APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development's (the "Ministry") September 11, 2012 reconsideration decision in which the Ministry determined that the Appellant was eligible for a child care subsidy beginning July 1, 2012, but not eligible from May 1 to June 30, 2012 in accordance with sections 4 and 13 of the Child Care Subsidy Regulation.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) Section 4.

Child Care Subsidy Regulation (CCSR) Section 4 and 13.

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PART E – Summary of Facts

With the Appellant's consent, a Ministry observer attended the hearing but did not participate in the hearing.

For its reconsideration decision the Ministry had the following evidence:
1. Child care subsidy application dated July 17, 2012, and signed by the Appellant and his spouse. The Appellant indicated on the form that this was not his first time applying.
2. Summary of facts in the reconsideration decision as follows:

- Appellant had been receiving child care subsidies since 2010 and a previous authorization period ended on April 30, 2012.
- May 7, 2012 Appellant's spouse called the Ministry about renewing the child care subsidy. The Ministry adjudicator advised the wife to complete and submit a renewal application with the required school registration material and the spouse's pay stubs. The Appellant's spouse stated that she had downloaded the application and confirmed that she understood what documentation was needed to renew child care subsidy.
- May 29, 2012 Appellant called the Ministry to check on the status of his subsidy payment, and advised the adjudicator of his medical condition in May. The Appellant was advised to submit the form to establish a medical need for child care. The Appellant also informed the Ministry about his spouse's employment and he was told that pay stubs would be required.
- May 31, 2012 Appellant's spouse called the Ministry to provide income details. Income information was recorded, but the spouse was advised hard copies of pay stubs would still be required as well as the outstanding renewal application. The Appellant's spouse confirmed that these would be sent as soon as they were available.
- June 15, 2012 Appellant's wife called the Ministry to confirm receipt of pay stubs. The Ministry confirmed these were received, with the work schedule letter with details of the hours child care was needed. The still outstanding renewal application was mentioned during the call.
- July 16, 2012 Appellant called the Ministry and he was advised that his renewal application was due April 30, 2012 and had still not been received. The Appellant said he was not aware of that. The Ministry adjudicator verified that the renewal application had been discussed with the Appellant and his spouse during two calls in May.
- July 16, 2012 Appellant's spouse called the Ministry saying she was not made aware of the renewal application. The adjudicator verified the case history notes and confirmed that this had been discussed in May with the Appellant and his spouse.
- July 16, 2012 a Ministry supervisor called the Appellant's spouse and reviewed all the information, as well as explaining the Ministry's backdating policy and the regulations governing the subsidy.
- July 18, 2012 Ministry received the Appellant's renewal application requesting backdating to May 1, 2012. The Ministry sent a letter confirming authorization from July 1, 2012.

3. Appellant's August 28, 2012 request for reconsideration with a statement from the Appellant. He wrote that in May he had surgery so that he could not leave the house to fax the documents for reapplication of the child care subsidy. The surgery and medication rendered him incapable of contacting the subsidy office. The Appellant also stated that he was not sure what documents were required and could not search his house for the information for reapplication. The Appellant's spouse faxed in what she believed was required for reapplication. Later in May, the Appellant indicated that he contacted the child care subsidy office to confirm that they had submitted all the required

documents for reapplication. The Appellant wrote that he was told that all that was missing was the medical document. He stated that he was not told that the reapplication package was to be sent in.

The Appellant stated that he was the sole applicant for the subsidy and that he should have been told what was needed for reapplication. He wrote that his spouse was only helping during his recovery period and not taking over as applicant. She was not authorized to act as an applicant for him. The Appellant argued that whether or not his spouse was told that the application was required is irrelevant. He maintained that he wasn't told of its necessity when he called at the end of May and had he been told he would have had the reapplication package faxed in at the same time. He was made aware of the entire reapplication package necessity in July

At the hearing, the Appellant repeated the arguments and the history of his contacts with the Ministry as set out in his reconsideration request. He also made a number of arguments about the Ministry's responsibilities and the Ministry's application form, which are set out in Part F of this decision. The Appellant disputed the Ministry's version of the contacts it had with him and his spouse.

At the hearing, the Ministry reviewed its reconsideration decision and referred to its internal telephone logs regarding contacts between it and the Appellant and the Appellant's spouse. For example, the Ministry stated that its logs indicated that on May 29, 2012 the Appellant was told by a Ministry representative that an application renewal form was needed. The Ministry acknowledged that the Summary of Facts in its reconsideration decision did not reflect this version of the conversation.

The Panel makes the following findings of fact:
1. The Appellant had been receiving child care subsidies since 2010.
2. The Appellant's child care subsidy period ended on April 30, 2012.
3. The Appellant and his wife signed a child care subsidy application on July 17, 2012 and it was received by the Ministry on July 18, 2012.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was eligible for a child care subsidy beginning July 1, 2012, but not eligible from May 1, 2012 to June 30, 2012 in accordance with sections 4 and 13 of the Child Care Subsidy Regulation.

