

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Children and Family Development's (the Ministry) decision made under section 17(4) *Child Care Subsidy Regulation (CCSR)* dated August 8, 2019, that denied the Appellant's Request for Reconsideration on the grounds that her request was not delivered within the time permitted under section 17(1)(b), and that therefore the Appellant would not be granted a Reconsideration.

The Appellant was required to deliver her Request for Reconsideration within 20 business days after being notified of the decision she wished to appeal, and because she did not do so the ministry refused to consider its decision of August 2, 2017, relying upon section 17(4) which provides that if a Request for Reconsideration is not delivered within the 20 business day time period, the Appellant is deemed to have accepted the decision and it is not open to appeal to a Tribunal or other body.

**PART D – RELEVANT LEGISLATION**

*Child Care Subsidy Act (CCSA)*, section 4  
*Child Care Subsidy Regulation (CCSR)*, section 17(1) & (4)

**PART E – SUMMARY OF FACTS****BEFORE THE MINISTRY ON APPLICATION FOR RECONSIDERATION****1. The Notice of Decision (Amended) Dated August 2, 2017**

The ministry decision referenced numerous letters, email communications and telephone calls to the Appellant advising her that she was issued child care subsidies in the specific amount, for which she was not eligible under the *Child Care Subsidy Act*, alleging that she had not reported changes in her employment status and family composition changes, advising the Appellant that she must re-pay that amount and that the ministry could recover it by various means if she did not repay it, and further advising the Appellant that if she disagreed with the decision she could request a Reconsideration, and that her request must be received by the Verification and Audit Unit within 20 business days after the Appellant was notified of the decision.

**2. Document Entitled “Child Care Subsidy Overpayment Calculation” consisting of 13 pages dated August 2, 2017**

This document is a month-by-month recapitulation of the child care subsidy issued to the Appellant for the children from a specific date in 2012 to a specific date in 2016, showing amounts to which the Appellant was entitled, the amount determined by the ministry to be overpayments, with the alleged overpayments beginning in 2013, and continuing with the ministry’s determination that the Appellant was not entitled to any amounts after that specific month in 2013 through to a specific month in 2016, culminating in a total overpayment set out at the end of the document.

**3. An Xpresspost Cover Label and Signed Receipt**

This document was the address label and signed receipt of the package containing the Notice of Decision referred to in (1) above, showing that decision sent to the Appellant and signed for on August 3, 2017.

**4. The Appellant’s Verification and Audit for Reconsideration and Ministry Decision Dated May 2, 2019**

The ministry determined that the original Notification was sent to the Appellant on May 29, 2017 and received confirmation of delivery of that Notification on May 31, 2017. The ministry sent a Final Debt Notification by Xpresspost, with the signature for receipt required, which the ministry said was received from Canada Post on August 3, 2017 confirming delivery. The ministry said that when the Request for Reconsideration was received, the statutory time period within which the Appellant could apply for Reconsideration had passed, and advising that the file documentation was forwarded to another Ministry to recover the amount ministry said was wrongfully paid, and the Appellant’s file was closed.

**5. The Ministry Decision Denying the Appellant Reconsideration Dated August 8, 2019**

This decision set out the various dates, specifically saying that

- On August 2, 2017 the Verification and Audit Unit determined that the Appellant had received a specific amount of Child Care Subsidy for which she was not eligible, and stating that a denial letter and supporting legislation were sent to the Appellant
- On August 3, 2017 the ministry received confirmation from Canada Post that the Appellant received the “debt notification package”, which was the decision referred to in (1) above
- On July 10, 2019 the Verification and Audit Branch received the Appellant’s Request for Reconsideration
- On August 8, 2019 the ministry completed its review of the Appellant’s Request, denying it on the grounds and in the circumstances that the Appellant had not delivered her Request for Reconsideration within the statutory time period allowed.

6. A chain of emails exchanged between the Appellant and the ministry, which included the email from the Appellant dated August 12, 2017, in which the Appellant advised the ministry that she wanted “an appeal” and asking for information to do so.

**AT APPEAL**

**7. Notice of Appeal Dated August 23, 2019**

In her Notice of Appeal, the Appellant stated that “*the ministry would not appeal a matter saying it was out of the 20 business days*”. She stated she never received the Reconsideration package of August 2, 2017 and had “*proof via email on August 13/ 2017 that I requested the Reconsideration Package*”.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Reconsideration decision of the Ministry of Children and Family Development's (the Ministry) decision made under section 17(4) *Child Care Subsidy Regulation* (CCSR) dated August 8, 2019, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. In denying the Appellant's Request for Reconsideration, the ministry said that her request was not delivered within the time permitted under section 17(1)(b), and that therefore the Appellant would not be granted a Reconsideration .

