APPEAL

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated February 27, 2013 in which the Ministry of Social Development (the "ministry") denied the appellant's request for reconsideration of the decision of the ministry holding that the appellant was ineligible for a child care subsidy for her daughter. The ministry held that, pursuant to section 17 of the *Child Care Subsidy Regulation*, the time for requesting reconsideration had expired prior to the appellant's request.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 6
Child Care Subsidy Regulation (CCSR), section 17.

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant had been notified of the hearing, the hearing proceeded under section 86(b) of the *Employment and Assistance Regulation.*

The evidence before the ministry on reconsideration included the following documents:

1. copy of Standard Form Rental Agreement dated June 5, 2010 for premises occupied by the appellant's mother;
2. copy of credit card statement dated January 2013 for the appellant's mother; and
3. 5 pages of the appellant's handwritten notes dated February 19, 2013 in Section 3 of the Employment and Assistance Request for Reconsideration.

The ministry did not seek to introduce new evidence at the hearing.

The evidence of the appellant contained in Section 3 of the Request for Reconsideration included the following:

1. The ministry did not properly understand the arrangements between the appellant and her mother for the care of her daughter. That misunderstanding may have been caused by the appellant's lack of fluency in English. At one time the appellant's mother lived with the appellant but this had not worked out for her mother and so her mother moved out in January, 2010. The appellant may have given the ministry the impression that her daughter lived with the appellant's mother throughout the week but, if that was what the ministry understood, that was not the case. Though the appellant's mother provided care for the appellant's daughter in the appellant's mother's home during the appellant's work day, the daughter spent the night and non-work days in the home of the appellant.
2. She had not sent the request for reconsideration to the ministry within the 20 days of her receipt of the denial letter because she did not know there was a deadline and, in addition, she was ill during the period when she should have mailed or faxed the request.

The facts set out in the reconsideration decision which the panel adjudged to be relevant to this appeal were the following:

1. The appellant had been in receipt of a child care subsidy for her daughter from 2009 until some time in 2012.
2. In 2012 the appellant had a number of discussions with the ministry, including one in which the appellant was accompanied by an interpreter, regarding the continuation of a child care subsidy for her daughter and also, at some point, her son.
3. On November 15, 2012 the ministry sent the appellant a letter [the letter stating that the appellant had ceased to be eligible for a child care subsidy for her daughter] (the "Denial Letter") with supporting legislation and information regarding the process for requesting a reconsideration of the decision".
4. On November 29, 2012 the appellant contacted the ministry to discuss the Denial Letter and advised the ministry that she would request reconsideration.
5. On November 30, 2012 the appellant spoke to a reconsideration adjudicator who advised her of the 20-day period for requesting reconsideration.
6. On December 5, 2012 the ministry mailed the reconsideration package to the appellant.
7. On February 22, 2013 the appellant's request for reconsideration was received by the ministry.

The ministry did not object to the admission of the appellant's evidence contained in Section 3 of the Request for Reconsideration and identified above as items 1 and 2. However, the panel did not admit the evidence in item 1 as the panel concluded it was irrelevant to this appeal. On the other hand, the panel held that the evidence set out in item 2 was relevant and that it met the test for admissibility set out in section 22(4) of the *Employment and Assistance Act*: it was in support of the evidence that was before the ministry on reconsideration. Indeed, the panel noted that it was an admission by the appellant against her interest.

The panel found as facts:

1. The appellant received the Denial Letter sometime between November 15, 2012 (the date of the letter) and November 29, 2012 (the dated the appellant contacted the ministry to discuss the letter).
2. On November 30, 2012 a representative of the ministry spoke to the appellant and, inter alia, advised the appellant of the 20-day period in which a request for reconsideration had to be initiated.
3. On December 5, 2012 the ministry mailed a reconsideration package to the appellant.
4. On February 22, 2012 the appellant's request for reconsideration was received by the ministry.

PART F – Reasons for Panel Decision

The issue on this appeal is whether in denying the appellant's request for reconsideration of its decision declaring the appellant ineligible for the continuation of a child care subsidy for her daughter the ministry reasonably determined that the appellant had failed to comply with the time limits for requesting reconsideration set out in section 17 of the CCSR and, accordingly, lost her right to reconsideration.

