

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (“Ministry”) dated March 14, 2024, in which the Ministry determined that the Appellant was not eligible for the Affordable Child Care Benefit (the “Benefit”) between September 1, 2023 and January 31, 2024.

Part D – Relevant Legislation

Child Care Subsidy Act, sections 4 and 5(1)(a)
Child Care Subsidy Regulation (“Regulation”), sections 4 and 13
Employment and Assistance Act, section 22(4)

Part E – Summary of Facts

The hearing took place by videoconference on April 25, 2024, and May 9, 2024.

Evidence before the Ministry at Reconsideration:

The Appellant had been receiving the Benefit for her child since 2021, with the most recent benefit plan expiring on June 30, 2023. On May 22, 2023, the Ministry sent a message to the Appellant through her MyFS account, saying that the Benefit Plan would end in approximately 30 days, and the Appellant could ask to renew the Benefit by using a link on the MyFS dashboard. The message went on to say that no action was required if the Appellant no longer required the Benefit or had already renewed the Benefit Plan.

The Ministry did not receive a request to renew the Benefit.

Communication with the Ministry:

The Appellant did not see an email from the Ministry in October 2023 notifying her that the Benefit had been terminated, because it ended up in her email spam folder.

On November 20, 2023, the Appellant phoned the Child Care Service Centre (“CCSC”). According to the Ministry’s record of the call:

- The Appellant asked for an assessment letter for the period September 1, 2022 to June 30, 2023.
- The Ministry told the Appellant the amounts of the Benefit for that period and said that they would re-send the assessment through MyFS.

The Appellant phoned the CCSC again on February 6, 2024. She said that she thought the Benefit Plan would continue when the child returned to school in September 2023. The Ministry told her that the Benefit Plan had ended on June 30, 2023, that her renewal was due by October 31, 2023, but as they did not receive a renewal request, her file was closed and she had to re-apply.

The Appellant submitted an Affordable Child Care Benefit Application Form CF2900 (“CF2900”) on March 5, 2024. The Ministry also received an Affordable Child Care Benefit Child Care Arrangement Form CF2798 (“CF2798”) for child care for the Appellant’s child from September 5, 2023 to January 31, 2024, signed January 31, 2024.

Communication with the Child Care Provider:

The Appellant asked the child care provider to submit a CF2798 in September 2023. Staff told her that the form had been sent to the Ministry in September 2023. When the Appellant was not receiving the Benefit in the fall of 2023, she followed up with the child care provider in person and then by email repeatedly, between September 2023 and February 2024. On February 1, 2024, the Appellant told the child care provider "My file shows that [the Benefit] was not given to [the child] since 30 June 2023. Please can you provide the form for 2023-2024." The child care provider gave the Appellant a CF2798 dated February 8, 2023 [sic], for child care starting September 5, 2023 and ending January 31, 2024 (the end date has been altered, with the number 4 written over the last digit, which appears to be the number 3).

Additional Evidence:*Appellant:*

Following questions from the Panel, the Appellant confirmed that, in the Appeal Record and in her communications with the Ministry, and the Ministry of Social Development and Poverty Reduction at reconsideration, she was referring to Form 2900 mistakenly, thinking that was the number of the form the child care provider had to provide.

The Appellant showed the Panel the messages from the Ministry on her MyFS account:

- May 22, 2023: text as summarized above.
- February 6, 2024, which states:
"We require an updated Child Care Arrangement form (CF2798) reflecting the Child Care Fee Reduction Initiative starting September 1, 2023 in order to assess your eligibility...."

In order to complete the assessment of your eligibility please submit a new childcare arrangement form (CF2798) for each care provider....

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."

The Appellant said:

- She remembered seeing the May 22, 2023 message and remembers clicking on the link to renew the Benefit.

- She has a vague memory of filling in the information in the online renewal form, and up to the time of the hearing she believed she had applied to renew the Benefit when she received the May 22, 2023 message about the upcoming expiration of the Benefit.
- She wonders now if perhaps she did not submit the online renewal request successfully.
- When she phoned the Ministry on November 20, 2023, she was asking about the Benefit for the current period starting September 1, 2023. She was calling the Ministry to ask why the Benefit was not continuing.
- She did not ask for an assessment letter for September 1, 2022 to June 30, 2023, and she had no reason to ask for an assessment letter for the previous year.
- She denies that the Ministry told her, in the phone conversation on November 20, 2023, that the Benefit had ended on June 30, 2023, or that her file had been closed. She was shocked to learn, in February 2024, that her file had been closed in October 2023.

