

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration decision dated January 23, 2013 wherein the ministry found that the appellant is not eligible for a child care subsidy for the period between September 1 and October 31, 2012. The Ministry denied the request because it does not have legislative authority to authorize child care subsidy beyond the 30 day limit set out in section 13(2) 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

The appellant did not attend this hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

By way of background, the appellant contacted the ministry on April 11, 2012 to advise that she was self employed, and to request child care subsidy. The appellant was mailed a child care arrangement form and, according to the ministry records, the ministry also advised the appellant that she needed to submit a child care subsidy application form by July 31, 2012.

On May 10, 2012 the appellant called the ministry to request another child care arrangement form as she had not yet received one. The appellant sent in the child care arrangement form and enrolled her child in daycare as of September 1, 2012. The ministry received the child care arrangement form August 23, 2012 however it did not receive a child care application form. As a result, it could not finalize the appellant's application for child care subsidy.

At the end of November, the appellant received notification from her daycare that they had not received any child subsidy payments. In early December, the appellant called the ministry to inquire about the lack of subsidy payments to the daycare. At that time, she was advised that her application had not been processed because the ministry had not received her child care subsidy application form.

On December 12, 2012 the appellant submitted a child care subsidy application. Included on page 3 of the application is a declaration which reads, "Subsidy may be paid from the first day of the month in which the application is completed, or the date child care begins, whichever is later. I am responsible for child care fees prior to this date."

Upon reviewing the appellant's application, the ministry determined that the appellant became eligible for child care subsidy as of December 1, 2012 pursuant to section 13(1) of the Regulation. The appellant, however, seeks child care subsidy for the period between September 1 and November 30, 2012. She says she is a single mom and cannot afford the shortfall that is now owing to the ministry for the preceding months.

On reconsideration, the ministry changed its original decision and found that, pursuant to section 13(2) of the Regulation, the appellant was eligible for child care subsidy as of November 1, 2012. However, the ministry could not provide subsidy for the period prior to that date.

In her notice of appeal, the appellant says that she disagrees with the ministry's decision because it was their duty to inform her when she asked about what was needed to be done to switch her child to another daycare, yet they didn't do that.

At the hearing, the ministry stated:

- It is the appellant's responsibility to submit the correct forms and information in order to qualify for subsidy;
- Notwithstanding that, there is nothing in the ministry records to indicate that the ministry did

notify and remind the appellant, on August 23, that she needed to submit a child care arrangement form;

- The ministry considered this to be an administrative error pursuant to section 13(2) of the Regulation and accordingly paid child care subsidy for November 2012 being the 30 days before the appellant completed her application pursuant to section 4 of the Regulation; and
- There is no legislative authority available to the ministry to permit the ministry to fund the appellant for any period beyond the 30 days set out in section 13(2).

The panel has considered the new evidence submitted by the appellant and the ministry and finds that it is admissible under section 22(4) of the *Employment and Assistance Act* as it is evidence in support of the information and records that were before the Ministry when the original decision was made.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant's request for child care subsidy between September 1 and October 31, 2012 should be denied.

The following sections of the *Child Care Subsidy Act* and *Child Care Subsidy Regulation* apply to this decision:

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 each adult dependant, 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.

(3) Repealed. [B.C. Reg. 187/2007, s. (b).]

(4) A parent ceases to be eligible for a child care subsidy on the date that is 12 months after the date of application under subsection (1) or this subsection, as applicable, unless, before that date, the parent completes an application referred to in subsection (1) and otherwise complies with that subsection.

Will a subsidy be paid for child care provided before completion of the application?

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.

The Ministry's position is that, regardless of whatever misunderstandings the appellant may have had about the application process, it is the appellant's responsibility to ensure that the correct forms were completed as set out in section 4 of the Regulation.

The appellant did not provide a completed application for child care subsidy until December 12, 2012. The ministry concedes that the ministry records do not indicate that the appellant was reminded, on August 23, 2012, about the need to submit a child care subsidy application form. The ministry acknowledged this administrative error by invoking section 13(2) of the Regulation thereby funding the appellant for the period of November 2012. However, the ministry says it has no authority to provide child care subsidy any earlier than November 1, 2012.

The ministry points out that the appellant ought to have been aware of the payment restrictions due to her signed acknowledgment of the declaration regarding payment contained within in her application (and in her previous applications). That declaration reads, "Subsidy may be paid from the first day of the month in which the application is completed, or the date child care begins, whichever is later. I am responsible for child care fees prior to this date."

The appellant's position is that it is entirely the ministry's fault that her application was not finalized earlier. She says that the ministry did not exercise its duty to properly advise her of the application process.

The panel has considered all of the evidence in conjunction with the legislation. The legislation is clear that the appellant cannot be eligible for child care subsidy until the first day of the month in which she completes an application under section 4. The only exception is in the case of an administrative error. In this case, there was administrative error which the ministry has acknowledged. The ministry rectified that error by authorizing the appellant for child care subsidy in the 30 day period before the appellant's application was completed (November 1) pursuant to section 13(2) of the Regulation. There is no legislative authority for the ministry to fund child care subsidy any earlier than this date.

As such, the panel finds that the ministry's decision was reasonably supported by the evidence and confirms the decision pursuant to section 24(2)(a) of the Employment and Assistance Act.