

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (Ministry) reconsideration decision dated January 8, 2015 which held that the appellant was not eligible for a child care subsidy because her children are not attending an eligible child care arrangement as required under section 2 of the Child Care Subsidy Regulation.

### PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) Section 4  
Child Care Subsidy Regulation (CCSR) Section 2  
Employment and Assistance Act (EAA) Section 19.1  
Administrative Tribunal Act Section 44 and 46.3

## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the Employment and Assistance Act.

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

- December 2, 2014 letter from a child development consultant stating the appellant needed to reside with her parents because of her mental health needs, and that a childcare arrangement has been made with the appellant's father due to the needs of the children.
- The appellant is a one parent, 3 unit family with two young children.
- The appellant is employed 4 – 7.5 hours per day, on an on-call basis.
- In a November 25, 2014 telephone call with the ministry the grandfather and care provider confirmed the appellant and her children reside with her parents. The benefit plan created for October 2014 was therefore cancelled.
- The appellant has mental health issues and receives benefits as a Person with Disabilities (PWD).

Documents received after the reconsideration decision:

- January 21, 2015 notice of appeal
- January 28, 2015 release of information form signed by the appellant appointing her father as her representative with written submission attached; the attachments included photocopies of general information from the Canadian Human Rights Commission and the BC Human Rights Coalition on the issue of 'duty to accommodate'.

Procedural issues:

- A late submission was received from the Ministry on February 18, 2015 consisting of the statement that: "The ministry's submission in this matter will be the reconsideration summary provided in the Record of the Ministry Decision."
- This submission was accepted by the panel chair as there was no new substantive information or argument made that the appellant must address, but rather the late submission simply directs the panel's attention to the existing information on file.

## PART F – Reasons for Panel Decision

The decision under appeal is whether the Ministry's reconsideration decision which held that the appellant was not eligible for a child care subsidy because her children were not attending an eligible child care arrangement as required under the Child Care Subsidy Regulation is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The applicable legislation is summarized below.

### **Child Care Subsidy Act**

**1** In this Act:

"**child care**" means the care and supervision of a child in a child care setting, other than

- (a) by the child's parent, or
- (b) while the child is attending an educational program provided under the [School Act](#), the [Independent School Act](#) or a law of a treaty first nation in relation to kindergarten to grade 12 education;

"**child care setting**" means any setting in which child care is provided, including

- (a) a facility licensed under the [Community Care and Assisted Living Act](#) to provide child care, and
- (b) the child's own home;

### *Reconsideration and appeal rights*

**6** (1) Subject to section 6.1, a person may request the minister to reconsider a decision made under this Act about any of the following:

- (a) a decision that results in a refusal to pay a child care subsidy to or for the person;
  - (b) a decision that results in a discontinuance or reduction of the person's child care subsidy.
- (2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified in the regulations.
- (3) Subject to section 6.1, a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) may appeal the decision that is the outcome of the request to the Employment and Assistance Appeal Tribunal appointed under section 19 of the [Employment and Assistance Act](#).

### **Child Care Subsidy Regulation**

**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.

### ***The Ministry's position***

The ministry argues that the appellant is not eligible for the child care subsidy because her children are not attending an eligible child care arrangement as laid out in Section 2 of the CCSR, but are provided care by the children's grandfather, and the children and their grandfather reside in the same home. This living arrangement may have been required due to the mental health needs of the

applicant but the child care arrangement is not an eligible arrangement under Section 2 of the CCSR.

### ***The Appellant's position***

The appellant argues that as supported by the child development consultant in a letter dated December 2, 2014, due to her mental health needs it is necessary that she reside in the home of her parents. There are no available childcare options within the area for the youngest child who is less than one year old, while the older child needs before- and after-school care and has a medical condition of chronic inflammatory airway disease which requires monitoring

The January 21, 2015 notice of appeal argued that there has been a violation of applicant's human rights and that the appellant should be able to live where she chooses and the *Human Rights Code* prohibits discrimination against persons with disabilities while the *Canadian Charter of Rights and Freedoms* guarantees people with disabilities equal benefit and protection before and under the law. The matter shouldn't be before the Employment and Assistance Appeal Tribunal, but should be before the BC Human Rights Commission because of the ministry's failure to accommodate the appellant's needs.

Section 19.1 of the Employment and Assistance Act states that section 44 and 46.3 of the Administrative Tribunal Act apply to the Employment and Assistance Appeal Tribunal. Therefore, the tribunal does not have jurisdiction over constitutional issues, which includes a consideration of the Charter rights of the appellant and does not have jurisdiction to apply the Human Rights Code.

### ***The Panel's findings and conclusion***

The CCSA provides for child care subsidies in specific circumstances, and reconsideration and appeal rights are set out in section 6(3), which allows for an appeal of a decision by the Employment and Assistance Appeal Tribunal.

The CCSR, section 2 outlines when a child care subsidy may be provided. Section 2(c) states that if the child receives care in the child's own home, a child care subsidy may only be provided if the child care is provided by someone other than a person who is a relative of the child and resides in the child's home. Although the appellant argues that she and her children moved into her parent's home because of her mental health needs and child care is difficult to find because of the on-call nature of her job and the age and needs of her children, any entitlement remains tied to the existing legislation. The child care provided by the maternal grandfather in a home shared with the children is not a circumstance allowing for the provision of a subsidy. Section 2 of the CCSR, specifically indicates it is not.

The Panel finds that the reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant, and the Panel confirms the Ministry's reconsideration decision. The reconsideration decision is upheld.