

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development's (the "ministry's") reconsideration decision dated May 7, 2019, which held that the appellant had failed to deliver her completed Child Care Subsidy Request for Reconsideration to the ministry within the legislated 20 day time limit mandated by section 17(1) of the *Child Care Subsidy Regulation*, and therefore the ministry could not reconsider the matter.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act, s. 6
Child Care Subsidy Regulation, s. 17

PART E – SUMMARY OF FACTS**Information Before the Ministry at Reconsideration**

The following information was before the ministry at reconsideration:

- Request for reconsideration package that was sent to the appellant on April 3, 2019, noting the requestor had been informed of the decision on January 22, 2014. The decision date listed on the decision summary was March 27, 2019; the summary was unsigned and described a decision made in January 2014;
- Child Care Subsidy Application made by the appellant, dated September 1, 2013;
- Child Care Subsidy Application made by the appellant, dated November 20, 2012;
- Child custody agreement in relation to Child 1;
- Court application in relation to child custody and support of Child 2;
- Residential Tenancy Agreement for the appellant (illegible);
- Rental agreement for the appellant's boyfriend, dated November 30, 2013;
- Letter from the ministry to the appellant, dated January 10, 2014, advising the appellant had received \$11,500 in child subsidy payments for which she was not eligible, that she had to repay this amount, and that she could seek a reconsideration of this decision, but any request must be received within 20 days of being notified of this decision, and that additional information about how to seek a reconsideration was available in an attached brochure. (No attachments were evident in the material that was before the ministry.);
- Child Care Subsidy Overpayment Calculation Form;
- Canada Post confirmation of delivery of a package from the ministry to the appellant on January 22, 2014;
- Canada Post confirmation of delivery of a package from the ministry to the appellant on April 3, 2019, with signature of the appellant;
- Copy of the Request for Reconsideration signed by the appellant on April 5, 2019, attaching a letter addressing the merits of her request. The appellant:
 - Stated she did not tell the ministry in December 2013 that her boyfriend had lived with her and moved out;
 - Explained documents that she had previously forwarded to the ministry and how the ministry may have misinterpreted them to mean her boyfriend had just moved out of her residence;
 - Stated which of her previous landlords the ministry had spoken to and explained missing information;
 - Explained why her boyfriend had a drivers' licence and ICBC insurance papers with her address even though he did not live with her;
 - Explained documents that she attached to her request for reconsideration;
 - Disputed that she was living in a marriage-like relationship with her boyfriend on the basis that:
 - (1) the evidence used was faulty,
 - (2) the ministry had not gathered sufficient evidence as it had not spoken with one of her previous landlords where she lived for the majority of the relevant period, or with her current child care provider (who had been her provider for part of the period for which the ministry found her ineligible),
 - (3) her boyfriend could not provide a lease before December 1, 2013 because he had no fixed address at that time,

- (4) the appellant and her boyfriend had been seeing each other for less than 5 months as of December 1, 2013, and
- (5) she believed a complaint had been wrongly made to the ministry about her by her former daycare provider in retaliation for the appellant reporting that daycare provider to a licensing official; and
 - Attached contact information for her landlord and childcare provider.
- Income Tax and Benefit Returns for the appellant's boyfriend for the 2012 and 2013 tax years showing his address as a post office box;
- Tax credit for the appellant's boyfriend dated January 4, 2013 showing his address as a post office box;
- T4 slips for the appellant's boyfriend for the 2012 year showing his address as a town (no street address);
- Letters to the appellant from her former landlord dated May 16, 2013 and May 27, 2013;
- Email to the ministry from Canada Post dated January 23, 2014 confirming delivery of material to the appellant on January 22, 2014;
- A copy of the January 10, 2014 letter from the ministry to the appellant with a handwritten note "resent January 21, 2014 No signature required";
- A Canada Post "Track-Result Detail Print" indicating delivery of a package showing an item that Canada post attempted to deliver to the appellant on January 15, 2014 without success and eventually returned to Victoria;
- An email from the appellant to the ministry on January 9, 2014 attaching documents:
 - Child custody agreement in relation to Child 1;
 - Court application in relation to child custody and support of Child 2;
 - Rental agreement for the appellant's boyfriend, dated November 30, 2013;
- Internal ministry email stating that one ministry representative had confirmed the appellant was living with her boyfriend and that he had told her she needed to reapply for the child care subsidy;
- List of child subsidy payments made concerning appellant;
- Copy of appellant's identity card;
- Copies of Child 1 and Child 2's birth certificates;
- Child Care Subsidy Review Report dated February 21, 2014 noting the ministry had received an anonymous report that the appellant was not reporting her child care subsidy information accurately and was living with her boyfriend, that the ministry had confirmed this, that the appellant had been advised of the debt and had not contacted the ministry further or sought a reconsideration, and recommending that the file be transferred to the Ministry of Finance's collections department;
- Copy of the appellant's driver's licence;
- Copies of Child 1 and Child 2's care cards;
- Child Care Subsidy Child Care Agreement signed by provider on November 22, 2012;
- Service Canada child care benefit claim for the appellant for 2012; and
- Handwritten page with title "Proof of Income."

