

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision, dated 8 May 2013, in which the Ministry of Social Development, (Ministry), determined that the appellant was not eligible for the Child Care Subsidy (CCS) for the period of Jan. 1 to Feb. 28 2013, as the appellant had not applied for the subsidy until March and further there had been no administrative error allowing the application to be backdated.

PART D – Relevant Legislation

CCA Child Care Subsidy Act-Sec. 4

CCSR Child Care Subsidy Regulation-Sec. 4 and 13

PART E – Summary of Facts

The evidence before the ministry at reconsideration showed that the Appellant had originally applied for the Child Care Subsidy, (CCS) in Jan. 2012 and again in March 2013. The application form signed by the appellant states that the subsidy may be paid from the first day of the month in which the application is completed and that the applicant is responsible for any child care fees before this date. On Dec. 28 2012 the Appellant contacted the ministry to advise her child care provider had not been paid since Aug, further that she was starting a new full-time job in Jan. The appellant was advised to provide paystubs for Sept and fill out a work search record as best possible to potentially receive CCS for Oct. to Dec. She was also advised, according to the ministry file notes, to submit a CCS application "as renewal date is 2012 Dec 31 & to submit 2 C/C P/S for new job when rec'd." The appellant signed her new CCS application on Mar. 12 and it was stamped received on Mar. 14, 2013.

On Mar. 25 the ministry determined that the appellant was not eligible for the CCS for Jan and Feb 2013 as she could only receive the subsidy beginning the month in which the application was made. As such the ministry determined she was only eligible from Mar. 1, 2013. The Appellant applied for reconsideration and stated she understood from the phone conversation on Dec. 28 that she should wait until she had received her first two pay stubs and send in all the documents together. She stated she was not informed that she should apply in Jan. or that if she was late in her application, the CCS could not be backdated and therefore paid. She further advised she had filled out the form immediately after speaking to the ministry, but waited until as her understanding was she should wait and send all documents at once. She further advised she did not know until Dec. that the child care provider had not been paid and that is when she called the ministry.

In its Reconsideration Decision the Ministry found the appellant was not eligible for the CCS for Jan. and Feb. Her authorization for the CCS had expired on Dec. 31 2012 and her application was not submitted until Mar. 14, 2013. Therefore she was not eligible for the CCS until Mar. 1, 2013. The decision found that the CCS application explains that child care fees are the Appellant's responsibility and that it is the appellant's responsibility to submit the correct form and documents to re-qualify for the CCS after 12 months.

The Reconsideration Decision further determined that under sec. 13(2) of the CCSR that payment of CCs could only be backdated if an administrative error had occurred. The ministry found that the evidence does not establish that such an error occurred. The ministry's record showed the Appellant had been advised on Dec. 28 to submit a CCS application, and to submit paystubs from the new job when they were received. Therefore there was no administrative error.

At the hearing the appellant testified that when she spoke to the ministry on the phone she understood that she should wait until she had all the material she needed before sending in her application and that is what she did. She was not made aware that her renewal could not be backdated. She was advised by the ministry that the Sept. to Dec. CCS could potentially be backdated and it was; she received these benefits. She clarified that her new job is a temporary position, for a person on maternity leave, as such her pay is regulated back East and it was not until the end of Feb. until she had the two paystubs the ministry required for her application. She advised that she is a young single parent and has not had to deal with these types of situations before. These forms are short and can be easily filled out and if she knew they were needed for Jan. she would have done so.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration in terms of what happened in the application process.

The Ministry when asked by the panel advised that the notes from the ministry record of the phone conversation of Dec. 28, with the shorthand, would read that the client was advised to submit another CCS application as her renewal date was Dec. 31, 2012 and to submit two paystubs for her new job when they were received. The ministry confirmed that the computer only allowed a certain number of characters to be entered in the system for these notes and that unless the note was in quotes they are likely the gist of the conversation. When asked the ministry agreed that the above conversation could be taken two ways; 1-that the application should be submitted and the paystubs provided when received, or 2-submit an application with the two stubs when they are received.

PART F – Reasons for Panel 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 issue to be determined is whether the Ministry was reasonable to find that the Appellant was only eligible for the CCS from Mar. 1, 2013. The appellant argues she simply followed what she understood from the ministry and if she had been aware of the application deadline she would have applied immediately. The ministry relies on the reconsideration decision and states that under the legislation the appellant does not qualify for the CCS for Jan. and Feb.

In its Reconsideration Decision the Ministry found the appellant was not eligible for the CCS for Jan. and Feb. Her authorization for the CCS had expired on Dec. 31 2012 and her application was not

submitted until Mar. 14, 2013. Therefore she was not eligible for the CCS until Mar. 1, 2013. The decision found that the CCS application explains that child care fees are the Appellant's responsibility and that it is the appellant's responsibility to submit the correct form and documents to re-qualify for the CCS after 12 months. The panel finds that this is reasonable.

Sec. 4(4) of the CCSR states eligibility expires after 12 months, unless before that date the parent re-applies. The Appellant testified she was not told this was the case. If correct, it is unfortunate. However, the fact that the appellant is ignorant of this does not allow the ministry, or the tribunal, who must follow the legislation, to backdate her application except in accordance with the legislation.

The Reconsideration Decision further determined that under sec. 13(2) of the CCSR that payment of CCS could only be backdated if an administrative error had occurred. The ministry found that the evidence does not establish that such an error occurred. The ministry's record showed the Appellant had been advised on Dec. 28 to submit a CCS application, and to submit paystubs from the new job when they were received. Therefore there was no administrative error.

The appellant has maintained since her initial request for reconsideration that her understanding from the ministry on Dec. 28, was that she should send in her application when she had received all of the documents. Her evidence in this regard was not challenged by the ministry at the hearing. Further the ministry agreed when asked by the tribunal that the ministry notes of the conversation could be read two ways; one of which is consistent with the appellant's understanding of the conversation. In further support of this, the appellant was informed during the same conversation, according to the ministry notes, that backdating in regard to the Sept. to Dec. CCS payments was a possibility. The panel finds it is entirely reasonable for the appellant to conclude from this conversation that she should send in all the material at once when she had received it as backdating was a possibility.

The reconsideration decision found that the evidence did not establish an administrative error had occurred, however, the decision did not analyse this evidence at all. The word administrative indicates the managing, directing or conducting of the CCS. In this regard when the appellant spoke to the ministry on Dec. 28 she was directed to gather the appropriate information and submit it all at once. As acknowledged by the ministry during the hearing, this interpretation of the conversation was reasonable. There was no evidence from the ministry contrary to this. The ministry could have called evidence from the worker who spoke to the appellant on Dec. 28 but did not do so. The only evidence was from the appellant and the ministry notes of a conversation that were not clear one way or the other. As such, this is evidence that the appellant was directed to proceed in this fashion. It is an administrative error. The panel finds that under sec 13(2) of the CCSR that an administrative error has occurred and the finding by the ministry on this issue was not reasonable.

Under sec. 13(2) of the CCSR if an administrative error has occurred, then the child care subsidy may be paid for the 30 days before the parent completes an application under the sec. 4. Pursuant to the legislation such an error only allows back dating for 30 days, it does not allow backdating to Jan. of 2013.

The panel rescinds the reconsideration decision returns the matter to the minister for a determination as to amount.