

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development's (ministry) reconsideration decision of July 31st, 2012 wherein the ministry determined beginning June 1st, 2012 that the appellant is not eligible to receive a child care subsidy because, in accordance with section 7(1) Child Care Subsidy Regulation (CCSR), the family's monthly net income exceeds the child's base threshold income level as set out under section 10(2) CCSR.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 4
Child Care Subsidy Regulation (CCSR) section 7, 8, 9 and 10.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration were:

- Request for reconsideration dated July 20th, 2012
- Child Care Custody Assessment report for June 2012 and July/August 2012
- Child Care Subsidy Application May 3rd, 2012
- Two pay stubs for the appellant which each indicate a net bi-weekly pay of \$1662.66.
- Letter from ministry to the appellant dated June 12th, 2012

The appellant is a single parent with two dependent children. On May 3rd, 2012 the appellant submitted his renewal application for a Child Care Subsidy. The ministry assessed the application and on June 12th wrote the appellant advising that, from the information provided, the ministry had determined that he was no longer eligible for a child care subsidy since the family's monthly net income exceeded the child's base threshold income level. In the letter, the ministry advised the appellant a number of factors such as family size, age of the child(ren) requiring child care, and the type of child care setting selected are used to determine the family's base threshold income level. The letter stated that the amount the appellant was eligible to receive as a child care subsidy had now changed since both dependent children had reached school age. The new child's base threshold income level for the appellant's family is \$1,790.00 and the family's (appellant's) monthly net income is \$3325.

Neither the appellant nor the ministry introduced any new evidence at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of July 31st, 2012 to determine that the appellant is not eligible for a child care subsidy under section 7(1) CCSR because the appellant's family net income exceeds the child's base threshold income level.

Legislation considered:
Child Care Subsidy Act

Child care subsidies

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

Child Care Subsidy Regulation Income test

Section 7

(1) An applicant is not eligible for a child care subsidy for a child receiving a type of child care if

(a) the family's monthly net income exceeds the child's threshold, and

(b) the result of the calculation under section 8 (2) for the child is not more than zero.

(2) Subsection (1) does not apply to an applicant if the child care is for a child

(a) in relation to whom the applicant has entered into an agreement with a director under section 8 of the *Child, Family and Community Service Act*,

(b) in relation to whom the applicant, by agreement under section 94 of the *Child, Family and Community Service Act*, exercises a director's rights or carries out a director's responsibilities,

(c) of whom the applicant has custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4)

(c) or 49 (7) (b) of the *Child, Family and Community Service Act*,

(d) of whom the applicant has custody under an order of the court under section 42.2 (4) (a) of the *Child, Family and Community Service Act*, if the applicant is the other person referred to in section 42.2 (4) (a) (i), or

(e) who is receiving assistance under section 6 of the *Employment and Assistance Regulation* and the applicant is the relative, within the meaning of that section, with whom the child resides.

[en. B.C. Reg. 281/2005, s. 4; am. B.C. Reg. 271/2006, s. 1.]

Amount of subsidy

Section 8

(1) If a family's monthly net income does not exceed a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care.

(1.1) If a parent is eligible for a subsidy for more than one type of child care set out in Schedule A, the minister may determine which subsidy rate applies.

(2) If a family's monthly net income exceeds a child's threshold, the amount of child care subsidy for the child in respect of a type of child care is $A - B$ where:

A = the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care;

(2.1) Repealed. [B.C. Reg. 388/2004.]

(2.2) The child care subsidy for a child described in section 7 (2) is the amount set out in Schedule A or the

parent fee, whichever is less, for the type of child care the child is receiving.

(3) If child care is required for less than 20 days per month, the child care subsidy will be prorated based on the daily rate set out in Schedule A or the daily parent fee, whichever is less.

(4) If the child care is

- (a) arranged or recommended where a risk assessment and written risk reduction plan have been completed by staff delegated under the *Child, Family and Community Service Act*, or
- (b) recommended under the *Child, Family and Community Service Act* for a parent participating in a Young Parent Program, the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.

(5) In this section, "parent fee" means the payment made by the parent for a child care space.

