PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 14, 2014 which found that the appellant was not eligible for a child care subsidy as the subject child care arrangement is not an eligible child care arrangement under Section 2 of the *Child Care Subsidy Regulation* (CCSR).

PART D – Relevant Legislation

Child Care Subsidy Regulation (CCSR), Section 2

PART E – Summary of Facts

With the consent of the parties this appeal was conducted in writing in accordance with s. 22(3)(b) of the *Employment and Assistance Act* (EAA).

The evidence before the ministry at the time of the reconsideration decision included:

1) Copies of driver's licenses and medical care cards (mostly illegible);
2) Birth Certificate for the appellant's child indicating the name of the child's mother;
3) Undated note signed by the appellant stating that his work schedule varies and he works 4 days on, 4 days off, on rotational schedules;
4) Earnings statement for the appellant for the period ending October 19, 2013;
5) Child Care Subsidy, Application dated October 29, 2013 indicating that this is the first time that the appellant and his spouse have applied and that the appellant's spouse has a condition that interferes with her ability to care for the children who require child care. One child is cared for full-time with one child care provider (provider #1) and the other child is to be cared for by two child care providers (provider #1 and provider #2);
6) Child Care Subsidy, Medical Condition dated October 29, 2013 in which a physician indicated that the children's mother has an existing medical condition that interferes with her ability to care for her children;
7) Child Care Subsidy, Child Care Arrangement form dated October 29, 2013 indicating the name of the child care provider as a license-not-required child care arrangement (provider #1) and details of the appellant's two children;
8) Letter dated December 16, 2013 from a physician to the Ministry of Children and Family Development (MCFD) which states in part that the physician knows the child care provider (provider #1) as a patient for many years and he believes that placing the appellant's children in her care, while the current situation between the appellant and his spouse is resolved, is the best for the children and the parents at this time. The physician supports the appellant's request for financial assistance for the children while they are being cared for at his grandparent's home (provider #1); and,
9) Request for Reconsideration- Reasons dated November 29, 2013.

Prior to the hearing, the appellant provided additional documents as follows:

1) Child Care Subsidy, Child Care Arrangement dated January 20, 2014 indicating the name of a child care provider (provider #2) as a licensed preschool for part-time care of one of the appellant's children; and,
2) Letter dated February 18, 2014 from the appellant's grandparents stating in part that:
    - They have supported the appellant since he made an application for assistance in October 29, 2013.
    - The appellant has stayed with his wife through difficult times because of mental health issues. The appellant is trusting that his family will be reunited in a home that will be a good environment and a safe place for his children to grow up.
    - The appellant was put out of his home for legal reasons, his children's lives were disrupted, his wife needed medical help, and his marriage was strained.
    - From August 24, 2013, when they first got the children, until present the children are growing and thriving in every way. They will continue to help the appellant and look after his children until the appellant is reunited as a family.
    - One child is attending pre-school 3 days per week, preparing him for kindergarten.

- The main reason for rejection [of the appellant's application] is that the grandparents and the appellant are family. This is nothing more than discrimination against family members who are willing to help in a time of crisis.

Prior to the hearing, the ministry provided a written submission dated February 18, 2014 stating that:

- The child care arrangement with the caregiver who is the appellant's grandmother (provider #1) is an ineligible arrangement since the caregiver is a relative of the children and resides in the same home as the children.
- The Child Care Subsidy Child Care Arrangement form dated January 20, 2014 with information regarding preschool for one of the appellant's children (provider #2) was not available in the original decision or the Request for Reconsideration. This form can be submitted to the Child Care Subsidy Centre and eligibility for child care will be reassessed.

No objections were raised in the written submissions by either the ministry or the appellant to the admissibility of these documents. The panel admitted the letter from the appellant's grandparents and the Child Care Arrangement form, pursuant to Section 22(4) of the *Employment and Assistance Act*, as providing information regarding the care of the appellant's children and being in support of information that was before the ministry at reconsideration. The panel considered the ministry submission as argument containing no new evidence.

In his Request for Reconsideration, the appellant wrote that:

- He feels that the section of the Child Care Act which states that relatives of a child are not eligible for child support is discriminatory towards relatives.
- Child care is best done by placement with family members or relatives.
- The youngest child has been in the present home for 8 to 10 hours per working day while he and his spouse worked. Now both children are in this home full time because of the present family situation, which is putting a financial strain on the family giving constant support and care for the children.
- Child protection services have evaluated the placement home and found that the children are well cared for and given love, care and provision that would likely not be so in a home that would be foreign to them. The youngest child has known this home as a second home for the past 4 ½ years.
- To remove the children from this home just to place them in an "approved" home would not only be detrimental to their present physical and mental state, but would also disrupt any routines in place which are necessary for the children's daily care.
- Their personal physician, upon seeing the children, stated that they are fortunate to be cared for by the appellant's grandmother, which is the best possible home they could be in.
- The home his children are now in is stable, safe and provides a healthy environment for his children.

In his Notice of Appeal, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- He failed to submit a Child Care Subsidy Child Care Arrangement form with his previous application and he has now submitted the form.
- He believes his children are receiving far better care than any "approved" care givers could or would provide.
- The decision to deny financial support is discrimination against family members.

