

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated July 29, 2014 which found that the appellant was not eligible for child care subsidy beginning July 1, 2014 because she does not have an eligible reason for needing child care, pursuant to Section 3 of the *Child Care Subsidy Regulation (CCSR)*.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), Section 4

Child Care Subsidy Regulation (CCSR), Section 3



PART E – Summary of Facts

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

- 1) Letter dated June 18, 2014 from the appellant to the ministry stating in part that she has received the day care subsidy for her child's daycare for the past few months, which is expiring. She is still working full-time. Her husband is volunteering at a care centre and studying by himself in order to get ready for a professional exam in January 2015 in order to practice his profession in Canada. Her husband has to study full time so he has no time to take care of their child and she cannot afford to pay the day care fees;
- 2) Letter dated July 9, 2014 from the ministry to the appellant denying her request for the child care subsidy as she does not require child care for any of the eligible reasons;
- 3) Information regarding the professional exam, including confirmation of payment of the exam fee of \$1,695, a list of preparation resources and suggested reference books, and an exam date of November 8, 2014; and,
- 4) Request for Reconsideration- Reasons dated July 21, 2014.

In her Request for Reconsideration, the appellant wrote that:

- She is working full time but her husband is trying to upgrade his professional certificate to work in Canada. He must take and pass several exams as a prerequisite before applying for a position.
- He has registered for the first exam, which is a comprehensive exam covering all the subjects he had studied over 7 years. Her husband must review all these subjects and this takes a lot of time.
- It is very competitive for a few available positions so it is very important that he gets high marks in the exams in order to have more chance to succeed in this process.
- It is true that her husband is not attending any school right now, but he is studying by himself at least 12 hours each day and he cannot take care of their child at the same time.
- She has no relatives in Canada and the only option is to take her child to daycare but she cannot afford to pay daycare costs.
- Although her husband registered to write the first exam in November 2014, he is going to postpone it to January 2014 (sic). She attached information about the exam.
- She believes that her situation does not match any of the reasons for receiving child care subsidy but she really needs child care for the described reasons, which is not considered in legislation.

In her Notice of Appeal dated August 6, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that, according to the legislation, the reason for offering subsidies to families is that both parents do not have time to take care of their child and this works for her situation. Her husband is studying to upgrade his license in order to find a job, so it could be considered as a way of job seeking which is one of the reasons for receiving the subsidy.

At the hearing the appellant's husband stated that:

- He came to Canada in 2012 and was a professional in his country of origin. He needs to upgrade his license in order to practice in Canada.
- His wife is working full time but daycare expenses are high.
- For the first year, he took care of their child and studied at the same time but he found that he could not do it as his young child took all of his time.
- After the first year, they took their child to daycare and he took courses to improve his English-

language skills and he was also searching for a job.

- They received the child care subsidy for their child for the period October 2013 through April 2014 and they did not receive a subsidy for the months of May, June or July 2014.
- Since he could not find a job, he decided to focus full time on his studies.
- For the comprehensive exam, he needs to study all of the subjects and, although he has started, he feels he does not have enough time to prepare for the exam on November 8, 2014 and he will try to postpone it to January or February of 2015.
- He is not attending any school or training for writing the exam as he is doing a program of self-study and then he will write the exams. He is aware that some private organizations may offer sessions to assist with studying for the exam, but these have a fee and he is able to study as effectively on his own.
- He has not approached employers and cannot work in his chosen profession unless he has a license to practice in Canada.
- He anticipates that it will take him 9 months to prepare properly for the first exam and, if he passes in January 2015, he will have to study again and take the next exam in July of 2015. After the second exam, he will need to study again and write the third exam about 6 months later. He also needs to take an English- language proficiency exam.
- The timing for the exams may change, depending on how well he does at each stage.

At the hearing the appellant stated that:

- Her parents do not live in Canada and she has no one else to help her with her child.
- She works full time in a low-income field although she was also a qualified professional in her country of origin.

The ministry relied on its reconsideration decision as summarized at the hearing. The ministry also stated that:

- An employment-related program is a program delivered sometimes by Service Canada which generally involves a course outline, classroom time and monitoring by an instructor. The participants will often enter into an agreement regarding the program expectations.
- For job searching, the ministry expects that there will be a record of the efforts made and the time spent looking for work.

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 because she does not have an eligible reason for needing child care, pursuant to Section 3 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 4 of the *Child Care Subsidy Act (CCSA)*, provides:

Child care subsidies

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

Section 1 of the *Child Care Subsidy Regulation (CCSR)*, provides:

Definitions

1 (1) In this regulation:

"employment-related program" means a program

- (a) delivered for the purpose of assisting unemployed, or underemployed, persons to search for, overcome barriers to, train for or obtain employment or self-employment, and
- (b) in which a person participates for a specified period of time or until that person obtains employment or self-employment;

Section 3 of the *Child Care Subsidy Regulation (CCSR)*, provides:

Circumstances in which subsidy may be provided

3 (1) The minister may pay a child care subsidy only if

- (a) the minister is satisfied that the child care is needed for one of the reasons set out in subsection (2),
- (b) the child care is arranged or recommended under the Child, Family and Community Service Act, or
- (c) the child care is recommended under the Community Living Authority Act in respect of a child who has a parent approved for or receiving community living support under the Community Living Authority Act and the minister is satisfied that the child care is needed.

