

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (Ministry) dated April 16, 2024, in which the Ministry decided that based on the Appellant’s application dated February 28, 2024, the Appellant was eligible for the Affordable Child Care Benefit under the Child Care Subsidy Act (“the Act”) from February 1, 2024, but was not eligible for the benefit for the period May 1, 2023 to January 31, 2024, because the benefit could not be backdated before February 1, 2024. The Appellant is appealing the decision that the benefit could not be backdated for the period May 1, 2023, to January 31, 2024.

Part D – Relevant Legislation

Child Care Subsidy Act, (the Act) section 4

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

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

The hearing took place on May 14, 2024, in person with the Ministry representative joining by telephone.

Relevant Evidence Before the Minister at Reconsideration**The ministry's record of events included the following:**

- The Appellant was receiving the Affordable Child Care Benefit (ACCB) for her child. As noted on her Benefit Plan dated January 3, 2023, her previous authorization expired on April 30, 2023.
- On March 20, 2023, a message was sent to the Appellant via her MyFS account by the Child Care Service Centre (CCSC) advising, "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."
- On October 1, 2023, the Appellant's account was closed due to inactivity on the file since June 2023. There is no record of her contacting the CCSC via MyFS, telephone, mail or fax and no information was submitted to the Ministry for the renewal of her benefit.
- On February 27, 2024, the Appellant tried to access her MyFS, but it was closed. She was advised to submit her CF2900 ACCB Child Care Application form to reopen her case.
- On February 28, 2024, the CCSC received via MyFS the Appellant's Affordable Child Care Benefit Application, CF2900 signed and dated on February 28, 2024. The CCSC found her eligible for subsidy and issued a Benefit Plan for the period beginning February 1, 2024.
- On March 1, 2024, the Appellant called the CCSC requesting backdating of her ACCB. She explained that she was told by her child care provider that she can receive backdated ACCB. The CCSC advised that if her case had not closed and she was renewing, backdating was a possibility. The Appellant advised she had several issues with the MyFS portal in submitting documents. She was advised to call the CCSC anytime she was experiencing problems. She explained that she understood.
- On April 3, 2024, the Appellant requested a reconsideration of the decision to deny her ACCB from May 1, 2023, to January 31, 2024.

From the Appellant's Reconsideration Submission

On April 8, 2024, the Appellant submitted her Request for Reconsideration to the CCSC, advising of her request that the Ministry approve the child care subsidy from the months of May 2023 - January 2024. Her reasons follow:

- The Appellant acknowledges that she was submitting the request past the 20-business day limit, upon receiving the message in her inbox.
- In a phone call with a CCSC on April 3, 2024, the 20th business day after receiving the message, she was told that this would be accepted anytime before April 5, 2024, which was confirmed with an adjudicator, who agreed that there would be flexibility with this deadline, up until April 3, 2024.
- As a single parent, it has been very difficult to complete the paperwork necessary for the child care subsidy, while also caring for her child diagnosed with autism on February 28, 2023.
- While trying to process this diagnosis, the Appellant also had to navigate the paperwork needed to implement and utilize her child's autism funding, as well as frequent medical appointments to manage urgent behavioural concerns, beyond typical toddler behaviour.
- Attempting to set up the child care subsidy at the same time was very overwhelming. It was difficult to navigate these different systems with a variety of different forms, without a support network to help. She is a single parent who does not have any extended family support nearby. The other parent is not involved, physically or financially.
- The Appellant's child often experiences meltdowns related to the diagnosis of autism, and these are disruptive to typical routines.
- The Appellant has her own physical challenges as well, and is on disability benefit, with limited availability and energy to work.
- With these various factors at play, it was very daunting and exhausting to continually address the subsidy application, throughout the process. As a result, the Appellant thought she had completed her application for this subsidy and expected to receive the support.
- Over the period between May 2023 - January 2024, the Appellant attempted to log into my account several times but couldn't access it. Without the access to her account, she was unable to submit the application to have it completed.
- Even when the Appellant realized the application hadn't been completed, she could not access her account to submit the necessary forms. At this point, when contacting the CCSC, she followed staff's instructions to create a new account and request access to her prior account. This call center staff noted that she would be able to request backdating, due to several factors,

including the account closure and the difficulties throughout the urgent autism diagnosis process.

- The Appellant says that she was informed that backdating for these prior months would very likely be approved, due to her child's significant needs, her limited resources, and administrative burdens and difficulties to receive notification of account closure.
- When she received the denial for support in March 2024, she called the CCSC, and each time she was told that an adjudicator would call her back, but she never received a call. This made it difficult to complete this process and appeal the decision.
- The Appellant received messages in her inbox, and she was not made aware of the 20-business day window to appeal.

