

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated February 22, 2013 which held that the Appellant was not eligible to receive Child Care Subsidy (CCS) for the timeframe September 1 to November 30, 2012 based on her not advising the Ministry of a change in her circumstances per Section 14 of the Child Care Subsidy Regulation and her not making application for CCS until December 10, 2012, per Section 13 of the CCS Regulation.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) Section 4
Child Care Subsidy Regulations (CCSR) Section 3, 4, 13 and 14
Excerpts from Child Care Subsidy Act and Regulations Sections 1 - Definitions

PART E – Summary of Facts

The evidence before the Ministry at Reconsideration was:

- Approval letter from the Education Committee, undated, confirming sponsorship of the Appellant's education expenses.
- Confirmation of Direct Deposit for Appellant's earnings dated December 10, 2012.
- Letter from the Appellant to the Ministry, dated December 10, 2012, requesting full CCS for her children so she can attend to her educational commitments.
- Student Fall Detail Schedule report for Appellant dated December 10, 2012.
- Student Winter Detail Schedule report for Appellant dated December 10, 2012.
- Child Care Subsidy (CCS) Arrangement form dated December 10, 2012, for Appellant's preschool child.
- CCS Arrangement form dated December 10, 2012, for Appellant's older children for After School Care.
- CCS Application submitted by the Appellant and dated December 10, 2012.
- Letter from the Ministry, dated January 21, 2013, regarding both, approval for CCS for Appellant for the time frame December 1, 2012 to November 30, 2013; and, notification of Appellant's ineligibility for receiving CCS for the time frame September 1, 2012 to November 30, 2012.
- Appellant's Request for Reconsideration dated January 29, 2013 where the Appellant states that:
 - She requests the Ministry to reconsider [their] refusal to pay for [CCS] Subsidy for the months of September, October and November [2012].
 - She understands the reason she was refused subsidy but was not aware that [she] was applying as a new applicant; [she] thought the subsidy account was just being switched into [her] name.
 - She apologizes for her late CCS application and states that had she known the severity of the situation, she would have sent the application in sooner.
 - She indicates that she is a single parent of three babies and she is in her graduating year of a four year post secondary program. If her CCS is denied, her youngest child will be let go of daycare.
 - She indicates that her ex common law (CL) spouse was the main applicant on her previous CCS application. Due to the challenges with her family situation, she did not think to phone in and switch the subsidy.
 - She is sorry that the CCS was on the 'back burner' and did not expect this to happen; she is sole caregiver of her babies and needs their childcare to be successful in her career.

:The Appellant's oral submission at the hearing included the following:

- She is apologetic for not being on time with her CCS application and takes responsibility for the situation.
- She disagrees that the Ministry considers her to be a 'new' applicant as she has been a recipient of CCS for a few years; she finds it confusing that the Ministry considers her a 'new' applicant, yet for example, the Ministry refers to her having submitted a CCS 'renewal' application in Section 2 of the Request for Reconsideration documentation.

- She does not understand why the Ministry insists that her 'ex' is the applicant for her children's daycare because they sent a letter to her in May of 2012; and, they have communicated with her via telephone for everything else. In reality, she states, it is she, whom the Ministry communicates with the majority of the time. The Appellant did not present evidence of the Ministry contacting her in writing.
- She has had CCS for her children since 2008; and, it was her common law spouse who applied for the CCS because he was living in their home at the time.
- She acknowledges that her common law spouse had given the Ministry authority to speak on his behalf and consent to share information with her.
- To her understanding, the CCS was renewed each year in April; and, they had just done this in April 2012.
- She is concerned for her youngest child's wellbeing if he is taken out of his daycare as a result of this situation because his daycare has been like a second home and family to him.
- She reiterated that amidst the challenges of sorting her family situation out and trying to study, and be a single parent, too; it just did not occur to her to advise the Ministry of her 'change' in circumstances, specifically that her ex left the family home.
- She acknowledges receiving a letter from the Ministry, in May 2012, addressed to her, where the Ministry stated that the end date to her children's CCS would be August 31, 2012.

The Ministry's oral submission at the hearing included the following

- The Ministry was primarily relying on their Reconsideration Decision dated February 22, 2013 for their hearing submission.
- The Ministry stated that, as indicated in the legislation, 'parent' is defined as including a person with whom a child resides and who stands in place of the child's father or mother.
- The Appellant's ex is no longer defined as 'parent' because he is no longer resides with his children in the same residence.
- As indicated in the legislation, 'applicant' is defined as meaning a 'parent' who applies under Section 4 for a CCS.
- The Appellant's ex is no longer considered a 'parent' for the purposes of applying for CCS.
- To be eligible for CCS, it is the 'parent', as defined in the legislation that must complete an application form for CCS.
- As required under the CCS Act, the legislation clearly states that, as soon as possible, after any change in circumstances affecting the eligibility of the 'parent', the 'parent' is responsible to notify the Minister [Ministry] of a change in those circumstances as the 'parent' of the children receiving the CCS.
- When an application for CCS is made, payment can only be made from the first day of the month in which the 'parent' completes the CCS application, and in this case, the CCS application was completed by the Appellant [parent] in December 2012; therefore, she is eligible to receive CCS from December 1, 2012 and not before that date, which explains why the Appellant is not eligible for CCS from the day after her ex's CCS expired until the day before her application for CCS takes effect, November 30, 2012.

The Panel finds that:

- The Appellant has received CCS for her children since 2008.
- That prior to the CCS expiring in August 2012 that CCS was applied for by her ex partner

because he was residing in the family home.