Ministry:

The Ministry provided the Appellant's MyFS Case Note on November 22, 2023, which states:

*"T/C from Clt 2023/Nov/20: Clt calling re BP amounts for 2022Sep01-2023Jun30
-Clt adv that they rec'd BP confirmation msg but no assessment ltr or approval msg for the above noted period
-Adv Clt of BP amts for 2022Sep01-2023Jun30, and adv Clt that this adj will re-sent assessment for this period
-Clt expressed understanding*

Sent Assessment Ltr to Clt via Mail (file is closed, cannot send via MyFS)"

The Ministry advised that "BP" means "Benefit Plan".

The Ministry provided a list of activity on the Appellant's MyFS file, showing the following file activity in 2023:

- January 27, 2023: message received via MyFS.
- November 20, 2023: telephone call from client.

The Ministry also provided:

- an expanded case file comment beside the date July 8, 2023 stating that “Application rec’d via MyFS 2022 June 28; CF2900 signed 2022 June 28”.
- a case file note connected to the expanded case file comment, setting out benefit plan details and documents on file, stating that a CF2798 for summer care was due, and a CF2900 was due May 31, 2023.
- a document list from the Appellant’s file, showing a CF2900 received by the Ministry on November 4, 2022, and the next CF2900 received March 5, 2024.

In answer to questions from the Panel, the Ministry representative stated:

- Ministry files are “auto-closed” by the system if there is no contact from an applicant for 4 months. The Appellant’s file was closed on October 31, 2023, because there had been no contact from her after the Benefit expired on June 30, 2023.
- When a Benefit Plan expires, the Ministry requires a new Form 2900 from the applicant. Sometimes when there is no change in child care provider, the Ministry does not require another Form 2798 on renewal.
- They reviewed the documents in the Appellant’s Case File, which showed that the Ministry received a CF2900 form signed by the Appellant on November 4, 2022, and no new documents submitted by the Appellant until the Appellant provided the CF2900 on March 5, 2023.
- The case file entry beside the July 8, 2023 date would have been generated by the Ministry employee who looked at the file on that date; the expanded comment shows the information they reviewed.

Admissibility of Additional Evidence:

Neither party objected to the additional evidence provided by the other party. The additional oral and documentary evidence presented by the parties provides further information about the communication between the Appellant and the Ministry, and the steps the Appellant took to apply for the Benefit. The Panel finds that the additional evidence is reasonably required for a full and fair disclosure of the matters in issue in the appeal. Therefore, the Panel finds the additional evidence is admissible under section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's determination that the Appellant was not eligible to receive the Benefit between September 1, 2023 and January 31, 2024, was reasonable.

Appellant's Position:

The Appellant says that she believes that she submitted the online request to renew the Benefit when she received the May 22, 2023 message telling her that the Benefit Plan would expire in approximately 30 days. She maintains that the only information she had not provided to the Ministry was the CF2798 form, which she gave to the Ministry as soon as she was able to get it from the childcare provider. She says that she did not know that her file would close automatically at the end of October 2023, and that when she phoned the CCSC on November 20, 2023 to ask about the Benefit starting in September 2023, the Ministry representative did not tell her either that her file had closed or that the Benefit had ended on June 30, 2023. She maintains that she had no reason to ask for an assessment letter for the previous year, as the Ministry wrote in its file in error.

Ministry Position:

The Ministry says that the Appellant did not renew the Benefit when it expired, and her file was closed on October 31, 2023 after four months without contact from her. They say that, when she phoned the Ministry on November 20, 2023, she was asking for an assessment letter for the Benefit from September 1, 2022, to June 30, 2023. The Ministry says that the Appellant was not eligible to receive the Benefit until she submitted the CF2900 on March 5, 2024, which made her eligible to receive the Benefit starting March 1, 2024.

Panel Decision:

The Appellant had been receiving the Benefit, which expired on June 30, 2023. On May 22, 2023, the Ministry sent the Appellant a message on MyFS, saying that the Benefit would expire and giving a link to renew the Benefit. The Appellant believes that she clicked on the link when she received the message, and filled out the information online, asking to renew the Benefit. Her efforts since then have all been directed at providing the CF2798 form.

The Ministry says that there is no record of the Appellant sending a renewal request. They say that, if the Appellant had clicked on the link in the MyFS reminder message, the system would automatically generate the CF2900 form. If the form had been submitted online, it

would have shown as a document in the Appellant's case file. The Ministry produced the case file records at the hearing to confirm that the Appellant's case file shows a CF2900 submitted on November 4, 2022 and the next CF2900 submitted on March 5, 2024.

The Panel accepts that the Appellant believed she had submitted the form to renew the Benefit after it expired in June 2023. However, the Appellant was not able to provide any records to show that she submitted the form. After reviewing the Ministry's case file records, the Panel finds that the Ministry did not receive a request, or a CF2900, between November 4, 2022 and March 5, 2024. Therefore, as there was no application to renew the Benefit, the Panel finds that the Benefit expired without being renewed when the child returned to childcare in September 2023.