The Appellant is asking that, considering her family's circumstances, and the challenges in applying for the subsidy, that her request for May 1, 2023 - January 31, 2024, be approved.

Additional Information

Appellant

Notice of Appeal (April 24, 2024)

The Appellant explained that she disagreed with the reconsideration decision because of her family's circumstances, and the challenges in applying for the subsidy, substantially repeating the information in her reconsideration submission.

At the hearing, the Appellant requested that three documents she submitted be admitted as evidence:

- A letter from the Appellant's counsellor, dated May 13, 2024, supporting the Appellant's contention that she should be awarded relief based on her personal circumstances.
- A photocopy of logged telephone calls February 27, to April 24 (no year given) to support the Appellant's contention that she frequently attempted to contact the Ministry by phone with no response.
- A diagnostic report dated February 23, 2023, wherein her child is diagnosed with autism.

At the hearing, the Appellant also testified that she submitted no documents to renew her benefit from the time of the expiry of the benefit on April 30, 2023, until her re-application on February 28, 2024. She stated she realizes it is her mistake that the benefit was not

renewed on a timely basis, however, she maintains she was given misleading and inconsistent information by the Ministry about backdating benefits. She noted that she is not blaming the Ministry, but her personal circumstances of having an autistic child, being unwell herself, having no support from anyone, and simply trying to care for her child as her top priority, should count in her favour for backdating the benefit for the disputed period.

Ministry

The Ministry representative explained the Ministry's process in handling applications for the ACCB:

- The Ministry representative explained the operation of section 4(1) of the Regulation requiring the submission of an application to be eligible for a child care subsidy.
- The Ministry also explained the operation of section 13 of the Regulation. 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. However, in this case, no error was made by the Ministry.
- The Ministry representative added that at reconsideration, the Ministry has no option but to apply the legislation as it is written. This is likewise the case at an appeal of the reconsideration decision where a panel must apply the legislation.
- The Ministry representative then proceeded to explain that Ministry policy permits a "window", where a child care subsidy benefit may be backdated up to 4-months, based on the applicant's circumstances. However, at this stage of the Appellant's case, namely an appeal of a reconsideration decision, the panel is bound to follow the wording of the legislation, not policy.
- The Ministry asked the Appellant when she became aware that the child care subsidy was no longer being paid. Her response was April 2023. The re-application was dated February 28, 2024, or about 10 months later.

The panel determined the additional information provided by the Appellant respecting her efforts to connect with the Ministry, to corroborate the overwhelming aspect of her personal circumstances and challenges, and the autism diagnosis of her child is reasonably required for a full and fair disclosure of all matters related to the decision.

The panel determined the additional information provided by the Ministry relating to its procedures and processes was helpful and is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Therefore, this additional information from the Appellant and the Ministry is admissible under section 22(4) of the Employment and Assistance Act.

The panel determined the other additional information to be argument.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision that, based on the February 28, 2024 application, the Appellant was not eligible for the ACCB for the period from May 1, 2023 to January 31, 2024 because the benefit could not be backdated before February 1, 2024, was a reasonable application of the legislation in the Appellant's circumstances.

Appellant Position

The Appellant acknowledges that she does bear some responsibility for failing to follow-up with the CCSC about renewing the benefit, however her challenging personal circumstances and other difficulties impaired her ability to do so. Over the past year she has been overwhelmed by her family circumstances, including the autism diagnosis of her child which has created medical and financial hardship for her.

The Appellant also acknowledges that she did not provide the needed information requested by the Ministry on a timely basis. The Appellant finds as a single parent, that it has been very difficult to complete the paperwork necessary for the child care subsidy, while also caring for her child diagnosed with autism. With these various factors at play, it was very daunting and exhausting to continually address the subsidy application, throughout the process. As a result, the Appellant thought she had completed her application for this subsidy and expected to receive the support.

Further, she was told inconsistent information about whether her benefit would be backdated to the date she began using child care. The Appellant asks the Ministry to exercise discretion and provide the subsidy backdated to May 1, 2023, on compassionate grounds.

