

PART C – Decision under Appeal

The decision being appealed is the Ministry's January 24, 2012 reconsideration denying the Appellant a child care subsidy from January 1, 2011 to November 30, 2011. The Ministry determined that it did not receive the Appellant's application for a child care subsidy until December 2011 and therefore the Appellant was only eligible for a subsidy from December 1, 2011 in accordance with section 4 and 13 of the Child Care Subsidy Regulation.

PART D – Relevant Legislation

Child Care Subsidy Act Section 4.

Child Care Subsidy Regulation Sections 4 and 13.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry records Indicating that:

- The Appellant submitted a child care subsidy application on December 7, 2011.
- That application was processed on December 12, 2011 and the Ministry determined that it needed further details about the family's income to assess eligibility as well as identification for the Appellant's daughter. A letter was sent to the Appellant requesting this information.
- The Appellant phoned the Ministry on December 19, 2011 to check on his application and he was told about the missing information which he committed to sending right away.
- On December 23, 2011 the Ministry received a letter from the Appellant listing various dates in 2011 when he stated that he tried to submit an application. The information the Ministry requested to assess his eligibility was not included.
- On January 3, 2012 the Appellant phoned the Ministry to check on his application and also advised that he sent the required documents; however, the Ministry had not received anything.
- On January 4, 2012 the Ministry received the requested copies of the daughter's identification and details of the family income. The Ministry then processed the application and assessed the Appellant's eligibility.
- The Ministry authorized child care subsidy to begin from December 1, 2011 and a confirmation letter was sent to the Appellant.

2. Letter from the Appellant to the Ministry dated December 20, 2011 providing information about his daughter, his work schedule and his wife's earnings. The Appellant also provided the following information related to his subsidy application:

- A child care provider issued a statement dated November 29, 2011 indicating that his son went to that care centre from December 1, 2010 to August 2011, and he sent the child care subsidy application in January 2011 by fax.
- In March 2011 he resent the same application by fax and received no answer. A copy of the application was lost in a move.
- His son started going to another child care centre on September 1, 2011 and the provider filled in the care agreement on September 7, 2011. His wife signed the subsidy application on September 11, 2011 and it was faxed shortly after that. The Appellant stated this was his third attempt to file an application.
- In October 2011 the Appellant and his wife called the Ministry. They were told there were no records of their application which the Appellant stated was completed on October 25, 2011 and sent by fax on a fax transmittal sheet with the first care provider's letterhead. It was also sent by post and the Appellant stated this was his fourth attempt.
- On about November 19, 2011 the Appellant called the Ministry and again was told that there were no records of his application received either by fax or by post. The care provider advised the Appellant to resend the application.
- The Appellant completed the same application on December 7, 2011 with the assistance of the care provider and it was sent by fax and by "next day" post. The Appellant stated this was his fifth attempt.
- The Appellant asked that his application be back dated to January 2011.

3. Copy of an email dated November 19, 2011 from the Appellant to the care provider asking for the provider's assistance with sending the application by registered post or a form of secured delivery, and a reply from the provider agreeing to help.

4. Letter dated December 14, 2011 from the Appellant to the Ministry stating that he called the Ministry office and was told that his application was received on December 8, 2011. He also listed the 5 previous dates on which he said he sent in the subsidy application. The Appellant also asked that the subsidy application be back dated to January 2011.
5. Copies of the Appellant's child care subsidy applications for his daughter dated September 11, 2011 and December 7, 2011, and for his son dated December 7, 2011.
6. Fax transmittal cover sheet with two dates, October 25, 2011 and December 7, 2011, from the Appellant to the Ministry stating he was submitting his subsidy application for his son.
7. Appellant's January 17, 2012 request for reconsideration with a statement supporting his request. The Appellant referred to the documents listed as above and also enclosed separate letters from 2 care providers, one dated January 12, 2012 and one dated January 17, 2012. The Appellant indicated that he submitted subsidy applications in January 2011, March 2011, September 2011, October 2011 and December 2011. He referred to the telephone calls he made to the Ministry's office, including one in December 2011, confirming that the December 2011 subsidy application had been received. The Appellant also wrote that he was told that the Ministry had no record of his previous applications and no record of 4 previous telephone inquiries.
8. Letter from one care provider dated January 12, 2012 to the Ministry supporting the Appellant's application to have the subsidy backdated to January 2011. The care provider indicated that she completed her portion of the application for the Appellant's son in January 2011 for 2 days per week, then in September 2011 for full time care, and then in October 2011 and December 2011 when the Appellant completed another application.
9. Letter dated January 17, 2012 from another employee at the same care provider confirming that the Appellant requested her assistance with completing subsidy applications for his 2 children on two occasions, October 25, 2011 and December 7, 2011. She cited the fax number the October application was sent to from the provider's fax machine.