Submissions and Evidence on Appeal

In her Notice of Appeal, signed May 24, 2019, the appellant states "I was not aware that a request for reconsideration was needed to be mailed to a different department. I had spoke[n] to an agent who requested my

documents, spoke with me a few times after 1/10/14 and did not advise me that talking to him wasn't the process." In a written submission, the appellant writes, that she had no recollection of having to send in a request for reconsideration. She again states she spoke to the ministry's agent after January 10, 2014 and that he did not "indicate a process I seemed to have missed in the denial letter." She said she understands there was a time limit to apply for reconsideration, but that she was unaware of these limits at the time and that she was only told of them later by letter, despite having reached out to the ministry agent. She argued she should not be held liable for the debt as she can prove that she was not living with her boyfriend, because she in no way abused the program (she followed the rules), and because an angry ex-daycare provider made a "false claim" to the ministry about her after she reported the provider to a licensing authority and pulled her children out of that provider's care.

In support of her appeal, the appellant also attached:

- A letter "To Whom It May Concern," dated June 13, 2019, written by the appellant's boyfriend's mother. In that letter, the mother states that starting in January 2012, the appellant's boyfriend began a lifestyle of "couch surfing," living in her camper on a friend's land, renting a room in his brother's house, and living with his aunt. She also writes that in 2013 he worked as a pilot car driver, with his work taking him out of town. She writes that the appellant's boyfriend had no permanent address and shared a post office box with his parents. She also writes that at no time did he have a permanent address or live with the appellant;
- A bill from a communications company dated October 7, 2013 addressed to the appellant;
- A bill from BC Hydro dated February 28, 2014 addressed to the appellant; and
- A submission from the appellant that restates her evidence to the ministry at reconsideration.

The ministry relied on its reconsideration decision.

Panel's Ruling on New Evidence on Appeal

Under section 22(4)(b) of the *Employment and Assistance Act*, the panel may admit new evidence on appeal only if it is "in support of" the information and records that were before the ministry at the time the reconsideration decision was made. Evidence "in support" of information that was before the ministry at reconsideration means additional evidence that substantiates or corroborates the information and records that were before the ministry.

The panel admitted the letter from the appellant's boyfriend's mother and the bills from the communications company and BC Hydro. These documents support the information that was already before the ministry at reconsideration concerning the appellant's argument that her boyfriend was not living with her during January 2013 to January 2014.

The panel also admitted the appellant's new evidence concerning her having no recollection that she had to send in a reconsideration request, and that she had spoken to a ministry agent after the denial decision and that he did not indicate that she had to send in a reconsideration request. This information explains information that was before the ministry (why she did not submit a request for reconsideration within 20 business days of being notified of the denial decision), and tends to corroborate information that was before the ministry (that she received the denial decision, but did not submit a request for reconsideration).

The Panel's Findings of Fact

Based on the evidence described above, the panel finds as fact that:

- The appellant received the ministry's denial decision on January 22, 2014;
- The denial decision told the appellant that she could request a reconsideration from the ministry and set out the 20-day deadline for doing so;
- The legislative deadline for submitting a reconsideration expired in February 2014; and
- The appellant sought reconsideration of the denial decision on April 5, 2019, more than five years after the deadline expired.

PART F -- REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision of May 7, 2019—which held that the appellant had failed to deliver her completed Child Care Subsidy Request for Reconsideration to the ministry within the legislated 20 day time limit mandated by section 17(1) of the *Child Care Subsidy Regulation* and that, therefore, the ministry could not reconsider the matter—was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant statutory provisions are found in section 6 of the *Child Care Subsidy Act* (the "Act"), and section 17 of the *Child Care Subsidy Regulation* (the "Regulation"):

Child Care Subsidy Act, R.S.B.C. 1996, c.26**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.

Child Care Subsidy Regulation, BC Reg. 74/97 as amended.**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 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 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.

[am. B.C. Regs. 262/2002, s. 6; 337/2008, s. 6; 148/2018, App. 1, s. 10.]

Analysis

The appellant's position is that she did not know she had to submit the reconsideration request and that the ministry representative that she spoke to did not tell her about this requirement. The ministry's position is that ministry's records showed the appellant did not make a request for reconsideration with the 20 days allotted by the legislation and therefore it could not conduct a reconsideration of the matter.

Section 6 of the Act states that a request for reconsideration "must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations." The ministry has no discretion to consider late requests for reconsideration—even in situations where the ministry might find merit to the request.

Section 17 of the Regulation states that a person who wishes the minister to reconsider a decision *must* deliver to the Child Care Services Centre a reconsideration request in the form specified by the minister within 20 business days after notification of the decision. Here, the request was delivered in the form specified, but it was delivered over 5 years after the appellant was notified of the decision. It is not clear from the information before the panel why or how the appellant came to be submitting such a late request for reconsideration. It appears the ministry sent her the reconsideration package in April 2019, but the panel has no information about the events that led up to this. Nevertheless, the appellant's submissions on appeal acknowledge that she received the denial letter in January 2014 and that she spoke to a ministry agent about the denial around that time, but that he did not tell her she needed to apply for reconsideration. The denial letter itself clearly states the legislative requirement that the appellant seek reconsideration within 20 days, and that letter was delivered to her on January 22, 2014.

In these circumstances, based on the evidence that was before the ministry at reconsideration and on the new evidence admitted on appeal, the panel can only conclude that the ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant failed to complete the request for reconsideration within the legislative timeline and that therefore the ministry could not reconsider the matter, was a reasonable application of the legislation in the circumstances of the appellant and was reasonably supported by the evidence. The panel confirms the decision pursuant to section 24 of the EAA and the appellant is not successful in her appeal.

APPEAL NUMBER

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Kathy Grant

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

July 24, 2019

PRINT NAME

Sandra Chan

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

July 24, 2019

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

July 24, 2019