The Appellant submitted some phone records noting calls from her to the Ministry. The panel finds this evidence is relevant to the Appellant's contention that she ran into a number of obstacles in contacting the Ministry. However, neither party spoke to this evidence and the evidence is not self-explanatory on the surface. For example, the dates are incomplete with no year indicated. Therefore, the panel gives little weight to this call log. The Appellant's letter from her counsellor, dated May 13, 2024, is relevant in supporting her contention that she should be awarded relief based on her personal circumstances; however, the counsellor provided no evidence of her qualification and credentials, so the panel afforded it little weight. Finally, the diagnostic report dated February 23, 2023, wherein her child is diagnosed with autism was supportive of the

Appellant's testimony that her personal challenges significantly impacted her ability to follow up with the renewal of her ACCB.

Ministry Position

The Ministry notes that the Appellant was no longer receiving the ACCB in April 2023, and the last activity on her account was in June 2023. Through inactivity, her account was closed on October 1, 2023. The Appellant then failed to contact the CCSC until February 27, 2024, at which time she was advised of the need to re-open her case to renew her benefit. On February 28, 2024, the CCSC found the Appellant eligible for subsidy and issued her a Benefit Plan for the period beginning February 1, 2024. Under section 13(1) of the Regulation, the subsidy can be paid from the first day of the month the parent completes the application, which is February 1, 2024. The Ministry could backdate the subsidy for 30 days before the date of the application if there was an administrative error by the Ministry. There is no evidence of such an error by the Ministry, and under the legislation, the Ministry does not have discretion to backdate the subsidy for any other reason, including compassionate grounds.

Analysis

Section 4, CCSA – child care subsidies

Section 4 states subject to the regulations, the minister may pay child care subsidies.

Section 4 (CCSR) – how to apply

Section 4 of the CCSR states, to be eligible for a child care subsidy, one parent must complete an application (Form CF2900) in the form required by the Minister and supply the Minister with required authorizations. Evidence from the Ministry shows an Affordable Child Care application was received on February 28, 2024 by the CCSC. The panel finds that the Ministry must have the ACCB application, for a parent to be eligible for the child care subsidy, and the Appellant did not meet this requirement of section 4, until February 28, 2024.

Section 13 (CCSR) – subsidy before completion of application

Section 13 states that a child care subsidy may be paid from the first day of the month in which the parent completes an application 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. Evidence shows the Appellant submitted an ACCB application, signed and dated February 28, 2024. The panel finds that on October 1, 2023, the Appellant's case was closed due to inactivity on the file since June 2023, and therefore the absence of contact from the Ministry cannot be viewed as an administrative error, since no file is even opened until an application for the benefit is received from the applicant.

The panel must however note that the appellant did have an open file that the ministry closed, and it questions why the Ministry would close the file after 4 months of no contact from the Appellant. It would not be onerous for the Ministry to send a letter to the Appellant to inform her of the need to renew her ACCB. A simple letter can avoid the lack of contact problem. While we do have evidence of the phone record and the Appellant's testimony at the hearing that she tried to contact the Ministry, the panel re-iterates its finding there was a very significant time from June 2023 to February 2024, where the Appellant made no effort to renew her ACCB.

The panel therefore finds that the Ministry reasonably determined the date of eligibility for the ACCB to be February 1, 2024 - the first day of the month in which the application was completed, as per section 13 of the CCSR.

The panel acknowledges there were communication difficulties and confusion regarding the Appellant's case file, and the application process. The Appellant explained she is a single parent with health challenges, and a child just diagnosed with autism, at the same time she needed to attend to renewing her ACCB. She was simply overwhelmed and unable to cope with all these challenges, and to process her ACCB renewal application in a timely manner. In addition, she was given incorrect information from Ministry personnel about how to renew her ACCB and what she could expect in the way of relief or consideration because of her personal challenges. While the panel questions why the Ministry would not take more initiative to contact the Appellant to ensure administrative fairness, the panel finds that this does not amount to an administrative error by the ministry. The panel is still faced with the reality that the account was closed due to the lack of contact by the Appellant with the Ministry, from June 2023 to February 2024. The panel is bound by the clear wording of the legislation, and in the absence of an administrative error by the Ministry, there is no discretion to backdate the ACCB in the legislation.

Conclusion

In conclusion, the panel finds the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for the ACCB from May 1, 2023 to January 31, 2024,

because she did not complete the ACCB application until February 28, 2024, was reasonably supported by the evidence. The Appellant is not successful on appeal.

Schedule of Legislation

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.

(2) Only one parent in the family may apply for a child care subsidy.

...

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(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
Bill Farr

Signature of Chair

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

Print Name
Kulwant Bal

Signature of Member

Date (Year/Month/Day)
2024/05/14

Print Name
Neena Keram

Signature of Member

Date (Year/Month/Day)
2024/05/21