The relevant legislation is as follows:

CCSA

Reconsideration and appeal rights

6 (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:

(a) a decision that results in a refusal to pay a child care subsidy to or for the person;

(b) a decision that results in a discontinuance or reduction of the person's child care subsidy.

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.

(3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of the *Employment and Assistance Act*.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

CCSR

Reconsideration of decisions

17 (1) A person who wishes the minister to reconsider a decision made under the Act must deliver to the Child Care Subsidy Service Centre a request for reconsideration that

(a) is in the form specified by the minister, and

(b) is delivered within 20 business days after the person is notified of that decision.

(2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Subsidy Service Centre.

(3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.

(4) If a request for reconsideration is not delivered in the time required by subsection (1),

(a) the person is deemed to have accepted the decision, and

(b) the decision is not open to review in a court or subject to appeal to a

tribunal or other body.

(5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must

(a) reconsider the decision, and

(b) provide the person who delivered the request with a written decision on the request.

(6) If a request for reconsideration is delivered under this section about a decision that results in a discontinuation or reduction of a child care subsidy, that decision is set aside until the minister

(a) reconsiders the decision, and

(b) provides the person who delivered the request with a written decision on the request.

(7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister

(a) reconsiders the decision, and

(b) provides the person who delivered the request with a written decision on the request.

Pursuant to section 6 of the CCSA, the appellant was entitled to request a reconsideration of the ministry's decision declaring her ineligible for the continuation of a child care subsidy for her daughter. She decided to so request. Once she made this decision she was obliged to proceed strictly in accordance with the provisions of section 17 of the CCSR. For the purpose of this appeal the operative provision of that section is subsection 17(1). The procedure set out in that subsection is mandatory. A person wishing to have a decision reconsidered "**must** deliver to ... a request ... within 20 days after the person is notified of that decision." [emphasis added]

The position of the appellant was that she was unaware of the statutory requirement that she deliver the request for reconsideration within 20 days of the Denial Letter and, further, she was ill for a period of time that (may have) included the expiration of that 20-day period.

The position of the ministry was that the reconsideration decision properly applied the relevant legislation to the appellant and, since the legislation was mandatory, even had the ministry been inclined to accommodate the appellant, it had no discretion to do so.

The issue the panel had to deal with in interpreting the relevant statutory provision in the context of this appeal was the question of when the appellant was notified of the decision, that is, when did she receive the Denial Letter and hence when did the 20-day period being running. Subsection 17(2) stipulates that the decision may be mailed or faxed. But it is not clear from the reconsideration decision whether the ministry used either of these forms of delivery. Perhaps the Denial Letter was delivery to the appellant in some other manner. There is a provision in subsection 17(2) that deems when delivery is effected if the decision is mailed but that is of no help if one does not know if delivery was effected by mailed. Moreover, most of such deeming provisions are rebuttable in the appropriate circumstances.

However, as the panel found as a fact, on November 29, 2012 the appellant contacted the ministry to discuss the Denial Letter. At that time she also stated that she would seek reconsideration. Accordingly, the panel is satisfied that the appellant received the Denial Letter no later than November 29, 2012. Thus the panel is satisfied that the 20-day period commenced no later than November 29, 2012 and, accordingly, that the 20-day period expired on December 19 (excluding the day of delivery), 2012.

Since the appellant did not deliver the request for reconsideration to the ministry until February 22, 2012, clearly she was beyond - indeed, well beyond - the mandatory time set out in subsection 17(1) of the CCSR for delivering the request.

In concluding that the appellant failed to conform to the statutory requirements, the panel has not ignored the appellant's statement that she was "very sick in Christmas time". However, there is nothing in the statutory language that suggests that the ministry has any discretion to waive the strict requirements of the time line for seeking reconsideration set out in section 17 of the CCSR. Accordingly, the appellant's illness is not a circumstance that is relevant to this appeal.

The panel concluded that the decision of the ministry – that the appellant had not complied with the statutory requirements for delivering her request for reconsideration – was reasonably supported by the evidence and was a reasonable application of the relevant statutory provision in the circumstances of the appellant.

In view of this conclusion, the panel confirms the ministry's decision that the appellant has no right to reconsideration.