

PART C – Decision under Appeal

The issue under appeal is the Ministry's reconsideration decision dated January 27, 2011 which determined that the Appellant was ineligible for a Child Care Subsidy ("Subsidy") from September 1, 2010 to December 31, 2010 under section 4 of the *Child Care Subsidy Act* and sections 4 and 13 of the *Child Care Subsidy Regulation* because the Appellant failed to submit a Child Care Subsidy Renewal Application to the Ministry until January 6, 2011.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), Section 4  
Child Care Subsidy Regulation (CCSR), Sections 4 and 13

## PART E – Summary of Facts

The evidence before the Minister at reconsideration included the Appellant's Child Care Subsidy Request for Reconsideration dated January 26, 2011 and the Appellant's Child Care Subsidy Application dated January 6, 2011.

At the hearing, the panel also had before it the Appellant's Notice of Appeal dated February 15th, 2011, the Reconsideration Decision dated January 27<sup>th</sup>, 2011, the Appellant's Request for Reconsideration dated January 26<sup>th</sup> 2011, and oral evidence of the Ministry as to a conversation the Ministry had with the Appellant on August 06<sup>th</sup>, 2010.

At the hearing, the Appellant gave evidence that sometime in early August 2010, she received a letter from the Ministry advising her that her Subsidy was set to expire on August 31, 2010. On August 6, 2010, she called the Ministry and spoke with a worker whose name she could not recall. The Appellant stated that the purpose of her call to the Ministry was to determine what steps she had to take to renew her Subsidy. It is the Appellant's evidence that the Ministry worker she spoke to advised her at that time that she was required to submit an application form along with the previous two weeks' pay stubs for both herself and her spouse. The Appellant says that she then advised the worker that her marriage was at that time the subject of a validation process being conducted by the Canada Revenue Agency. The Appellant says that the Ministry worker then told her that she should "take care of that" before applying for the renewal of her Subsidy. Once her marriage was validated by the CRA, the Appellant called the Ministry office in late December 2010 and she was told at that time that her renewal application would not be backdated to August 1, 2010.

The Ministry advised the Panel that the Appellant's original Child Care Subsidy file was opened in August 2009 and that her initial application for a Subsidy, while dated May 26, 2009, was received on August 11, 2009, and was applicable to a period commencing September 2009. The Ministry further advised the Panel that the Appellant's original application was completed by the Appellant as a single parent and not as married. The Ministry referred to the notes of the August 6, 2010 telephone conversation between the Appellant and the Ministry worker which did not reference a request by the Ministry for employment or pay records from the Appellant's spouse and did not reference the suggestion by the Ministry worker, as alleged by the Appellant, that the Appellant not apply for renewal of the Subsidy until her marriage validation process was complete. The evidence provided by the Ministry was that there was a telephone call from the Appellant as a result of the Appellant receiving the renewal statement in the mail. The Ministry's evidence was that the Appellant was advised to submit two consecutive pay stubs as required with the renewal form. There was a further discussion about potential changes to the Appellant's child care arrangements, and that this information would be required as well.

The panel makes the following findings of fact:

The Appellant has been receiving a Child Care Subsidy from August 2009 to August 2010. A telephone conversation took place on August 6, 2010 between the Appellant and a worker with the Ministry. That telephone call was made by the Appellant regarding her Child Care Subsidy which



was set to expire on August 31, 2010. The Appellant submitted a Child Care Subsidy Application on January 6, 2011 and she was determined to be eligible for a Child Care Subsidy for the period between January 1, 2011 and December 31, 2011.

PART F – Reasons for Panel Decision

The issue to be decided is the reasonableness of the Ministry's decision that the Appellant is ineligible to receive a Child Care Subsidy for the period of September 1, 2010 through December 31, 2010 because she failed to submit a Child Care Subsidy Renewal Application to the Ministry until January 06<sup>th</sup> 2011.

The relevant legislation is the *Child Care Subsidy Act* section 4 and the *Child Care Subsidy Regulation* sections 4, 13 and 17.

***Child Care Subsidy Act***

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

***Child Care Subsidy Regulation***

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).]

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.]

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.

The Appellant's position is that she was given erroneous advice by the Ministry worker when she was told that she should wait to apply for renewal of her Subsidy until her marriage validation process was complete and that she should be eligible for a Subsidy for the period of September 1, 2010 to December 31, 2010.

The Ministry's position is that the Appellant did not submit an application for renewal of her Subsidy until January 6, 2011 and as such, she is only eligible for the subsidy for the period of January 1, 2011 through December 31, 2011.