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How monthly net income is calculated

Section 9

(1) The monthly net income of a family is calculated by adding the income that each person in the family receives per month, including, but not limited to, the following:

- (a) employment income;
- (b) self-employment income;
- (c) maintenance paid to a spouse or child in the family;
- (d) employment insurance benefits;
- (e) workers' compensation benefits;
- (f) training allowances;
- (g) investment income, including interest;
- (h) tips and gratuities;
- (i) money earned by providing room and board, less essential operating costs;
- (j) rental income of any kind, less essential operating costs;
- (k) grants, bursaries or scholarships, except
 - (i) the amount for tuition or books, and
 - (ii) with respect to grants provided under the British Columbia Student Assistance Program, \$50 for each week covered by the grant.

(2) When calculating net income under subsection (1), the following are considered not to be income:

- (a) income earned by a dependent child;
- (b) the basic family care rate for foster homes;
- (c) assistance paid under the *Employment and Assistance Act* or assistance paid under the *Employment and Assistance for Persons with Disabilities Act*;
- (d) a family bonus;
- (e) the basic child tax benefit;
- (f) a goods and services tax credit under the *Income Tax Act (Canada)*;
- (g) a sales tax credit under the *Income Tax Act (British Columbia)*;
- (h) the BC earned income benefit;
- (i) maintenance paid for, and passed on to, a person with disabilities or a person aged 19 or older;
- (j) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (k) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax

- liability due to income received under the Forest Worker Transition Program;
- (l) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (m) post adoption assistance payments provided under section 28 (1) or 30 (1) of the Adoption Regulation, B.C. Reg. 291/96;
- (n) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (o) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program;
- (p) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Ages 6-18 Program;
- (q) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [agreement with child's kin and others];
- (r) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*;
- (s) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (t) loans provided under the British Columbia Student Assistance Program or under a student loan program of the federal government, the government of a province or the government of a jurisdiction outside Canada;
- (u) a benefit paid under section 4 (1) of the *Universal Child Care Benefit Act* (Canada);
- (v) the low income climate action tax credit under section 8.1 of the *Income Tax Act*;
- (w) the climate action dividend under section 13.02 of the *Income Tax Act*.

- (3) If the monthly net income of the family varies during a calendar year, the minister may calculate their monthly net income by
- (a) estimating the annual net income that everyone in the family, other than a dependent child, will receive in the calendar year, and
 - (b) dividing the estimated annual net income by 12.

Self-employment program exemptions

Section 9.1

- (1) In this section and section 9.2, "permitted operating expenses" includes equipment purchases or rentals, but does not include
- (a) employer contributions to an employee benefit program, other than employer contributions for employment insurance, Workers Compensation or the Canada Pension Plan, or
 - (b) rent and utilities for the residence of the persons described in clauses (A) or (B) of paragraph (h) (i) of the definition of "permitted operating expenses" in section 1, unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family's shelter allowance under the Employment and Assistance Regulation or the Employment and Assistance for Persons with Disabilities Regulation.
- (2) Income of a recipient of income assistance under the *Employment and Assistance Act* or disability assistance under the *Employment and Assistance for Persons with Disabilities Act* is exempted from the total income of the recipient's family if
- (a) the recipient is participating in a self-employment program, and
 - (b) the income is derived from a small business under the self-employment program in which the recipient is

participating and

- (i) is used for permitted operating expenses of the small business, or
- (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
- (iii) is used for costs of renovation to the recipient's place of residence if
 - (A) the renovations are part of a business plan accepted, under a self-employment program, by the minister charged with responsibility for the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act*, and
 - (B) the costs do not exceed \$5 000 or a greater amount approved by that minister.

Withdrawals and expenditures from self-employment program account

Section 9.2

The amount of any expenditure or withdrawal out of a separate account described in section 9.1 (2) (b) (ii), is self-employment income for all purposes of this regulation, unless

- (a) the expenditure or withdrawal is for the payment of permitted operating expenses of the small business referred to in section 9.1 (2), and
- (b) in the case of a withdrawal, the amount withdrawn is used within one month after the date of withdrawal to pay permitted operating expenses of the small business referred to in section 9.1 (2) (b).

