

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the “Ministry”) June 25, 2015 reconsideration decision which determined that the Appellant is not eligible for a child care subsidy beginning February 1, 2015 because the Appellant’s child’s care is not being provided in an eligible child care setting under section 2 of the Child Care Subsidy Regulation.

### PART D – Relevant Legislation

*Child Care Subsidy Act* Sections 1 and 4.

Child Care Subsidy Regulation Sections 1 and 2.

## PART E – Summary of Facts

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

For its reconsideration decision, the Ministry had the following evidence:

1. Information from its records that:

- The Appellant is the owner and operator of a licensed daycare in his home from 9:30 a.m. to 3:30 pm Monday to Friday and he is employed by that daycare; his spouse is also employed by that daycare from 8 a.m. to 6 p.m. Monday to Friday.
- The Appellant's daughter attends that daycare from 8 a.m. to 6 p.m. Monday to Friday.
- During a telephone conversation on May 15, 2015, the Appellant's spouse advised the Ministry that they are the owners and operators of the daycare in their home. The spouse confirmed that she is working as a teacher's assistant and providing care for their daughter during the day, along with doing administrative duties.

2. The Appellant completed the Child Care Subsidy Application dated February 6, 2015, containing the following information:

- The request is for a subsidy for his daughter for child care at the daycare in his home, for care Monday to Friday from 9:30 a.m. to 4:30 p.m. starting on September 1, 2014.
- His spouse also needs child care assistance; she is currently employed at the same daycare Monday to Friday from 8 a.m. to 6 p.m.

3. The Appellant's completed Child Care Subsidy Child Care Arrangement form indicating that the Appellant provides licensed group child care in his home; his daughter is provided with child care at that home from 8 a.m. to 6 p.m. Monday to Friday at a monthly rate of \$930; and, the Appellant's wife is providing that child care.

4. Appellant's Request for Reconsideration signed on June 8, 2015, with the following information:

- The Appellant submitted that their home daycare is a licensed group child care center, totally separated from their residence – a basic requirement to get a business license.
- There are 4 positions in this child care center related to Early Childhood Educator and Early Childhood Educator Assistant jobs; the Appellant and his spouse work in the child care center in these jobs; they are teachers providing professional services to all students, not just to their child.
- The Appellant's wife – the child's mother- is the child's care provider, is an assistant to the Early Childhood Educators in the center and she deals with administrative issues.
- The Appellant is an employee of the child care center as one of 3 Early Childhood Educators, and his job is teaching all students, not only his child.
- His child is a regular student included within the maximum number shown in the business license; the child takes one space approved by that license.
- The Appellant and his spouse have not received any child care subsidies even when they were students and when they were working.
- He submitted a chart listing education programs attended by him and his spouse in 2012, 2013, 2014 and 2015, and showing that they both worked at their family day care center in 2013, 2014 and 2015.
- They have low incomes, they work full-time as a self-employer and employee, and they take courses evenings and weekends; the Appellant submitted enrollment information for himself and his spouse for courses in 2015 at an early childhood institute and diploma programs at a

university, and other certificates and transcripts.

- They were approved for the Child Care Subsidy Benefit Plan in April 2015 (2 benefit statements dated April 22, 2015 included and 2 subsidy assessments included).
- Copy of the licence issued on August 30, 2013 by a regional health authority to the Appellant authorizing the Appellant to operate the child care as a “Group Child Care 30 months to school age”, with a maximum capacity of 10.
- Copy of the licence issued by the province to the Appellant to practice as an Early Childhood Educator effective October 29, 2013; copy of the licence issued to his spouse to practice as an Early Childhood Educator Assistant effective December 4, 2013; copies of licenses for 2 other individuals.
- Canada Revenue Agency 2015 Notices of Assessment for the Appellant and for his spouse. The address for both is the same address to which the Ministry sent its correspondence regarding this matter.
- Earnings statements for the Appellant and his wife for 2015 showing employment at the child care center with the same address as on the notices of assessment and to which the Ministry sent correspondence.

For this appeal, the Appellant submitted all of the same documents and information that he originally submitted with his request for reconsideration. With his notice of appeal, dated June 29, 2015, he also submitted a statement with the same information as in his reconsideration request, as well as his arguments. The Panel has summarized the Appellant’s arguments in Part F Reasons.

