

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development's (the "ministry") reconsideration decision dated June 20th, 2013 wherein the ministry determined that (a) beginning April 1 2013 the appellant is not eligible to receive a full child care subsidy based on the provisions of section 7 (1) and 10 of the Child Care Subsidy Regulation (CCSR), and (b) the appellant is also not eligible for a partial subsidy based on the provisions of Section 7 (1) of the CCSR and the calculation under section 8 (2), because the appellant's monthly family income exceeds the child's base threshold income level as set out in section 10 (2) CCSR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The relevant evidence before the ministry at the time of reconsideration included the following:

- Appellant's Child Care Subsidy Application dated April 4, 2013 from the appellant;
- Child Care Subsidy Assessment dated as of the Reapplication date of April 30, 2013 for the Plan expiry date of April 30, 2013;
- Child Care Arrangement dated May 2, 2013;
- Appellant's pay stub dated March 8, 2013 and March 22, 2013, which indicate a net bi-weekly pay of \$1565.17 and \$1619.89 respectively, for an aggregate net income from employment of approximately \$3185.00;
- Letter from the ministry to the appellant dated May 14, 2013 informing the appellant that (a) she is not eligible for a subsidy beginning April 1, 2013; (b) her family net monthly income exceeds the amount that would qualify her for a parental subsidy; (c) the ministry has recalculated her eligibility for subsidy based on a reduced threshold amount due to her son being considered to be of school age;
- Telephone Log dated June 19, 2013 of a conversation between a representative of the ministry and the appellant that states that the appellant is receiving \$840.00 per month as rental income from her basement suite;
- Family expenses sheet for the months of January, February and March 2013 submitted by the appellant;
- Appellant's Reasons for Reconsideration Request which includes the following submissions from the appellant: (a) the appellant's son needs child care now that he is in school; (b) the daycare fees go up in the summer months to \$650.00 per month; (c) the appellant is paying for child care with money borrowed from bank and credit cards; (d) the appellant does not receive child support from her son's father; (e) the appellant does not lead an extravagant life; and (f) the appellant had sought counseling from an external source to manage her expenses; and
- Ministry's calculation sheet setting out the calculation of eligibility for partial subsidy in accordance with the applicable provisions of the law.

The appellant is a single parent with one dependent child. On April 4, 2013 the appellant submitted her renewal application for child care subsidy. The ministry assessed the application on May 14, 2013 and informed the appellant that, from the information provided by the appellant, the ministry had determined that she was no longer eligible for child care subsidy due to the family's monthly net income level.

Neither the appellant nor the ministry introduced any new evidence at the hearing. However, the appellant and the ministry made the following submissions at the hearing:

The appellant submitted that her reasons for appeal are the same as those that she had submitted in writing before the appeal. She does not understand why the amount of subsidy changes when a child becomes of school age particularly as the need for child care support continues even at that age. The appellant stated that day cares are expensive i.e. \$450.00 per month during the school year and \$650.00 during the summer. The appellant purchased a house in June or July of 2012 and her monthly mortgage payment is approximately \$2200.00. She has been receiving rental income of \$840.00 per month from the time she purchased her house in 2012. The appellant has sought guidance from credit counselors as to how she should manage her monthly expenses differently, but nonetheless, after payment for shelter, food and clothing, she is still short of money for day care expenses. The appellant acknowledged that her employment income for the month of March 2013 was approximately \$3150.00, which was in addition to the monthly rental income of \$840.00 received by her. She also acknowledged that her average monthly income from employment is approximately \$3150.00. The appellant argued that she is very conscious of how she spends her income. She does not receive any child support. It is in arrears and likely to remain so in the future.

The ministry stated that it is sympathetic to the financial situation of the appellant. However, the appellant's monthly employment income exceeds the threshold prescribed by law and the ministry has no discretion to deviate from the criteria under section 7 of the CRSR. The ministry recommended that the appellant may wish to consider applying for child care tax credits in her income tax returns.

Based on the foregoing, the panel makes the following findings of fact:

- There are two people in the appellants family – the appellant and her 6 year old son;
- During the month of March 2013, the appellant received a net income of approximately \$3185.00;
- The appellant also received \$840.00/month as rent from her basement suite, which was not reported as a source of income in the appellant's 2013 Child Care Subsidy Application.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated June 20, 2013 that determined that beginning April 1 2013 the appellant is not eligible to receive a child care subsidy because, in accordance with section 7 (1) of the Child Care Subsidy Regulation (CCSR), the appellant's monthly family income exceeds the child's base threshold income level as set out in section 10 (2) CCSR.

The relevant applicable legislation is as follows:

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) 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.

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.

(2.1) 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) 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.

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.

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 \$1500 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.