How child's threshold is calculated

Section 10

(1) The threshold income level for a child receiving a type of child care is calculated by adding

- (a) the base threshold income level applicable under subsection (2) for the child's family, and
- (b) the amounts applicable to the child under subsection (3).

(2) The base threshold income level for a child's family is the amount set out in Column 2 opposite the family's size in Column 1:

Column 1	Column 2
Family Size	Base Threshold Income Level
2 persons	\$1 082
3 persons	\$1 275
4 persons	\$1 418
5 persons	\$1 571
6 persons	\$1 704
7 persons	\$1 837
8 persons	\$1 960
9 persons	\$2 083
10 persons	\$2 206
more than 10 persons	\$2 206 for the first 10 plus \$123 for each additional person

- (3) The base threshold income level for a child is increased as follows:
- (a) by \$125 per month for each person in the child's family who
 - (i) is a child with special needs,
 - (ii) is a person with disabilities, or
 - (iii) has reached 65 years of age;

 - (b) by \$515 per month for a child who
 - (i) has not reached school age and is receiving child care
 - (A) in a licence-not-required child care setting, or
 - (B) in the child's own home as described in section 2 (c), or
 - (ii) is of school age and is receiving child care in any child care setting;

 - (c) by \$1 500 per month if the child has not reached school age and is receiving child care
 - (i) in a licensed child care setting, or
 - (ii) in a registered licence-not-required child care setting;
 - (c.1) Repealed. [B.C. Reg. 145/2011, s. 3 (d).]

 - (d) by \$100 per month if the child
 - (i) is a child with special needs, and
 - (ii) receives a type of child care described in section 2.

The ministry argues that section 8 CCSR sets out the amount of child care subsidy a family may be eligible to receive and section 10 CCSR sets out how the child's base threshold income level is determined. The ministry argued that the child's base threshold income level for the appellant's family is \$1,275 plus \$515 [if the child is of school age and received child care in any child care setting (section 10(3)(b)(ii)] which totals \$1,790. The ministry argued that since the family's monthly net income (\$3325) exceeded the child's base threshold income level (\$1,790) that the appellant does not meet the legislated criteria in section 7(1) CCSR to be eligible for a child care subsidy. The ministry argued that once it was determined that the appellant's daughter was school age, the amount of subsidy (section 10(3) CCSR) that the appellant was eligible to receive was significantly less compared to what he had received previously and this change impacted on his eligibility to receive a child care subsidy.

The appellant argues that he needs the child care subsidy to assist with his child care expenses and pay the normal increases to maintain his household – food, clothing, gasoline, utilities, etc. The appellant argues that because his daughter is now considered school age that according to the legislation he makes too much money and is not entitled to a child care subsidy. The appellant argues the legislation is flawed and that his daughter, who is only 6 years old, cannot and should not, be expected to take care of herself. The appellant argues that he is employed daily on a full-time basis and that there is no one to take care of his daughter when he goes to work, that his wages have not increased in the last three years but his expenses have and now he is being told he does not qualify for the child care subsidy. The appellant argues that without the subsidy he will not be able to afford to go to work and requests that the panel (the ministry) make an exception, understanding his circumstances, and that he be given the child care subsidy even if it is only for the summer months when his daughter is not at school. The appellant does not argue with the ministry's calculations, he disagrees with the legislation.

Both the panel and the ministry must be guided in their decision by the legislation within the Child Care Subsidy Act and Child Care Subsidy Regulation and have no discretion to vary from the legislation.

Section 7(1) CCSR states an applicant is not eligible for a child care subsidy if (a) the family's monthly net income exceeds the child's base threshold and (b) the result of the calculation under section 8(2) CCSR for the child is not more than zero.

The panel finds that the child's base threshold income for the appellant's family is \$1,790; that the family's monthly net income is \$3325; and therefore, as set out in section 7(1)(a) CCSR, the appellant is not eligible for a child care subsidy. The panel finds the ministry reasonably applied the CCSR legislation and that the ministry's decision to determine that the appellant is not eligible for a child care subsidy was reasonable.

The panel finds that the ministry's reconsideration decision is a reasonable interpretation of the legislation supported by the evidence and confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.