The following provision of the CCSA applies to this case:
4 Subject to the regulations, the minister may pay child care subsidies.

The following sections of the CCSR are applicable in this case;
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 stated that the Child Care Subsidy Program is governed by the laws in the CCSA and the CCSR. It also indicated that it reviewed all the information submitted with the Appellant's request, the supporting documentation and the relevant legislation. The Ministry pointed out that the Reconsideration Officer does not have the authority to overturn legislation. The purpose of reconsideration is to verify that legislation has been applied correctly and consistently. The program must always operate within its own regulation to maintain administrative fairness and integrity. The Ministry also stated that it does not backdate child care subsidy payments unless an administrative error has occurred.

The Ministry noted that the Appellant stated he is the sole applicant; however, his application form indicates that he consented to sharing information with his spouse. Both the Appellant and his spouse signed the application and therefore, according to the Ministry, there is no sole applicant. The Ministry also noted the Appellant's submission that he was not made aware of the need to submit a renewal application. The Ministry pointed out that it is not the job of the Ministry to advise clients that their authorization period has ended or is about to end. As a courtesy but not as a part of the legislated program, the Ministry sends out a renewal notice 45 days before the end of the authorization period. The Ministry submitted that ultimately it is the Appellant's responsibility to be aware of the end of an authorization period and to renew in time to prevent a gap in payments. The Ministry also noted that the Appellant had been receiving a child care subsidy since 2010, so it was reasonable to assume that the Appellant was aware of renewal procedures and requirements, particularly if he takes primary responsibility for his family's child care paperwork.

According to the Ministry's records, the Appellant's authorization period ended April 30, 2012, which meant his renewal was required by the end of May to ensure continuity of payments. The Ministry submitted that the Appellant's spouse was advised of this on May 7, 2012, May 31, 2012 and for a third time on June 15, 2012. The Ministry determined that, based on the legislation and because the Appellant's renewal application was not received until July 2012, it could only pay a subsidy from the beginning of July 2012. It could not pay a subsidy from May 1, 2012 to June 30, 2012.

The Ministry provided examples of what it considered to be administrative errors for the purposes of

the CCSR. The Ministry stated that losing a file, misplacing a form relevant to a file, or not following up on an illegible form could be considered administrative errors.

The Appellant disputed the Ministry's version of events, maintaining that on May 29, 2012, he was not told that he had to submit a reapplication. He submitted that he was not told about the need for a renewal form until July 2012 when he immediately submitted that required package. He said if he had been told in May that the form was needed he would have sent it in with his medical certificate. The Appellant also stated that his spouse did not exactly remember what she was told, except that she had to provide information about her employment, including copies of her pay stubs. In response to the Ministry's position that his spouse was a co-applicant because she completed and signed the renewal form, the Appellant argued that the form does not indicate that a spouse is a co-applicant, only that he and his spouse consented to sharing information, and that she was verifying the information she provided about her personal information and employment. The Appellant also referred to section 4(2) of the CCSR which states that only one parent in the family may apply for a child care subsidy. Based on this regulation and the way the Ministry's form is written, the Appellant argued that the Ministry cannot treat his spouse as a co-applicant for child care subsidy. He is the only parent applicant and he, not his spouse, should have been explicitly advised by the Ministry of the need to send in a renewal package. The Appellant further submitted that he should not be held responsible for misinformation he was given by the Ministry. The Appellant acknowledged he had been receiving a subsidy since 2010 but it was never clear to him what forms were required for what changes in his circumstances; for example, when he changed care providers he did not need to send in a new application form.

The Panel notes that there were several contacts between the Ministry and the Appellant, and between the Ministry and his spouse regarding the re-application for a child care subsidy. However, the parties disagree about what the Ministry told or didn't tell the Appellant and his spouse. Regardless of what was said or not said, the Panel finds that there is nothing in the CCSA or CCSR that requires the Ministry to specifically notify and explain to child care subsidy applicants what is required to renew their subsidy. There is, however, some evidence that application information is available on the Ministry's website and that the Appellant was receiving a subsidy since 2010.

The Panel further finds that what a Ministry's form states or doesn't state does not alter the requirements of sections 4 and 13 of the CCSR. That regulation is clear. To be eligible for a child care subsidy, a parent must complete an application in the form required by the minister and a child care subsidy may be paid from the first day of the month in which the parent completes an application under section 4. There is no dispute that the Appellant's application to renew his child care subsidy was not received until July 2012. Therefore, the Panel finds that the Ministry reasonably applied the applicable sections of the CCSR and it reasonably determined that the Appellant was eligible for a subsidy starting in July 2012, but not for May or June 2012. The Panel also finds that there is no evidence of an administrative error on the part of the Ministry. It processed the Appellant's renewal application as soon as it received it.

The Panel confirms the reconsideration decision as it was reasonably supported by the evidence and it was a reasonable application of the applicable enactments.