Schedule A

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				
G1 – Group (0 - 18 months)	18.75	375.00	37.50	750.00
G2 – Group (19 - 36 months)	15.90	317.50	31.75	635.00
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
G4 – Group (children of school age)	10.38	207.50	20.75	415.00
Licensed Family Child Care				
J1 – L Family (0 - 18 months)	15.00	300.00	30.00	600.00
J2 – L Family (19 - 36 months)	15.00	300.00	30.00	600.00
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
J4 – L Family (children of school age)	10.38	207.50	20.75	415.00
Licensed Preschool				
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

F1 – LNR Family (0-18 months)	10.95	219.00	21.90	438.00
F2 – LNR Family (19 - 36 months)	10.10	202.00	20.20	404.00
F3 – LNR Family (37 months and over)	8.85	177.00	17.70	354.00

Subsidy Rates for Registered Licence Not Required Child Care Settings

R1 – R Family (0 - 18 months)	15.00	300.00	30.00	600.00
R2 – R Family (19 - 36 months)	15.00	300.00	30.00	600.00
R3 – R Family (children who have reached 37 months of age but who have not reached school age)	13.75	275.00	27.50	550.00
R4 – R Family (children of school age)	10.38	207.50	20.75	415.00

Subsidy Rates for In Child's Home Child Care Setting

H1 - (1st child - 0 - 18 months)	9.85	197.00	19.70	394.00
H2 - (1st child over 18 months)	7.95	159.00	15.90	318.00
H3 - (2nd child - 0-18 months)	4.95	99.00	9.90	198.00
H4 - (each additional child, including 1st child of school age if another child in the family, younger than school age, is in category H1 or H2)	3.68	73.50	7.35	147.00
L2 – children of school age except if considered the 'additional child'	8.75	175.00	10.50	210.00

Subsidy Rates for Care Surrounding School Day

L2 – all children of school age except children in Child's Own Home Child	8.75	175.00	10.50	210.00
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Care Setting
considered the
'additional child'

The appellant's case is that she still needs a child care subsidy to assist with her child care expenses as her monthly expenses exceed the aggregate of her monthly employment income and rental income. The appellant is paying for child care with money borrowed from bank and credit cards and she does not receive child support from her son's father. The child support from her son's father is in arrears and likely to remain so in the foreseeable future. The appellant maintains that she does not lead an extravagant life and she has sought counseling from an external source to manage her expenses. The appellant, however, acknowledged that her average monthly income from employment is approximately \$3150.00.

The ministry's position is that the appellant is not eligible for full or partial child care subsidy as described in section 7 of the CCSR on the grounds that (a) the appellant's net income from employment is approximately \$3185.00 and exceeds the child's income threshold of \$1597.00; and (b) The amount of the relevant calculation prescribed under section 8 (2) of CCSR for child care subsidy, is not more than zero. As required by section 9 (1) (a) of CCSR, employment income is calculated into monthly income and is not exempt under the provisions of section 9 (2) of the CCSR.

Both the ministry and the panel are bound by the express provisions of the CCSA and the CCSR and have no flexibility or discretion to deviate from the prescribed provisions of the legislation. Section 7 (1) of the CCSR prescribes that an applicant is not eligible for a child care subsidy if (a) the family's net income exceeds the child's base threshold and (b) the result of the consequential calculation under section 8 (2) of the CCSR for the child is not more than zero and the appellant therefore does not meet the eligibility criteria for the subsidy.

The panel finds that:

- (a) The Appellant's family's monthly net income is \$3185.00;
- (b) Based on the family's monthly net income, the potential subsidy amount as per Schedule A is \$210.00;
- (c) The child's base threshold income exemption for the appellant's family as per section 10 of the CCSR is \$1597.00; and
- (d) The amount of the partial subsidy prescribed by section 8 (2) of CCSR is therefore not more than zero as per the calculation set out below:

Calculation

There is 1 Child in the family receiving child care described in section 2 of the CCSR. Therefore using the formula prescribed in section 8 (2) of the CCSR:

A = \$210.00 (Lesser of potential subsidy amount in Schedule A or actual cost of daycare, whichever is less, for the type of child care)

B = \$794 (A divided by total A for the family) X (50% of (Actual family income minus child income exemption))

\$210.00 divided by \$210.00 = (a) \$1.00

\$3185.00 - \$1597.00 = \$1588.00 X 50% = (b) \$794.00

B = (a) \$1.00 x (b) \$794.00 = \$794.00

A = B = (\$210.00 - \$794.00) = -\$584.00 (amount is not more than zero)

Therefore, as set out in section 7 (1) (a) of CCSR, the appellant is not eligible for partial child care subsidy.

The panel expresses no opinion about the rental income received by the appellant notwithstanding the fact that the net rental income is also required to be calculated in to the family units monthly net income as prescribed by the applicable law. In this context, the panel notes the ministry's decision not to included the rental income in the appellant's net monthly income because the essential operating costs for the rental suite could not be calculated based upon information available to the ministry at the time of reconsideration.

The panel finds that the ministry's determination that beginning April 1 2013 the appellant is not eligible to receive a child care subsidy was reasonable. The panel further finds that the ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel confirms the decision of the minister.