[Redacted]

The Appellant contacted the Ministry on August 6, 2010 seeking advice as to the steps she should take in applying for the renewal of her Subsidy. The Appellant says that she was told by the Ministry worker that as the CRA marriage validation process was ongoing, she should wait until its conclusion to re-apply. Based on that advice, the Appellant did nothing until her marriage was validated by the CRA in late December 2010 at which time she telephoned the Ministry. Pursuant to s.4 of the CCS Regulation, the Appellant applied for renewal of the Subsidy on January 6, 2011 but was informed by the Ministry that pursuant to s.13(1) of the CCS Regulation, she was only eligible for a Subsidy from the first day of January 2011 and not August 1, 2010.

The Ministry contends that there is no evidence that the Ministry worker in question told the Appellant to wait until her marriage validation process was complete prior to applying for renewal of the Subsidy. The Ministry points to two facts in support of this contention:

1. Notes of the August 6, 2010 conversation between the Appellant and the Ministry worker that do not reflect any discussion relating to the Appellant's marriage validation process or her husband; and
2. When the Appellant originally applied for the Child Care Subsidy, she checked the box "Single, Separated, Divorced or Widowed." By checking this box the Ministry says that there would not be any requirement to provide information regarding her spouse's employment thus there would be no reason for the Ministry worker to raise the issue in the telephone conversation with the Appellant.

The question as to what, if any, advice was given by the Ministry worker to the Appellant on August 6, 2010 is of crucial importance in this matter. After considering all of the evidence, the majority of the panel finds the evidence of the Appellant the most compelling. Prior to August 2010, the Appellant had been consistently receiving her Subsidy and she had been submitting pay records to the Ministry as required. Once she became aware that her marriage had been validated by the CRA, she called the Ministry to notify them of that which is consistent with the advice she says she received on August 6, 2010. While there is no written record of the advice that the Appellant says was given to her, her failure to apply for renewal until five months later, viewed in the context of her past diligence in submitting the required supporting materials and her call to the Ministry following the validation of her marriage leads the majority to conclude that the Appellant received advice from the Ministry worker to not apply for renewal of the Subsidy until her marriage validation process was complete.

As the majority has found that erroneous advice was given by the Ministry worker to the Appellant, the next question to be answered is whether the erroneous advice can be described as an "administrative error" for the purposes of the CCS Regulation s. 13(2). The majority finds that the erroneous advice was given in the context of the Appellant's open Child Care Subsidy file and that it was given by Ministry staff. Therefore, the majority of the panel is satisfied that the erroneous advice given by the Ministry worker was an administrative error for the purposes of CCS Regulation s. 13(2).

The majority of the panel finds that the Ministry's decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the Ministry's decision is overturned in favour of the Appellant.

Dissenting Opinion

[REDACTED]

In the Appellant's Section 3, Reason for Request for Reconsideration, the Appellant stated that in her phone call with the Ministry on August 06<sup>th</sup>, 2010, she was advised to fax in her pay stubs and those of her spouse for the last two pay periods. The Appellant says she advised them that her marital status was under review with CRA, and at that point she was advised that she should "probably" wait until that was cleared up before she re-applied for her subsidy. The Appellant stated that she believed that in the past her Child Care subsidy had been backdated by three months, so that she believed that this would happen once her marital status as separated had been validated, and that belief she felt was consistent with what she was being told by the Ministry. The Appellant's evidence at the hearing was that had been having discussions with CRA about her marital status, and was in the process of having this validated by CRA.

This panel member cannot conclude that the reason the Appellant failed to file her renewal application in a timely manner was a direct result of being given erroneous information by the Ministry over the telephone on August 06<sup>th</sup> 2011 that she should wait until her marriage validation process with CRA was concluded before applying.

There is no written record of the conversation that took place between the Appellant and the Ministry on the 06<sup>th</sup> of August, 2011. We have two different versions of the conversation. While it is open to conclude that the Appellant failed to file her renewal application as a direct result of the information she said she received, and that would be consistent with her failure to do so, it is equally open to conclude that she failed to do so because she was unclear in her mind of what she should do, or of her belief that an application could be back dated three months as she had a belief that this had happened in the past.

The ultimate responsibility for filing the application in a timely fashion has to rest with the Appellant.

Therefore this panel member concludes that the Ministry's decision was reasonably supported by the evidence and confirms the Ministry's decision.