the Ministry. She did not contact the Ministry again until January 15, 2024, when she was told that her file had been closed and she would need to re-apply. She says that, when they could not contact her by phone or MyFS, the Ministry should have contacted her in some other way, such as sending her a letter by regular mail, to tell her that her file had been closed and that she needed to re-apply.

The Ministry points out that, at the top of the CF2798 form, it states in bold print: "This form *must* be submitted with an Affordable Child Care Benefit application form (CF2900) to apply for benefits." The Panel finds that the Appellant did not complete an application to receive the Benefit after it expired on June 30, 2023, until she submitted the CF2900 on February 2, 2023. The CF2798 Form provides additional information that allows the Ministry to determine eligibility, but it is not an application in the form specified by the Ministry, and as stated at the top of the CF2798 Form.

When the Appellant's file was open and she asked to renew the Benefit through MyFS each year, she would be confirming the information the Ministry required to determine eligibility, updating as needed from year to year. As the Appellant did not renew the application through MyFS, the Panel finds that the Ministry was reasonable in determining that the Appellant was required to re-apply for the Benefit and that she did not re-apply until February 2, 2024.

The Appellant says that she could not renew through MyFS because the Ministry had automatically closed her file. She says that the Ministry did not tell her that the file would close automatically after four months of inactivity, and as a parent, there is no way for her to know that there is an arbitrary cut off date for renewing the application. She had always been able to renew before the end of October each year, and she says there was no way for her to know that November 2023 would be too late to renew. The Panel accepts that the Ministry accepted previous delays by the Appellant in submitting a request for the Benefit but notes the Appellant's evidence that previous applications were submitted in September or October.

It appears to the Panel that it would be helpful, when the Ministry sends the courtesy reminder that the Benefit is about to expire, to also tell parents that their file will be closed automatically after four months of inactivity. However, the Panel also finds that, in the Appellant's circumstances, it is not unreasonable for the Ministry to close a file after four months if the parent has not contacted the Ministry during that time, without further communication to the parent.

Backdating Due to Administrative Error:

Under the legislation, the Ministry has limited authority to give the Benefit retroactively. Under section 13 of the Regulation, a child care subsidy may be paid for child care provided in the 30 days before the parent completes an application under section 4 of the Regulation. The Panel has found that the Appellant completed the application on February

2, 2024. Therefore, the Panel finds that, if the Ministry had made an administrative error, they could backdate the Benefit no earlier than January 1, 2024.

The Appellant says that the Ministry should have told her in advance that her file would close after four months of inactivity, and the Ministry should have made more effort to contact her after she sent in the November Form CF2798. While the Ministry certainly could have done either of those things, the Panel finds that the Ministry's handling of the Appellant's file does not amount to an administrative error, either by closing the file automatically after four months of inactivity, or by not trying to contact the Appellant by other means when they received the November Form CF2798, when they could not reach her by phone.

The Ministry is required, under section 12 of the Regulation, to notify an applicant in writing if an application for the Benefit is not approved. However, the Panel finds that the "application" is the CF2900 form, which is the form required by the Ministry, and this form was not submitted until February 2, 2024.

The Panel notes that the Appellant apparently did not try to follow up with the Ministry about the Benefit for more than six months after it expired, and two months after she sent the November Form CF2798. The Panel understands that the Appellant was unclear about the application or Benefit renewal process, but the Panel finds that the Appellant also bears responsibility to apply to renew the Benefit in a timely way after it expired, and to follow up with the Ministry when she sent in the November Form CF2798 and did not receive an acknowledgement.

Conclusion:

The Panel finds that the Ministry's reconsideration decision, in which it determined that the Appellant was not eligible to receive the Benefit between September 6, 2023 and January 31, 2024, was a reasonable application of the legislation in the Appellant's circumstances. The Panel confirms the reconsideration decision. The Appellant is not successful in the appeal.

Relevant Legislation

Child Care Subsidy Act

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

Child Care Subsidy Regulation

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.

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.

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.

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

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)
2024/05/08

Print Name
John Pickford

Signature of Member

Date (Year/Month/Day)
2024/05/08

Print Name
Donald Stedeford

Signature of Member

Date (Year/Month/Day)
2024/05/08