(2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:

- (a) in a single parent family, because the parent
 - (i) is employed or self-employed,
 - (ii) attends an educational institution,
 - (iii) is seeking employment or participating in an employment-related program, or
 - (iv) has a medical condition that interferes with the parent's ability to care for his or her child;
- (b) in a two parent family, because
 - (i) each parent is employed or self-employed, attends an educational institution or participates in an employment-related program,
 - (ii) one parent is engaged in an activity listed in subparagraph (i) and the other is seeking employment,
 - (iii) one parent is engaged in an activity listed in subparagraph (i) and the other parent has a medical condition that interferes with that parent's ability to care for his or her child, or
 - (iv) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]
 - (v) each parent has a medical condition that interferes with their ability to care for their child.

Ministry's Position

The ministry's position is that the appellant was not eligible for child care subsidy beginning July 1, 2014 because she does not have an eligible reason for needing child care, pursuant to Section 3 of the CCSR. The ministry argued that, for a two-parent family, Section 3(2)(b) of the CCSR lists the eligible reasons for needing child care and the appellant's situation is not set out since she is employed and her husband is studying on his own for exams. The ministry argued that the



appellant's husband is not employed, self-employed, seeking employment, attending an educational institution, or participating in an employment-related program. The ministry argued that the appellant has not provided information to indicate that either she or her husband has a medical condition that interferes with an ability to care for their child. At the hearing, the ministry argued that an employment-related program is a program delivered by an organization which generally involves a course outline, classroom time and monitoring by an instructor and often the participants will enter into an agreement regarding the program expectations. The ministry argued that the appellant's self-study does not fit within the definition of "employment-related program." The ministry argued that the Tribunal cannot change the legislation and must take a reasonable approach to the definition of "employment-related program."

Appellant's position

The appellant's position as expressed in her Notice of Appeal is that, according to the legislation, the reason for offering subsidies to families is that both parents do not have time to take care of their child and this works for her situation. The appellant argued that her husband is studying to upgrade his license in order to find a job, so it could be considered as a way of job seeking which is one of the reasons for receiving the subsidy. The advocate also argued that the appellant's husband is engaged in an employment-related program as his program of self-study is designed to allow him to work at his chosen profession in Canada and to give his family a future. The advocate argued that if the government does not have a formal program established for a certain type of work, the person should not be made to suffer [by not receiving a benefit]. The advocate argued that the ministry should provide the subsidy to the appellant in order to allow the appellant's husband to obtain his professional qualification, rather than expecting him to spend his time caring for his child or to train for a lower-level position, which is not good for the child, for the family, or for Canada.

Panel decision

Section 3(1)(a) of the CCSR stipulates that the ministry may pay a child care subsidy only if the ministry is satisfied that the child care is needed for one of the reasons set out in subsection (2). Section 3(2)(b) of the CCSR, which applies to the appellant as hers is a two parent family, sets out that the child care must be needed for one of the reasons listed. The appellant did not argue that she or her husband have a medical condition that interferes with an ability to care for their child, and the panel finds that the ministry reasonably concluded that the reasons listed in Section (2)(b)(iii) and (v) of the CCSR do not apply. The appellant is employed and her husband is engaged in self-study for the first of a series of exams to qualify for a license in Canada to practice his profession. While the appellant argued that it is like her husband is seeking employment, which is the reason listed in Section 3(2)(b)(ii) of the CCSR, the appellant's husband admitted that he has not approached employers and that he cannot work in his profession until he obtains his license in Canada. The panel finds that the ministry reasonably determined that the appellant's husband was not "seeking employment" since he was not making active efforts spending time looking for work, and there was no record available to document these efforts.

The advocate argued that the program of self-study undertaken by the appellant's husband should qualify as an "employment-related program", especially since the government does not offer a formal program to assist with qualifying for the appellant's profession. The panel finds that the definition in Section 1 of the CCSR specifically limits the subject program to one "delivered," and the use of this word suggests a formal structure of presentation by a person or persons to others who "participate" for a specified period of time. The panel finds that the ministry reasonably concluded that the appellant's self-study in which he is engaged entirely by himself with a flexible time schedule, as

opposed to a structured program being "delivered" to him, does not fit within the definition of an employment-related program. Although the government may not provide a structured program to assist with qualifying for the appellant's profession, the appellant's husband admitted that there are private organizations that offer assistance with exam preparation, but that he believes his self-study is more effective. The appellant's husband stated that he will be postponing the first exam to the new year as he is not sufficiently prepared and, given the flexibility of the appellant's husband's self-directed exam schedule, the panel finds that the ministry reasonably expected that the appellant's husband was available to provide child care to his child at the same time that he studies for his exams, and that this was not an eligible reason for needing child care for a two-parent family, as set out in Section 3(2)(b)(i) of the CSSR.

Conclusion

The panel finds that the ministry's decision, which found that the appellant was not eligible for child care subsidy because she does not have an eligible reason for needing child care, pursuant to Section 3 of the *Child Care Subsidy Regulation (CCSR)*, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the ministry's decision.