The Appellant was required to deliver her Request for Reconsideration within 20 business days after being notified of the decision she wished to appeal, and because she did not do so the ministry refused to reconsider its decision of August 2, 2017, relying upon section 17(4) CCSR which provides that if a Request for Reconsideration is not delivered within the 20 business day time period, the Appellant is deemed to have accepted the decision and it is not open to review in a court or subject to appeal to a tribunal or other body.

**Relevant Legislation*****Child Care Subsidy Act (CCSA)*****Child care subsidies**

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

***Child Care Subsidy Regulation (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 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.

**Parties' Submissions*****Appellant's Submissions***

The appellant repeated the information that was set out above under Part E "Summary of Facts", but the gist of her submissions centred around the email that she sent to the ministry on August 12, 2017 stating that she wanted "*an appeal of this matter, can you please give me the information to do so?...*"

She explained that part of her delay in providing information to the ministry, such that there was a decision that she had been overpaid a Child Care Subsidy was caused by the fact that she could not provide the income information that was requested by the ministry to verify her status because she was undergoing an audit by the federal government and her income tax information was simply not available.

She said that she received the initial decision she wished to have reconsidered on May 29, 2017, and then later the Amended decision dated August 2, 2017, in which the ministry verification and audit officer said "*I have re-reviewed the child care subsidy payments...*" and later on said "*If you disagree with the*

*ministry's decision, you may request a reconsideration...*". She emphasised that in that decision dated August 2, 2017, the ministry said that if she disagreed she could request Reconsideration.

She said that the Reconsideration package that the ministry maintained was delivered on August 3, 2017 and signed for was something she never received and the signature on the Canada Post delivery receipt is not her signature.

She submitted that if she had received the Reconsideration package on August 3, 2017 there would have been no need for her to write and ask for it on August 12, 2017.

#### *Ministry Submissions*

In its written submission, the ministry relied upon the Reconsideration decision, stating that the original decision had been sent to the Appellant on August 2, 2017. The Reconsideration decision denying the Appellant a chance to have the original decision set out in the ministry letter of August 2, 2017 reconsidered was based upon the Reconsideration officer's determination that no request for Reconsideration was received within 20 days of the decision sent to the Appellant on August 2, 2017. The Reconsideration officer therefore determined that the Appellant would not be allowed to have the decision reconsidered.

However, at the hearing the ministry said that the Appellant's email of August 12, 2017 would have been considered a request for Reconsideration, and agreed that the email was within the 20 day period permitted under CCSR section 17(1)(b). The ministry could not explain why that email was overlooked.

#### *Panel Findings*

At the outset, the panel observes that this appeal is not dealing with whether or not the ministry's decision that the Appellant had been overpaid a Child Care Subsidy was correct or not. This appeal is concerned only with whether or not the Appellant is entitled to a Reconsideration of that decision.

The panel finds that everything that occurred after August 12, 2017 is irrelevant to this decision, because it is common ground between the ministry and the Appellant that the Appellant did email the ministry on August 12, 2017 requesting "*an appeal*", by which the panel understands the Appellant to mean that she was requesting Reconsideration of the amended decision communicated to her by letter dated August 2, 2017. The ministry agreed that that email should have been taken as a Request for Reconsideration and was within the 20 day time period allowed for in CCSR section 17(1)(b).

The panel finds that in fact the Appellant's email requesting "*an appeal*" was sent 10 days after the date of the ministry's letter to the Appellant (August 2, 2017) advising her of the finding that there had been a Child Care Subsidy overpayment, and that therefore the Appellant's request was within the 20 day time period set out in CCSR section 17(1)(b).

The panel finds that in not replying to the Appellant's email of August 12, 2017 and specifically in not providing the Appellant with the material necessary to request a Reconsideration and in overlooking the request in that email, the ministry was not acting reasonably.

The panel therefore finds that the Reconsideration decision dated August 8, 2019 was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the Appellant. The Appellant should be granted the opportunity to have the amended decision, communicated to her by letter dated August 2, 2017, reconsidered.

The Appellant is 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

Dan McLeod

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2019/SEP/16

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2019/SEP/16

PRINT NAME

Carla Tibbo

DATE(YEAR/MONTH/DAY)

2019/SEP/16