For this appeal, the Ministry provided no submissions. Therefore, the Panel will consider the Ministry’s reconsideration decision to be its position in this appeal.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision that the Appellant was not eligible for a child care subsidy was reasonably supported by the evidence and/or was a reasonable application of the applicable legislation in the Appellant's circumstances.

### Applicable Legislation

The following legislation applies to the Appellant's circumstances in this appeal.

#### Child Care Subsidy Act

##### Definitions

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;

**"child care subsidy"** means a payment made under this Act to or for a parent to subsidize the costs of child care;

**"parent"** includes a person with whom a child resides and who stands in place of a parent of the child.

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

#### Child Care Subsidy Regulation

1(1) In this regulation:

**"licence-not-required child care setting"** means a child care setting that

(a) is in the home of the primary caregiver,

(b) need not be licensed under the *Community Care and Assisted Living Act*, and

(c) is not registered under the Child Care Resource and Referral Program in accordance with the standards specified in the Child Care Resource and Referral Program Standards Manual that is on file with the office of the Deputy Minister,

but does not include the family home of a child being cared for in the setting;

**"licensed child care setting"** means a facility operating under a licence issued under section 11 of the *Community Care and Assisted Living Act* and providing any of the following programs as set out in section 2 of the Child Care Licensing Regulation, B.C. Reg. 332/2007:

(a) Group Child Care (Under 36 Months);

(b) Group Child Care (30 Months to School Age);

(c) Preschool (30 Months to School Age);

(d) Group Child Care (School Age);

(e) Family Child Care;

(f) Multi-Age Child Care;

(g) In-Home Multi-Age Child Care;

**"licensed preschool"** means a preschool described in paragraph (c) of the definition of "licensed child care setting";

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 Parties' Positions**

The Appellant's position is that his child's care setting is in a licensed group child care center eligible under the Child Care Subsidy Act section 4. That child care setting qualifies under section 2(a) of the Child Care Subsidy Regulation as a licensed child care setting and not under 2(c) which is care in the child's own home provided by someone other than a relative. The Appellant submitted that the child care center has a government issued group child care license and is totally separate from his, the owner's, home. The Appellant further submitted that the child care subsidy was approved in April 2015 and in May 2015 the subsidy was cancelled without notice; different Ministry employees have different understandings of the regulations. He and his wife work at their child care center at their respective jobs, not just taking care of their child.

In its reconsideration decision, the Ministry wrote that the Appellant's child attends a licensed daycare in the Appellant's home, and the child receives direct care from the Appellant and the Appellant's spouse. The Ministry wrote that to receive a child care subsidy under section 2(c) of the Child Care Subsidy Regulation, 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 decided that the Appellant's child care arrangement is not an eligible arrangement under section 2 of the Child Care Subsidy Regulation.

### **The Panel's Findings and Decision**

The Panel notes that the Ministry's reconsideration decision is not clear in its explanation of how the applicable legislation applies to the Appellant's circumstances. The Panel does, however, note that the Ministry stated that the Appellant's child care arrangement is not an eligible child care arrangement under section 2 of the Child Care Subsidy Regulation.

Both the *Child Care Subsidy Act* and its regulation, the Child Care Subsidy Regulation, apply to the Appellant's circumstances. In particular, the Panel notes that the act defines "child care" for the purposes of a child care subsidy as the care and supervision of a child in a child care setting, other than by the child's parent. This definition applies to the types of eligible child care listed in section 2 of the regulation. In other words, to be eligible for a child care subsidy under any of the legislated circumstances, a child's parent cannot provide the child care.

In this case, the Appellant did not dispute that he and his spouse, the child's parents, provide child care for their child, as well as care for other children in their child care setting. Therefore, based on the applicable legislation and the evidence, the Panel finds that the Ministry reasonably determined that the Appellant's child care arrangement is not an arrangement eligible for a child care subsidy under sections 1 and 4 of the act and section 2 of the regulation.

The Panel confirms the reconsideration decision, denying the Appellant a child care subsidy, as a reasonable application of the legislation in the Appellant's circumstances.