For this appeal the Appellant submitted a copy of outbound phone call records that he submits shows the calls that he made to the Ministry and he specifically referred to a call on October 14, 2011 which he said lasted about 16 minutes. The Ministry did not object to the admissibility of this document. The Panel admits this document as being in support of information that the Ministry had at the time of reconsideration pursuant to section 22(4) of the Employment and Assistance Act. However, the Panel gives it little weight because it is only a list of dates, phone numbers and time.

At the hearing the Appellant stated that the submissions he made with his request for reconsideration are also his reasons for this appeal. He also stated that he does not dispute the Ministry's findings in its reconsideration decision; however, he still wants his subsidy to be back dated to January 2011 because that is when he said he first submitted the subsidy application. The Appellant acknowledged that he does not have documents to support the fact that he sent in an application in January 2011. The Appellant reviewed the help he received from the care providers and referred to their letters regarding his application. The Appellant submitted that he sent the previous applications by fax but he also stated that he did not call the Ministry right after sending the faxes to confirm receipt. Any phone calls he or his wife made were sometime after the transmittals.

The Panel finds that the Appellant's testimony at the hearing is related to information the Ministry had about the Appellant's subsidy applications and therefore admits that testimony as being in support of the evidence the Ministry had at the time it made its reconsideration decision pursuant to section

22(4) of the Employment and Assistance Act.

At the hearing the Ministry reviewed the document handling procedures it described in its reconsideration decision. The Ministry submitted that documents are meticulously recorded and saved in a dedicated holding area for unidentifiable paperwork for 6 months, rarely do documents go missing and it is highly unlikely that the Ministry would have no record at all of receiving the Appellant's documents. Specifically the Ministry submitted that if it receives incomplete or illegible faxed documents, staff will call the sender to resubmit the documents. The Ministry also indicated that the Appellant's file was carefully reviewed for the reconsideration decision and there were no other applications or other information from the Appellant other than the December 2011 subsidy applications. The Ministry submitted that in the Appellant's case it had no legal basis for paying a child care subsidy before December 2011.

The Panel notes that the Appellant's evidence about his applications for a child care subsidy differs from the Ministry's records. Although the Appellant cited different dates that he applied for the subsidy, he did not provide copies of those applications, except for one in September 2011 and the December 7, 2011 applications. He also provided no evidence that he immediately checked with the Ministry to make sure his faxed transmittals were received. The Ministry's records, on the other hand, indicate that the Appellant's child care subsidy applications were sent on December 7, 2011, processed by December 12, 2011 and then completed on January 4, 2012 after further information was received from the Appellant. Therefore the Panel finds that the only child care subsidy applications received by the Ministry from the Appellant were those received in December 2011.

The Panel makes the following findings of fact:

1. The Ministry received the Appellant's child care subsidy applications for his son and daughter in December 2011 and completed processing them in January 2012.
2. The Ministry gave the Appellant child care subsidies starting on December 1, 2011.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is not eligible for a child care subsidy from January 1, 2011 to November 30, 2011 because it did not receive his application for the subsidy until December 2011 and therefore the Appellant was only eligible for a subsidy from December 1, 2011 in accordance with section 4 and 13 of the Child Care Subsidy Regulation.

The following section of the Child Care Subsidy Act applies to this appeal:

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

The following sections of the Child Care Subsidy Regulations apply to this appeal:

4 (1) To be eligible for a child care subsidy, a parent must

(a) complete an application in the form required by the minister.

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.

In its reconsideration decision the Ministry reviewed information from its records regarding the Appellant's child care subsidy application, the telephone calls from the Appellant, and its correspondence with the Appellant to obtain missing information. The Ministry also reviewed the applicable sections of the Child Care Subsidy Act and Regulations as well as its internal procedures for receiving and reviewing all documents it receives. The Ministry found that although the Appellant stated that he sent applications by fax, he did not confirm receipt by telephone right after sending any faxes. The Ministry's position is that under the applicable legislation it cannot issue backdated child care subsidy payments for any period of time prior to a client actually applying, and therefore the Appellant is not eligible for child care subsidy from January 1, 2011 to November 30, 2011. The Ministry determined that the Appellant is only eligible for subsidies starting in December 2011 based on when it received the applications from the Appellant.

The Appellant's position is that he applied for child care subsidy as early as January 2011 and then subsequently resubmitted his application in March 2011, September 2011, October 2011 and December 2011. Therefore he argued that his child care subsidy should be back dated to January 2011. The Appellant did acknowledge that he did not follow-up with phone calls immediately after sending the faxes and he had no documents to back-up the January 2011 application.

The Panel finds, based on the evidence, that the only subsidy applications the Ministry received from the Appellant were those it received in December 2011. The Ministry then decided based on the Child Care Subsidy Regulations that the Appellant was eligible for child care subsidies starting on December 1, 2011. Therefore the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel confirms that decision.