



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development’s (“Ministry’s”) reconsideration decision dated April 8, 2016, which held that the appellant was not eligible for a child care subsidy for the period between September 1, 2015 and January 31, 2016 because, under section 4 of the *Child Care Subsidy Regulation* (the “Regulation”), the appellant only became eligible for the subsidy at of the beginning of February 2016, the month in which his application was completed.

### PART D – Relevant Legislation

*Child Care Subsidy Regulation*, ss. 4 and 13

## PART E – Summary of Facts

### Information before the Ministry at reconsideration

The Ministry had the following information before it at reconsideration:

- The appellant had previously been receiving a child care subsidy for his daughter, but that authorization ended on June 30, 2015;
- On November 20, 2015 the appellant called the Ministry and was told his file was closed and that he needed to submit a new application and two months of pay stubs to reopen his file;
- The appellant submitted a new application on February 2, 2016 that was signed and dated on November 24, 2016; and
- In a telephone conversation with the Ministry on February 26, 2016, the appellant's spouse advised the Ministry that she did not know that the application had to be submitted.

In addition, documents before the Ministry at reconsideration included the following:

- The appellant's request for reconsideration, attaching a letter from the appellant in which he states he submitted his application on November 24, 2015 via fax to the department but states "it seems that our application was not received or it was lost and therefor was not reviewed by you," and asks the Ministry to "please take a look at the same application that you mailed me and requested a clarification from me on the page 2 of 2 I have signed on November 24, 2015." This letter contains handwritten notes at its top which say, "2<sup>nd</sup> Fax Received Pages 1-16" and "≥1, 2016";
- Pay stubs for the appellant dated November 30, 2015, January 15, 2016, February 15, 2016, and February 29, 2016;
- Child Care Subsidy Application signed by both the appellant and his wife and dated November 24, 2015;
- Child Care Subsidy Child Care Arrangement signed by the child care provider dated November 20, 2015, and signed by the appellant dated November 24, 2015;

The Ministry found "no evidence to establish that the ministry made an administrative error".

### Information provided on appeal

With his notice of appeal, the appellant included a written statement dated April 13, 2016 (the "appellant's statement") in which he explained that when his daughter started preschool in September 2015 he thought she still had a valid child care subsidy authorization, as did the child care provider. The appellant stated the child care provider billed the Ministry for September, October and November 2015, and contacted the appellant in November when she heard from the Ministry that there was no authorization in place. The appellant said he then faxed the application to the Ministry on November 24, 2015 and waited, not knowing how long it would take for the Ministry to respond. He said that when he faxed it, the fax machine said, "received." The appellant stated that after the Christmas break, he followed up with the child care provider, who followed up with the Ministry, and was told they had not received the application. The appellant said he resent the application but was told the subsidy would only start in February 2016. He explained that his family does not have the funds to pay for the previous five months of child care, and that he was appealing the decision because it would be a hardship to his family and could affect his daughter's early learning. He agreed that "mistakes were made" but "not maliciously" and he points out he tried to rectify them when they were

brought to his attention. Included with the appellant's statement were pay stubs dated March 15, 2016, March 31, 2016, and April 15, 2016.

The Ministry relied on the reconsideration summary provided in the Record of Ministry Decision.

The panel admitted the additional information in the appellant's statement, which provides more explanation about when/how he attempted to apply for the child care subsidy, under s. 22(4) of the *Employment and Assistance Act* as information in support of the information available at reconsideration. The information substantiates the previous information that was in documents and before the Ministry at reconsideration.

## PART F – Reasons for Panel Decision

### Issue on appeal

The issue is whether the Ministry's decision that the appellant was not eligible for a child care subsidy for the period between September 1, 2015 and January 31, 2016 is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

### The relevant legislation: *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.

#### **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 Panel's Decision

An applicant for a child care subsidy must meet the requirements of section 4 of the Regulation. As well, section 13 of the Regulation specifies the date from which a child care subsidy may be paid: specifically, from the first day of the month in which the parent "completes an application" unless an "administrative error has been made," in which case a child care subsidy may be paid for the 30 days before the parent completes the application.

No one disputes that the appellant meets the requirements of section 4 of the Regulation. Indeed, the Ministry found the appellant eligible for the subsidy starting February 1, 2016. The dispute lies in whether the Ministry's determinations that (1) the application was completed on February 2, 2016 and (2) the Ministry made no administrative error are reasonably supported by the evidence.

