

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the “ministry”) reconsideration decision of September 22<sup>nd</sup>, 2014 wherein the ministry determined the appellant's child is considered school age on September 1<sup>st</sup>, 2014, as defined under section 1(2) Child Care Subsidy Regulation (CCSR), and therefore the appellant is not eligible for a child care subsidy under section 7(1) CCSR because the family's monthly net income exceeds the child's base threshold income level.

The ministry determined that beginning September 1<sup>st</sup>, 2014 the child base income threshold level changed from \$1500 per month to \$515 per month.

The ministry also calculated the appellant's eligibility for a partial subsidy and determined that the eligible amount is not more than zero and therefore the appellant is not eligible for a partial subsidy under section 8(2) CCSR.

## PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 4  
Child Care Subsidy Regulation (CCSR) section 1, 7, 8, 9 and 10 and Schedule A.

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Child Care Subsidy application dated July 3<sup>rd</sup>, 2014;
- Child Care Subsidy Request for Reconsideration dated September 5<sup>th</sup>, 2014;

The appellant is a single parent and is considered a 1 parent, 2 unit family for the purpose of benefits under CCSR. The appellant's dependent child will reach the age of 5 years by December 31<sup>st</sup>, 2014 and therefore is considered to be school age beginning September 1<sup>st</sup>, 2014 for the purposes of the Child Care Subsidy Act and CCSR if the child reaches 5 years of age by December 31<sup>st</sup>. Once a child reaches age 5 the child threshold income level that is used to calculate child care subsidy decreases from \$1500 per month to \$515 per month for school age children receiving child care in a child care setting. The threshold income level for the appellant's child is calculated based on a 2 person family unit of \$1,082 per month, with an increase of \$515 per month for a total of \$1,597 per month. The appellant is paid semi-monthly with an average income of \$1,151.55 for a monthly total of \$2,303.10 per month which exceeds the child threshold income level.

The ministry also determined the appellant was not eligible for a partial child care subsidy which is calculated using the formula set out in section 8(2) CCSR,  $A - B$  wherein  $A =$  the amount set out in Schedule A CCSR (daily rate times the number of days or  $\$20.75 \times 112$  days) is calculated to be \$249.00; and  $B =$  the amount of  $A$  for a child, divided by the sum of the amounts of  $A$  for all the children in the family (1), multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold ( $\$249$  divided by  $\$249 + (a)$   $\$1, \$2303.10 - \$1597 = \$706.10 \times 50\% = (b) \$353.05$ ;  $B = (a) \$1 \times (b) \$353.05$ ;  $A - B = \$249.00 - \$353.05 = -\$104.05$ . The result of the calculation for determining the amount of the partial child care subsidy was a negative factor so the ministry determined the appellant was not eligible for a partial child care subsidy.

In the Notice of Appeal the appellant stated, "Please reconsider your decision regarding my income threshold level for financial eligibility. My son turns 5 on ... at the end of this calendar year. However, he won't be attending school until September 2015. He will remain in daycare until then. I am asking that you reconsider your decision based on the fact that he won't be attending school until next September."

The panel finds that the statements in the appellant's Notice of Appeal contain information in support of the information and records that were before the minister when the decision being appealed was made. As the statements provide information consistent with the appellant's previous testimony respecting when his son will be attending school, the panel finds the statement is admissible as evidence in accordance with section 22(4) Employment and Assistance Act (EAA).

Prior to the hearing commencing the appellant submitted the following documents to the Employment and Assistance Appeal Tribunal (EAAT) to be considered by the panel;

1. Letter of support dated September 29<sup>th</sup>, 2014 from community childhood agency that provide daycare services to appellant's child which states the appellant's son would benefit in learning and development by delaying his attendance entering into kindergarten by one more year, September 2015.
2. Letter of support dated October 1<sup>st</sup>, 2014 from a family center coordinator who states the appellant's son would benefit by delaying his entering kindergarten. The author states that the appellant's son is a bright, outgoing, exuberant four-year-old boy whose birthday happens to be at the end of the calendar year. The author continues, it has been their experience that when children are the youngest in class and not quite ready for school, they can experience long-term challenges from academic setbacks to social and behavioral issues to lower self-esteem.
3. Child Care Subsidy Special Needs application signed by a medical practitioner on October 15<sup>th</sup>, 2014.
  - On the application the medical practitioner is requested to check 1 or 2 boxes – 1) states that the

child named in section 1 requires child care; and 2) states the child named in section 1 does not require child care. The medical practitioner checked box 1 on the application and added the words, "but does not have special needs".

