

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated January 9, 2013 which held that the appellant was not eligible for the Child Care Subsidy from September 1 to September 30, 2012 because she had failed to submit a new Child Care Subsidy Application after being in receipt of the Child Care Subsidy for a 12 month period, in accordance with Section 4 of the Child Care Subsidy Regulation (CCSR).

The ministry also determined that it had not been established the appellant was advised additional information was required. The ministry therefore allowed the Child Care Subsidy to be provided for the 30 day period before the month the application was completed in accordance with the CCSR Section 13(2); which was the month of October, 2012.

PART D – RELEVANT LEGISLATION*Child Care Subsidy Act (CCSA)*

Section 4 - Child care subsidies

Child Care Subsidy Regulation (CCSR)

Section 4 – How to apply for a subsidy

Section 13 – Will a subsidy be paid for child care provided before completion of the application?

PART E – SUMMARY OF FACTS

The evidence before the minister at reconsideration included the following documents.

- A letter dated August 11, 2011 from the Child Care Subsidy Centre to the appellant informing her that the Centre cannot process her request for the Child Care Subsidy until she submits the following information: her two most recent pay stubs and the Child Care Subsidy Application.
- A Child Care Subsidy Child Care Arrangement form completed by the appellant and dated August 29, 2012.
- A Child Care Subsidy Application completed by the appellant and dated November 6, 2012. Attached to the application are two pay statements from October 2012.
- A letter dated November 20, 2012 from the Child Care Subsidy Centre finding the appellant to be eligible for the Child Care Subsidy for the period between November 1, 2012 and October 31, 2012.
- The Request for Reconsideration dated December 30, 2012, completed by the appellant stating that:
 - in August 2012 she was aware she had to renew her child care subsidy application;
 - she went to the Daycare for assistance with the form because she did not have a computer or printer;
 - the daycare gave her the wrong application;
 - the appellant has never had a problem in the past (with the application);
 - the appellant understands it is her responsibility to submit the correct forms and will in the future ensure the application is properly submitted; and
 - without financial help from anyone else and no savings it would be extremely hard for the appellant to repay the child care provider.
- A letter dated January 2, 2013 from the supervisor of the Daycare setting out a timeline and that inadvertently the wrong forms were used. The letter also confirms that the child continued enrollment at the daycare throughout the period that has not been approved for the Child Care Subsidy.

At Reconsideration the ministry established the following:

- The appellant has been in receipt of the Child Care Subsidy since 2009 and the appellant's child has been with the current day care provider since March 2011.
- In August 2011, at the end of the previous 12 month period, the appellant submitted Child Care Subsidy Child Care Arrangement form rather than the Child Care Subsidy Application. When the appellant was notified that the Child Care Subsidy Application form was required she submitted the proper form.
- On November 5, 2012 the appellant contacted the ministry regarding the status of her Child Care Subsidy and was informed she needed to complete the Child Care Subsidy Application.
- The ministry advised the appellant that a letter of notification was sent to her in September requesting additional information. There is no copy of the letter on the ministry file.

At the hearing, the appellant restated that she had not received a letter from the Child Care Subsidy office informing her that there was information missing. The appellant stated she lives in a house

with a mailbox shared by five people. The owners of the house work away from the community and have someone collect their mail. The appellant learned that she was not receiving the subsidy when she received a bill from the day care provider. As soon as she received that bill she provided the required information.

The Executive Director of the Day Care provided evidence that it was the supervisor working at the day care that provided the wrong form to the appellant. According to the Executive Director, the supervisor takes full responsibility for the error. The Executive Director's evidence is that the appellant views the supervisor as a person of authority and would have no reason to question the information provided to her.

The panel determined the additional oral evidence was admissible under section 22(4) of the EAA as it was in support of the records before the minister at reconsideration.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant was not eligible for the Child Care Subsidy from September 1 to September 30, 2012, because she had failed to submit a new Child Care Subsidy Application after being in receipt of the Child Care Subsidy for a 12 month period in accordance with Section 4 of the Child Care Subsidy Regulation, is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is the *Child Care Subsidy Act*:

Child care subsidies

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

The requirements for the application of the Child Care Subsidy are set out in the Child Care Subsidy Regulation, the relevant sections are set out below:

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).]

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.]

In the reconsideration decision the ministry noted that the appellant made the same error in submitting the incorrect form in 2011, and that she was advised at the time that she needed to submit a new Child Care Subsidy application, which she did. The ministry argues that it is the responsibility of the appellant to submit the correct form and documents in order to qualify for the Child Care Subsidy after 12 months.

In reviewing the file the ministry did not find a copy of the letter notifying the appellant that she needed to supply the Child Care Subsidy form and copies of two most recent pay statements. Because there was no proof that a notification letter had been sent, the ministry determined an administrative error had been made and provided the Child Care Subsidy for the month of October in accordance with section 13(2) of the CCSR. The ministry argues that there are specific requirements that must be met to qualify for the Child Care Subsidy and is no legislative authority to waive those requirements or to go back more than 30 days in reviewing an application.

The appellant argues that she did submit her paperwork in a timely manner, on August 29, 2012, but that it was the wrong form. The appellant received assistance from the day care supervisor. She did not know that she completed the wrong form and did not receive the letter from the Child Care Subsidy office informing her of the requirement to submit different information. The appellant believes the letter may have been collected with her landlord's mail. Once she was made aware of the requirement to submit further documentation she immediately complied. In her words, this was a human error; the appellant had no reason to believe that the form she submitted on time, in August, was not the right form.

The appellant's witness says the error made in completing the incorrect form rests with the supervisor of the day care.

The panel finds that the appellant did not submit the Child Care Subsidy application as required by section 4(1) of the CCSR until November 6, 2012. The appellant made the same error the year before in submitting the wrong form; she should have been aware of her previous error and taken care to submit the required forms. While she may have sought assistance from a person who provided inaccurate advice that does not exempt the appellant from the effect of section 4(4) of the CCSR which makes it clear that eligibility for child care subsidy ceases after 12 months unless a new application is completed.

The fact that the Executive Director of the day care is willing to say the error was made by the supervisor may be relevant to the matter of the funds owed by the appellant to the day care, but that is beyond the scope of this Tribunal.

With respect to the letter of notification from the Child Care Subsidy office, the panel accepts the appellant's evidence that she did not receive the letter. However that question was addressed by the Reconsideration Decision in providing the Child Care Subsidy for a period of 30 days before the month the proper application was submitted in accordance with section 13(2) of the CCSR. The panel agrees that there is no authority in the legislation to provide further latitude in the circumstances.

The panel finds the ministry's determination that the appellant was not eligible for the Child Care Subsidy from September 1 to September 30, 2012, was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.