The appellant's position is that he should be eligible for the subsidy from September 1, 2016 because he mistakenly thought his daughter's child care was subsidized, that when he discovered it was not he acted to rectify it, and that he applied on November 24, 2015 by fax and received a message from the fax machine that his application had been received. In essence, the appellant agrees he was late in applying, but alleges an error occurred when he submitted the application by fax on November 24, 2015 and it was somehow "not received or it was lost."

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The Ministry argues there is no record of the Ministry receiving the appellant's application prior to February 2, 2016 and no evidence that the Ministry made an administrative error. Therefore, the Ministry says section 13 of the Regulation only authorizes a child care subsidy from February 1, 2016—the first day of the month in which the application was completed.

*Section 13(1): month in which the parent completes application*

Completion of an application assumes that the Ministry has the application in its possession—that the applicant has submitted the completed forms to the Ministry for review. The only evidence before the Ministry at reconsideration about when the Ministry actually had the application in its possession was the application itself showing the Ministry's fax receipt (on the bottom) dated February 2, 2016. Therefore, the panel finds that the Ministry reasonably determined that the application was completed on February 2, 2016, the date on which the Ministry received the appellant's application. As well, since the application was completed on February 2, 2016, the Ministry reasonably determined that, according to section 13 of the Regulation, the appellant is eligible for the subsidy starting February 1, 2016.

*Section 13(2): administrative error*

"If an administrative error has been made," the appellant would also be eligible for a child care subsidy for child care received during the 30 days before completion of the application on February 2, 2016 (s. 13(2) of the Regulation). "Administrative error" is not defined in the Regulation or the *Child Care Subsidy Act*. The panel finds that an administrative error could reasonably be construed as any error in or at the Ministry occurring in the organization and running of the business of receiving and processing child subsidy applications.

The Ministry relies on (1) the absence of any Ministry record showing receipt of the application earlier than February 2, 2016, and (2) no record of the Ministry having sought a clarification of the application as stated in the applicant's letter that accompanied his reconsideration request. The difficulty with the Ministry's first point is that, if an error occurred in the receipt and/or recording of the application, there would likely be no record. With respect to the Ministry's second point, the panel finds the Ministry misunderstood the appellant when he wrote "please take a look at the same application that you mailed me and requested a clarification from me on the page 2 of 2 I have signed on November 24, 2015." In the context of his reconsideration application, the reasonable inference is that he was referring to the "Request for Reconsideration" package sent to him with the Ministry's initial decision, which asks an applicant to provide any "explanation or information relevant." The appellant appears to have directed the Ministry on reconsideration to look at the "Child Care Subsidy Child Care Arrangement," which is the only document in the reconsideration package that contains a "page 2 of 2" signed by the appellant on November 24, 2015.

The appellant does not offer any documentary or impartial evidence to support his assertion that he faxed the application on November 24, 2015 and that the Ministry made an administrative error (e.g., there was no confirmation receipt showing a fax sent to the Ministry on November 24, 2015, and no evidence from an impartial witness). There was circumstantial evidence that corroborates the appellant's *intention* to make an application to the Ministry in November 2015. Specifically, the appellant had called the Ministry a few days before, on November 20, 2015, and learned he had to make a new application; he had obtained a Child Care Subsidy Child Care Arrangement form, which

the child care provider signed on November 20, 2015 in anticipation of the appellant's application; and, he signed both the Child Care Subsidy Child Care Arrangement form and the Child Care Subsidy Application on November 24, 2015. However none of this circumstantial evidence speaks to whether the appellant did in fact send the application on November 24, 2015, and whether there was an administrative error in the course of its receipt.

Considering all these points, the panel finds that while there was evidence the appellant intended to fax his application to the Ministry in November 2015, in the absence of any impartial evidence that he actually did so, it was not unreasonable for the Ministry to find no evidence of an administrative error.

### Conclusion

The Panel finds the Ministry reasonably determined the application was completed on February 2, 2016, and that there was no evidence the Ministry made an administrative error. Therefore, the panel finds the Ministry's decision that the appellant is not eligible for a Child Care Subsidy from September 1, 2015 to January 31, 2016 is reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant.

The panel confirms the Ministry's reconsideration decision.