The ministry did not object to the panel on admitting these documents for consideration.

The panel finds that the letters of support, numbered 1 and 2 above, contain information in support of the information and records that were before the minister when the decision being appealed was made. As the letters provide information consistent with the appellant's previous testimony respecting when his son will be attending school, the panel finds the letters are admissible as evidence in accordance with section 22(4) EAA.

The panel finds the Child Care Subsidy Special Needs application, numbered 3 above, does not contain information in support of the information and records that were before the minister when the decision being appealed was made. The application refers to a child with special needs and there was no evidence before the ministry at reconsideration that the appellant's child is a child with special needs. The panel finds that the appellant's application for Child Care Subsidy Special Needs is not admissible as evidence in accordance with section 22(4) EAA.

At the hearing the appellant testified that if the child care subsidy is withdrawn it will place a heavy financial burden on the family. The appellant stated that if his son had been born into this world 27 hours later this hearing would not be taking place and the matter under review would not be an issue. The appellant stated he did extensive research into this matter and talked to experts in the field of child development before making the difficult decision to not have his son attend kindergarten until September 2015. The appellant testified that his son is not a special needs child but was told he should submit the Special Needs application in any case.

The panel finds the appellant's oral testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and is admissible as evidence in accordance with section 22(4) EAA.

The ministry relied on the facts in the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of September 22<sup>nd</sup>, 2014 wherein the ministry determined the appellant's child was considered school age on September 1<sup>st</sup>, 2014 as defined under section 1(2) CCSR, and therefore 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.

The legislation considered:

### Child Care Subsidy Regulation

#### Definitions

##### Section 1

(1) In this regulation:

**school age**", except in the definition of "licensed child care setting", means school age as determined under subsection (2);

(2) A person is deemed

(a) to be of school age beginning on September 1 in a school year if the person will have reached age 5 on or before December 31 of that school year,

Circumstances in which subsidy may be provided

##### Section 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.

(3) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]

(4) The restriction in subsection (1) (a) does not apply in respect of child care provided in a licensed preschool unless the child care is provided to a child of school age.

#### 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.

**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;

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 by staff delegated under the *Child, Family and Community Service Act*, after staff have

(i) offered support services or agreements to the child and family under section 16 (2) (a) of that Act,

(i.1) commenced an assessment under section 16 (2) (b.1) of that Act, or

(ii) commenced an investigation under section 16 (2) (c) of that 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.

**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 position is 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 given the child's date of birth he is considered school age as of September 1<sup>st</sup>, 2014 so the base threshold income level that is used to calculate the child care subsidy changes from \$1500 per month to \$515 per month. The ministry argued that the child's base threshold income level was calculated to be \$1,597 per month and the family's net income is \$2,303.10 per month, therefore the ministry argued that since the family's monthly net income exceeds the child's base threshold income level the appellant is not eligible for a child care subsidy. The ministry argued the legislation is clear, that there is no flexibility in the language of the legislation (words like may or should are not used) and therefore the ministry has no discretion in applying the CCSR legislation in this matter. The ministry also argued that a calculation for a partial child care subsidy under section 8(2) CCSR determined that the eligible amount is not more than zero; therefore the appellant is not eligible for a partial child care subsidy either under these circumstances.

The appellant's position is that as a result of extensive research and contemplation he made the conscious decision not to enroll his son into school until September 2015 so that his son would be on par developmentally with his classmates. The appellant argued that the two letters from the child care facility fully support his decision and his application for a child care subsidy to keep his son in daycare until he will attend school in September 2015. The appellant argued that common sense should be exercised in this matter and

that the panel needs to exercise some discretion in making their decision while understanding the financial burden the ministry's decision will have on him, his son and the family.

### Panel Decision

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.

The evidence before the panel is that the appellant's child turns five years old age prior to December 31<sup>st</sup>, 2014 as set out in section 1(a) CCSR and therefore, the panel finds the appellant's child is deemed to be school age as set out in the CCSR definitions and that the ministry reasonably applied the CCSR legislation when calculating the appellant's eligibility for a Child Care Subsidy under section 7 CCSR.

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 evidence before the panel is that the child's base threshold income for the appellant's family is \$1,597; and the family's monthly net income is \$2303.10. The evidence is that when the ministry calculated the appellants' eligibility for a partial subsidy (A – B) the result of the calculation was a negative factor.

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 as set out in sections 7(1) and 8(2) of the CCSR legislation 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 EAA.