PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (Ministry) reconsideration decision dated March 15, 2012 that determined the appellant was not eligible beginning June 1, 2012 to receive a child care subsidy (CCS) because the family's monthly net income in accordance to section 7(1) of the Child Care Subsidy Regulation (CCSR) exceeds the child's base threshold income level as set under section 10(2) of the CCSR.

The ministry in this reconsideration decision also notes that the appellant subsequently requested in a letter dated February 18, 2013 retroactive funding for another period and to contact the Child Care Subsidy Centre for follow-up.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration was the following:

- A Child Care Subsidy application signed by the appellant is submitted July 16, 2012 for type L2 Child Care according to Schedule A of the CCSR. The application is for after school child care subsidy for one child. The application reports income from Federal benefits and other disability income of $1140.89.

- A Child Care Subsidy Assessment by the ministry approved August 16, 2012 effective for the month of June 2012 indicating a family income of $2,329.76 and an amount of CCS of zero dollars.

- Letter from the Ministry to the appellant dated June 4, 2012 denying the appellant's request for a Child Care Subsidy.

- 2-page Banking Statements of the appellant that indicate net monthly income from Canada Pension Plan (CPP) in the amount of $1,188.86 and a disability fund of $1,140.89 totaling $2,329.75

- 2-page Canada Revenue Agency income tax Notice of Assessment for 2011 dated October 4, 2012 showing a tax credit of over $4,000.00

- A 2-page Statement of Real Estate Rentals for tax purposes (T776) for 2011 indicating a rental income of $1,140.00 per month which factors in the operating expenses of property taxes and property repairs and showing a net loss of $11,273.63.

- On February 1, 2013 the appellant contacted the ministry requesting another Request for Reconsideration form as she had not been able to pursue the matter earlier due to illness and asked for an extension to file same, which was accepted.

- On March 7, 2013 the appellant submitted her Request for Reconsideration with supporting documents. In this Request for Reconsideration the appellant notes in a letter dated February 18, 2013 her family's monthly financial constraints regarding medical costs and the benefits that her son does receive from child care experiences.

In her Notice of Appeal dated April 28, 2013 the appellant corrects the fact that her monthly rental income is not received from another person who lives in her house, but a separate residence in another area of B.C. and that it does not provide extra monthly income, but rather added costs each month. The appellant notes that only she, her husband and son reside in the family residence. The appellant's NOA was admitted by the panel as evidence under section 22(4) of the Employment and Assistance Act (EAA) as evidence in support of the information and records before the ministry at the time of reconsideration.

In this written hearing, the ministry advised that its submission is the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry of Children and Family Development (Ministry) reconsideration decision dated March 15, 2012 that determined the appellant was not eligible beginning June 1, 2012 to receive a child care subsidy because the family's monthly net income in accordance to section 7(1) of the Child Care Subsidy Regulation (CCSR) exceeds the child's base threshold income level as set under section 10(2) of the CCSR was a reasonable application of the legislation or reasonably supported by the evidence.

The relevant legislation consider is the following:

Child Care Subsidy Act

Child care subsidies

4 Subject to the regulations, the minister may pay child care subsidy

Child Care Subsidy Regulation

Income test

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),

(e) who is receiving assistance under the authority of the Child in the Home of a Relative Program Transition Regulation, B.C. Reg. 48/2010, and the applicant is the relative with whom that child resides, or

(f) who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e),

provided

(i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or

(ii) by the Nisga'a Nation or a treaty first nation.

[en. B.C. Reg. 281/2005, s. 4; am. B.C. Regs. 271/2006, s. 1; 143/2012, s. 2.]

Amount of subsidy

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;

B=the amount of A for the child, divided by the sum of the amounts of A for all children in the family receiving child care

described in section 2, multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold

(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) provided through a Young Parent Program, and the child care provider operating the Young Parent Program confirms, in the form and manner specified by the minister, that the parent is participating in the 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.

[am. B.C. Regs. 390/2000, s. 1; 57/2002, s. 3; 388/2004; 493/2004, s. 2; 281/2005, s. 5; 271/2006, s. 2; 187/2007, s. (d); 143/2012, s. 3.]

How monthly net income is calculated

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*;

(c.1) assistance that is similar in nature to any of the types of assistance provided under an Act referred to in paragraph (c) and that is paid under a program provided

(i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or

(ii) by the Nisga'a Nation or a treaty first nation;

(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 *[agreement with child's kin and*

others] of the Child, Family and Community Service Act;

(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.

[am. B.C. Regs. 234/98, s. 2; 110/99; 229/2000; 328/2000, s. 1; 340/2000, s. 1; 413/2000, s. 1; 29/2001, s. 1; 85/2001, s. 1; 262/2002, s. 4; 205/2003; 493/2004, s. 3; 121/2005, s. 3; 281/2005, s. 6; 247/2006; 169/2008; 143/2012, s. 4.]

How child's threshold is calculated

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 Family Size	Column 2 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.

[en. B.C. Reg. 281/2005, s. 7; am. B.C. Regs. 398/2007, s. 1; 145/2011, s. 3.]