- That the Appellant's ex CL spouse was the main applicant on their original CCS; the Appellant still had to have authorization from him to the Ministry for her to continue communicating with them and sharing information.
- The Appellant and her ex partner renewed their children's CCS every April, and had been notified via correspondence addressed to him, from the Ministry, in May of 2012, that the CCS would expire August 31, 2012.
- The Appellant contacted the Ministry via telephone on May 2, 2012 and was advised by the Ministry to submit the required documents for her fall semester classes.
- The Appellant acknowledges she knew the CCS was going to expire in August 2012; however, due to her trying to manage family issues and simultaneously attending to her school work, she neglected to look after the CCS issue until December 2012.
- Between the times the Appellant's partner moved from the home and she applied for CCS in December, she did not contact and advise the Ministry of the change in her circumstances; which means, the Ministry was not informed that her partner had moved from the family home until December 2012.
- There was no communication between the Appellant and the Ministry between May and December 2012.
- Once the Appellant applied for CCS, on December 10, 2012, the Ministry paid CCS from the first day of that month, December 1, 2012.
- There was no evidence presented at reconsideration that indicated an administrative error on behalf of the Ministry had taken place that would allow the Ministry to pay the Appellant CCS prior to December 1, 2012.

PART F – Reasons for Panel Decision

The issue to be decided at appeal is whether the Ministry reasonably applied the CCS legislation and regulations to the Appellant's circumstances by determining the appellant was not eligible for CCS from September 1, 2012 to November 30, 2012 based on her not advising the Ministry of a change in her circumstances per Section 14 of the CCSR and her not making application for CCS until December 10, 2012, per Section 13 of the CCS Regulation.

The legislation provides:

Definitions:

1 In this Act:

"child care" means the care and supervision of a child in a child care setting, other than

(a) by the child's parent, or

(b) while the child is attending an educational program provided under the *School Act*, the *Independent School Act* or a law of a treaty first nation in relation to kindergarten to grade 12 education;

"child care setting" means any setting in which child care is provided, including

(a) a facility licensed under the *Community Care and Assisted Living Act* to provide child care, and

(b) the child's own home;

"child care subsidy" means a payment made under this Act to or for a parent to subsidize the costs of child care;

"parent" includes a person with whom a child resides and who stands in place of the child's father or mother.

1 (1) In this regulation:

"Act" means the *Child Care Subsidy Act*;

"applicant" means a parent who applies under section 4 for a child care subsidy;

"dependant" , in relation to a parent, means anyone who resides with the parent and who

- (a) is the spouse of the parent,
- (b) is a dependent child of the parent,
- (c) shares with the parent income or assets or any necessities of life obtained with the income or assets, or
- (d) indicates a parental responsibility for the parent's child;

"dependent child" means a child who resides in the parent's place of residence and relies on the parent for the necessities of life, but does not include a child who is 18 years of age and is a person with disabilities;

Circumstances in which subsidy may be provided

3 (2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:

- (a) in a single parent family, because the parent
 - (i) is employed or self-employed,
 - (ii) attends an educational institution,
 - (iii) is seeking employment or participating in an employment-related program, or
 - (iv) has a medical condition that interferes with the parent's ability to care for his or her child;

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.

[am. B.C. Regs. 218/2003, s. 1; 187/2007, s. (b).]

Notifying the minister of change in circumstances

14 The notification required by section 5 (2) of the Act must be given in writing or by telephone,

(a) as soon as possible after any change in circumstances affecting the eligibility of the parent, and

(b) to an employee in the Child Care Subsidy Service Centre.

[am. B.C. Reg. 337/2008, s. 5.]

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.

[am. B.C. Reg. 337/2008, s. 4.]

The Appellant argues:

That she is not a new CCS applicant because both she and her ex CL spouse were both on the CCS account with the Ministry. She is a full time student with three children and extremely low income and

the decision made [by the Ministry] has a detrimental effect on herself and her children.

The Ministry argues:

That the Appellant is not eligible for CCS for the period September 1 to November 30, 2012. When the Appellant's ex CL spouse moved from the family's place of residence in May 2012, he was no longer eligible for the CCS as he was no longer considered 'family as defined in the CCS legislation. This is a requirement of eligibility for the CCS. When the Appellant's ex CL spouse moved, the children no longer resided with him, therefore he was no longer eligible for CCS.

The Panel's decision:

The Appellant's circumstances changed when her ex CL spouse moved from the family home; she did not advise the Ministry of those changes; wherein, if she had, she would have been advised, at that time, that she needed to open a CCS file in her own name because at that time of her CCS application in December, she became a 'new' applicant because of the change in her circumstances, that being, her ex partner had moved out of the family home and she then became the sole 'parent' [parent as defined in the CCSA Section 1] of the children within the home and the main CCS applicant for her children.

The Appellant made no contact with the Ministry between May and December 2012 for the purposes of applying for the CCS in her name. In December, the Appellant made an application for CCS in her name and has been approved per the requirements of the legislation.

Based on the fact that the Appellant's partner moved from the home and she did not advise the Ministry of the change in her circumstances as required under Section 14 of the CCSR; and, had she advised the Ministry of those changes in circumstance, she would have been advised, at that time, that she needed to open a CCS file in her own name, the Panel finds the Ministry's determination that the Appellant is not eligible for CCS for the time frame September 1 to November 30, 2012 a reasonable application of the applicable enactment in the circumstances of the Appellant and thus confirms the Ministry's Reconsideration Decision dated February 22, 2013.