The ministry also relied on its reconsideration decision which included evidence that:

- The appellant applied for the Child Care subsidy for his two children on October 29, 2013.
- A Child Care Subsidy Medical Condition form was included in which a physician confirmed that the appellant's wife has a medical condition that interferes with her ability to care for the children.
- In the Child Care Subsidy Child Care Arrangement form, the appellant's grandmother is listed as the child care provider (provider #1).
- On the Child Care Subsidy Application form, another care provider (provider #2) is also listed for the appellant's youngest child but no information was provided for provider #2 in a Child Care Subsidy Child Care Arrangement form.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found that the appellant was not eligible for a child care subsidy as the subject child care arrangement is not an eligible child care arrangement under Section 2 of the *Child Care Subsidy Regulation* (CCSR), was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 2 of the *Child Care Subsidy Regulation* (CCSR), provides:

What types of child care may be subsidized?

2 The minister may pay a child care subsidy if the child care is provided

(a) in a licensed child care setting,

(b) in a licence-not-required child care setting,

(b.1) in a registered licence-not-required child care setting, or

(c) in the child's own home, but only if the child care is provided by someone other than a person who

(i) is a relative of the child or a dependant of the parent, and

(ii) resides in the child's home.

Ministry's Position

The ministry's position is that the appellant is not eligible for the child care subsidy beginning October 1, 2013 because his children are not attending an eligible child care arrangement as set out in Section 2 of the CCSR. The ministry stated that provider #1, as the appellant's grandmother, is a relative of the children and resides in the same home as both of the appellant's children. The ministry stated that care cannot be provided in a child's own home if the care is provided by a relative and if the relative resides in the child's home. The ministry acknowledged that the living arrangement for the appellant and his two children is temporary but stated that as provider #1 is a relative of the children and currently lives in the same home as the children, the child care arrangement is not an eligible arrangement under Section 2 of the CCSR. The ministry also stated that the Child Care Subsidy Child Care Arrangement form dated January 20, 2014 with information regarding preschool for one of the appellant's children (provider #2) was not available in the original decision or the Request for Reconsideration and, therefore, the ministry has not had an opportunity to consider this information with respect to provider #2.

Appellant's position

The appellant's position is that he does not dispute that both children have been placed by child protection services in the home of his grandmother and argued that the placement has been evaluated and it has been found that the children are well cared for. The appellant argued that their personal physician, upon seeing the children, stated that they are fortunate to be cared for by the appellant's grandmother, which is the best possible home they could be in. The appellant argued that now that both children are in this home full time, it is putting a financial strain on the family giving constant support and care for the children. The appellant argued that child care is best done by placement with family members or relatives and to remove the children from this home just to place them in an "approved" home would be detrimental to their well-being. The appellant argued that the section of the Child Care Act which states that relatives of a child are not eligible for child support is discriminatory towards relatives. The appellant acknowledged that he failed to submit a Child Care Subsidy Child Care Arrangement form for provider #2 with his previous application and argued that he has now submitted the form.

Panel decision

Section 2 of the CCSR stipulates that the ministry may pay a child care subsidy if the child care is provided in the child's own home, but only if the child care is provided by someone other than a person who is a relative of the child and who resides in the child's home. Although the appellant's children are residing in the home of the appellant's grandparents, the appellant did not dispute that this is "the child's own home." The appellant's grandparents stated in their letter dated February 18, 2014 that they first got the children on August 24, 2013, that the children are thriving and that they will continue to help the appellant and look after his children until the appellant is reunited with his family. In a letter dated December 16, 2013, the physician of the appellant's grandparents supported the placement of the appellant's children in their care as being best for the children and the parents, while the current situation between the appellant and his spouse is resolved. The appellant admitted that both of his children had been placed by child protection services in the home of his grandmother, that the children remained in his grandmother's care at the time of his application on October 29, 2013, and the panel finds that the ministry reasonably determined that the home of the appellant's grandmother is currently "the children's own home."

The appellant also did not dispute that his grandmother is a relative of his children and that she resides in the children's home. The appellant argued that he believes his children are receiving far better care than any "approved" care givers could provide and that the decision to deny financial support is discrimination against family members. The ministry did not dispute that the appellant's children are being well cared for by the appellant's grandmother and pointed out that the ministry does not have discretion to grant a subsidy if a child care arrangement does not meet the requirements of Section 2 of the CSSR. The panel also does not have jurisdiction over constitutional questions or jurisdiction to apply the *Human Rights Code* as a result of Sections 44 and 46.3 of the *Administrative Tribunals Act*, which apply to the Employment and Assistance Appeal Tribunal pursuant to Section 19.1 of the *Employment and Assistance Act*.

On the appellant's Child Care Subsidy Application form, another care provider (provider #2) was listed for the appellant's youngest child but, as no information was submitted for provider #2 in a Child Care Subsidy Child Care Arrangement form, the ministry did not consider the appellant's eligibility for a child care subsidy for this provider. The appellant acknowledged that he failed to submit a Child Care Subsidy Child Care Arrangement form for provider #2 with his previous application and argued that he has now supplied the form with his Notice of Appeal. The ministry has not yet made a decision with respect to the appellant's eligibility for a child care subsidy for provider #2 and an appeal at this stage is, therefore, premature. The ministry suggested that the appellant submit the Child Care Subsidy Child Care Arrangement form to the Child Care Subsidy Centre and that his eligibility for a child care subsidy for provider #2 will be assessed by the ministry at that time.

Conclusion

The panel finds that the ministry's decision, which concluded that the appellant was not eligible for a child care subsidy as the subject child care arrangement is not an eligible child care arrangement under Section 2 of the CCSR, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the decision.