Schedule A

Item	Column 1	Column 2A	Column 2B	Column 3A	Column 3B
	Type of Child Care	**4 Hours or Less Daily** unless both before and after school care provided		**More than 4 Hours Daily** or both before and after school care provided	
		$ Per Day	$ Per Month	$ Per Day	$ Per Month
	Subsidy Rates for Licensed Child Care Settings				
	Licensed Group Care and Multi-Age Child Care				
1	G1 – Group (children under 19 months)	18.75	375.00	37.50	750.00
2	G2 – Group (children 19 months and over but under 37 months)	15.90	317.50	31.75	635.00

3	G3 – Group (children who have reached 37 months of age but who have not reached school age)	13.75	275.00	27.50	550.00
4	G4 – Group (children of school age)	10.38	207.50	20.75	415.00
	Licensed Family Child Care and In-Home Multi-Age Child Care				
5	J1 – L Family (children under 19 months)	15.00	300.00	30.00	600.00
6	J2 – L Family (children 19 months and over but under 37 months)	15.00	300.00	30.00	600.00
7	J3 – L Family (children who have reached 37 months of age but who have not reached school age)	13.75	275.00	27.50	550.00
8	J4 – L Family (children of school age)	10.38	207.50	20.75	415.00
9	Repealed. [B.C. Reg. 145/2011, s. 4 (d).]				
	Licensed Preschool				
10	N1 – (children who have reached 30 months of age but who have not reached school age)	11.25	225.00	-	-
	Subsidy Rates for Licence-not-required Child Care Settings				
11	F1 – LNR (children under 19 months)	10.95	219.00	21.90	438.00
12	F2 – LNR (children 19 months and over but under 37 months)	10.10	202.00	20.20	404.00
13	F3 – LNR (children 37 months and over)	8.85	177.00	17.70	354.00
	Subsidy Rates for Registered Licence-not-required Child Care Settings				
14	R1 – RLNR (children under 19 months)	15.00	300.00	30.00	600.00
15	R2 – RLNR (children 19 months and over but under 37 months)	15.00	300.00	30.00	600.00
16	R3 – RLNR(children who have reached 37 months of age but who have not reached school age)	13.75	275.00	27.50	550.00
17	R4 – RLNR (children of school age)	10.38	207.50	20.75	415.00

Subsidy Rates for Care Surrounding School Day –

All Child Care Settings Except Child's Own Home with Respect to Additional Child

and 1st Child of School Age if Another Younger Child in Family is H1 or H2

18	L2 – children of school age not in child's own home child care setting and 1st child of school age in child's own home child care setting unless another child in the family, younger than school age, is in category H1 or H2				
		8.75	175.00	10.50	210.00

The ministry's position is that the appellant's net monthly income from CPP and the long-term disability that amounts to $2,329.75 exceeds the child's income threshold of $ 1,790.00. As a result, the appellant does not meet the legislated criteria in section 7 of the CCSR and, therefore, is not eligible for a child care subsidy. It also submits that the appellant is not eligible for a partial subsidy under section 8 (2) of the CCSR. The ministry also notes the added monthly rental income the appellant receives which was not calculated as part of the appellant's monthly net income, but increases the actual net income above $2,329.75. It also notes the monthly financial issues of the appellant, but submits it has no discretion to grant the child care subsidy if the legislated criteria are not met.

The appellant's position is that she needs the child care subsidy because she is faced with excessive monthly financial constraints due to family medical issues and, without it, her son will not be able to receive the benefits the care affords. The appellant also argues that her rental property does not provide her with extra income, but rather added costs which should be factored in to her monthly net income.

Section 7(1) of the CCSR states that an applicant is not eligible for a child care subsidy 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. The panel finds that the child's base threshold for the appellant's family is $ 1,790.00 according to calculations under section 10 that allows a Base Threshold Income Level of $1,275.00 per month plus $515.00 per month for a child who is of school age and is receiving child care in any child care setting.

The panel finds the rental premises of the appellant are at another location than the family residence as stated in the appellant's NOA and confirmed by the Statement of Real Estate Rentals. The panel

notes that section 9(1) (j) of the CCSR in calculating net income includes rental income of any kind, less essential operating costs. The panel finds the appellant has provided an income tax form that lists expenses on a range of items that have not been established as essential operating costs such as 10% of $12,663.20 for a Motor Vehicle (not including Capital Cost Allowance); $5,679.88 for maintenance and repairs and $ 2,668.00 for management and administration fees. Given the large amount of these expenses relative to the monthly rental income of $1140.00 the panel finds the appellant has provided insufficient evidence to establish that these are "essential" operating costs as intended by the legislation which refers to not just operating costs, but those that are " essential." The panel finds, therefore, excluding the rental income, the family's net income is $2,329.75. Therefore, as set out in section 7(1) (a) and (b) of the CCSR the panel finds the ministry's determination that the appellant was not eligible for a child care subsidy was reasonable.

Section 8(2) of the CCSR allows the eligibility for partial subsidy using the following formula: A-B where A= the amount set out in Schedule A or the parent fee, whichever is less, for the type of child care; B=the amount of A for the child, divided by the sum of the amounts of A for all children in the family receiving child care described in section 2, multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold. The panel finds that the family's monthly net income is $2,329.75 and that the potential subsidy for the appellant's type of child care is (A) $175.00 monthly. Therefore, based on the above formula and calculation as follows:
$175.00÷$175.00= $1.00 x ($2329.75-$1,790.00)= ($539.75) x 50% =B or $269.88. Subtracting (B) $269.88 from (A) $175.00 amounts to minus $94.88 which is an amount not more than zero. As a result, the panel finds that the ministry's determination that the appellant was not eligible for a partial subsidy under the CCSR was reasonable.

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and is reasonably supported by the evidence. The panel, accordingly, confirms the ministry's decision.