The Appellant had a lot of difficulty getting the completed CF2798 form from the child care provider, with changes in staff, and misinformation from them about whether the form had been submitted. The Appellant phoned the CCSC on November 20, 2023. The parties do not agree about the content of the call. The Ministry case file note about the conversation says that the Appellant was asking for an assessment letter for the period September 1, 2022 to June 30, 2023. The Appellant says that she was asking about the Benefit for the current period starting on September 1, 2023. She says that she had no reason to ask for an assessment letter for the previous year.

The Ministry says that there are a few reasons why someone might ask for an assessment letter from a previous year, such as needing to provide information to the child's other parent or verifying payments to a child care provider. However, there is no evidence that the Appellant had a reason to contact the CCSC other than the reason she gave, which is that she was concerned about not having received the Benefit starting in September 2023. The Panel finds, on a balance of probabilities, that the Appellant called the CCSC to ask about the Benefit for the current year. The Panel finds that it is more likely that the CCSC misunderstood her request or recorded it incorrectly and then failed to tell the Appellant about the current status of her file – that the Benefit had not been renewed after it expired on June 30, 2023, and that her file had been closed on October 31, 2023 due to inactivity. The Panel finds that the case file note on November 20, 2023, stating that the assessment letter would be sent by mail because the Appellant's file was closed, is a note of the action to be taken after the phone call, not a note of information given to the Appellant during the call.

The Appellant continued to believe that she had submitted the request to renew the Benefit, and that the only form she had to provide was the CF2798. The child care provider finally gave her the completed CF2798 by email on February 8, 2024.

The Appellant phoned the CCSC on February 6, 2024, and was told that the Benefit had ended on June 30, 2023, and that she had to re-apply. On that date, according to their records, the Ministry sent the Appellant a message through MyFS titled “Your ACCB Application” and attaching the CF2798 form. They stated that they had received her request for the Benefit, subject to section 5(1)(a) of the Act, which is the section that authorizes the Ministry to direct a person to provide information. The Ministry told the Appellant to provide the CF2798 form within 60 days. The Ministry did not tell the Appellant in that message that she still had to provide the CF2900 form before she would be eligible to receive the Benefit.

Under section 13(1) of the Regulation, the Benefit may be paid starting on the first day of the month a parent submits an application in the form specified by the Ministry. The necessary form is the CF2900. The Appellant provided the CF2900 form on March 5, 2024, and the Ministry determined that the Appellant was eligible to receive the Benefit from March 1, 2024.

The Panel finds that the Ministry made administrative errors in dealing with the Appellant’s file. The Panel finds that:

- The Ministry misunderstood the Appellant’s enquiry on November 20, 2023, and failed to tell her that her Benefit had expired, her file had been closed due to inactivity, and she would need to re-apply to receive the Benefit.
- In its message on MyFS on February 6, 2024, the Ministry stated that they had received her request to renew the Benefit, and all she needed to do was provide the CF2798 form within 60 days. In fact, the Ministry still required the CF2900 form. The Panel notes that, if the Appellant had provided the CF2900 form in February 2024, she would have been eligible to receive the Benefit starting February 1, 2024.

Under section 13(2) of the Regulation, the Benefit may be backdated for 30 days before the date the parent submits the application if the Ministry has made an administrative error. Therefore, the Panel finds that the Appellant was eligible to receive the Benefit for child care provided in the 30 days before the Appellant completed the application on March 5, 2024.

The Panel recognizes that this finding may be of little or no practical assistance to the Appellant, as she has stated that she withdrew the child from child care because she could not afford the fees without the Benefit. However, under the legislation there is no discretion to pay the Benefit retroactively for more than 30 days before the date the parent completes the application.

Conclusion:

The Panel finds that the Ministry's reconsideration decision is not a reasonable application of the legislation in the Appellant's circumstances.

The Panel rescinds the Ministry's Reconsideration Decision.

- The Panel finds that the Ministry was reasonable in determining that the Appellant is not eligible for the Affordable Child Care Benefit between September 1, 2023 and January 31, 2024.
- However, the Panel finds that the Ministry's determination that the Appellant was eligible to receive the Benefit starting March 1, 2024, was not reasonable.
- The Panel finds that the Ministry made administrative errors, and under s. 13(2), the Appellant was eligible to receive the Benefit for child care provided in the 30 days before she completed the Application on March 5, 2024.

The Appellant is partially successful in the appeal.

Schedule of Legislation

Child Care Subsidy Act

Child care subsidies

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

Information and verification

s. 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;

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.

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.

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.

APPEAL NUMBER 2024-0126

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)
2024/05/15

Print Name
Susanne Dahlin

Signature of Member

Date (Year/Month/Day)
2024/05/16

Print Name
Joseph Rodgers

Signature of Member

Date (Year/Month/Day)
2024/05/15