

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated September 9, 2019, made by the Ministry of Children and Family Development (the ministry), which determined that the appellant's request for reconsideration could not be considered by the ministry because she did not deliver her request within 20 days of being notified of the decision as required by section 17 of the *Child Care Subsidy Regulation (CCSR)*.

PART D – RELEVANT LEGISLATION

The relevant legislation is section 6 of the *Child Care Subsidy Act (CCSA)* and section 17 of the CCSR.

PART E – SUMMARY OF FACTS

The appellant applied for and began receiving a childcare benefit in March 2019.

On June 17, the appellant contacted the ministry to inquire regarding receiving backpay of the benefit for the period from November 2018 to February 2019. At that time, she was told that the ministry could not provide her with such backpay because the childcare benefit is only payable from the beginning of the month in which it is applied for. The appellant requested that this decision be reconsidered, and the ministry sent her a signed reconsideration package via the appellant's online portal account (MyFS) as well as an unsigned package by mail at her request.

The appellant contacted the ministry on August 9 to inquire how to reset her MyFS password.

The ministry's Child Care Service Centre received the completed request for reconsideration package that it had sent to the appellant on June 17 on August 23. The package was dated August 12 and included a supporting letter dated August 19. The package was forwarded to the ministry's Reconsideration Branch which received it on August 26.

On September 9, the ministry declined to consider the request for reconsideration on the basis that the appellant had not delivered her request within 20 days of being notified of the decision as required by section 17 of the CCSR.

In her written submission and at the hearing the appellant did not contest the fact that she did not submit her request for reconsideration within the applicable timeline. Rather, she identified a number of extenuating circumstances which impacted her ability to respond within the timeline.

1. She gave birth to her second child during this period and experienced a number of medical issues with the pregnancy as well as dealing with a new baby and an older sibling after giving birth which meant she could not give the reconsideration the attention it required.
2. Her husband was experiencing difficulties with changes to medications for his mental health which made him unavailable for much of this period.
3. She did not have access to her MyFS account for the period June 17 to August 9 because she entered her password incorrectly numerous times, was locked out of her account and could not contact the ministry until August 9 due being otherwise preoccupied and call volumes on the ministry's telephone line.
4. She misunderstood what was required of her in order to initiate the request for reconsideration in that she thought she had been told by the ministry worker on the June 17 call that the ministry had initiated the process at that time and that she did not need to do anything.
5. She was not verbally informed of the 20-day timeline, could not access her MyFS to see that and did not think to read through the mailed-out package she received.
6. As her request for backpay of the childcare benefit on June 17 was not the first time she had made that request and been denied, she was not aware that this time further action was required in order to initiate the reconsideration process.
7. Once she had spoken with the ministry worker on August 9 and understood the situation and could access her MyFS, she completed and submitted her request for reconsideration as quickly as possible given that there were difficulties with her husband's ability to complete what was required of him in that request.

At the hearing the appellant submitted new information in the form of three letters from medical professionals. The first two, written by a physician, state that the appellant and her husband each suffer from medical conditions which would interfere with their ability to complete forms and meet obligations in a timely manner. The third, written by the appellant's midwife, provides some details regarding the adverse physical, mental and emotional conditions the appellant faced during this period.

The ministry did not object to the admission of these documents. The panel considers that the information contained in the letters provides professional support to statements made the appellant in her reconsideration decision request. In accordance with section 22(4)(b) of the *Employment and Assistance Act* the panel admits this information as evidence.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision finding that the appellant's request for reconsideration could not be considered by the ministry because she did not deliver her request within 20 days of being notified of the decision.

The relevant legislation is section 6 of the CCSA and section 17 of the CCSR:

Reconsideration and appeal rights

6 (1) Subject to [section 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.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.

(3) Subject to [section 6.1](#), 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*.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

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.

(2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Service Centre.

(3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.

(4) If a request for reconsideration is not delivered in the time required by subsection (1),

- (a) the person is deemed to have accepted the decision, and
- (b) the decision is not open to review in a court or subject to appeal to a tribunal or other body.

(5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must

- (a) reconsider the decision, and
- (b) provide the person who delivered the request with a written decision on the request.

(6) If a request for reconsideration is delivered under this section about a decision that results in a discontinuation or reduction of a child care subsidy, that decision is set aside until the minister

- (a) reconsiders the decision, and
- (b) provides the person who delivered the request with a written decision on the request.

(7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister

- (a) reconsiders the decision, and
- (b) provides the person who delivered the request with a written decision on the request.

The appellant's position at the hearing was that, due to the extenuating circumstances she describes, she did not know of the decision or understand that she was required to do something to initiate the reconsideration process

until August 9, at which time she did her best to submit her request as quickly as possible. She did not argue that she had submitted the request on time, but that these extenuating circumstances should be taken into consideration. Especially in light of the purpose of the childcare benefit, which is to assist families like hers when they face such challenges.

The ministry's position at the hearing was that the legislation is clear and unequivocal that a request for reconsideration must be delivered to the ministry within 20 business days after the person is notified of the decision. Likewise, the facts are clear that the appellant was notified of the decision on June 17 and the ministry did not receive her completed request for reconsideration until August 19, far outside the 20-day timeline.

The ministry noted that reconsideration officers can and do take extenuating circumstances into consideration and may decline to insist strictly on the 20-day timeline when the delay was caused by circumstances beyond the applicant's control. In this instance, it appears that the reconsideration officer did not consider this to be the case.

What the panel in this appeal must decide is whether the ministry's decision was a *reasonable* application of the 20-day timeline *in the circumstances of the appellant*. The circumstances of the appellant are described above. They were expressed, if not in detail then in substance, by the appellant in her reconsideration submission. Specifically, she cites her and her husband's medical conditions, her pregnancy and the birth of her child and the fact that she was locked out of her MyFS account and had difficulty contacting the ministry by phone.

Was it reasonable for the ministry to insist on the 20-day timeline given these circumstances? Particularly given that the ministry can and does take extenuating circumstances into consideration in making these decisions? A "reasonable" decision can be described as being "fair and sensible". Was it fair and sensible to insist on a strict interpretation of the appellant being "notified" (s. 17(1)(b)) knowing that the appellant did not know or understand – did not have constructive knowledge of -- what she was required to do due to misunderstandings, technical difficulties and unusually stressful circumstances?

It seems to the panel that a *reasonable* application of the legislation *in the circumstances of the appellant* would result in the ministry exercising its practice of waiving the 20-day timeline. However, the ministry cannot, strictly speaking, contravene the legislation in policy or practice. And this panel certainly cannot assume that it would or opine that it should have. The fact is that the ministry complied with the requirements of the legislation, and that cannot be considered to be unreasonable.

Based on this analysis, the panel finds that, according to the relevant legislation, the ministry reasonably determined that the appellant's request for reconsideration could not be considered by the ministry because she did not deliver her request within 20 days of being notified of the decision.

Accordingly, the panel finds that the Ministry's decision to deny the appellant a reconsideration was a reasonable application of the relevant legislation and confirms the Ministry's reconsideration 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 No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

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

PART H – SIGNATURES

PRINT NAME

Marcus Hadley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/11

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/11

PRINT NAME

Joe Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/11