

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry)'s reconsideration decision dated July 22, 2015, which found that the appellant was not eligible to receive certain amounts of child care subsidy that she received between June 2013 and March 2015 and which the appellant was required to repay in accordance with section 7 of the Child Care Subsidy Act.

## PART D – Relevant Legislation

The relevant legislation is sections 5 and 7 of the Child Care Subsidy Act (CCSA), and sections 7, 8 and 9 of the Child Care Subsidy Regulation (CCSR).

## PART E – Summary of Facts

The appellant is a single parent with two children. At the time in question the appellant was employed in a job which had a varied schedule due to which she was advised by the Child Care Subsidy Service Center that she was to contact the ministry by telephone at the end of each month to verbally submit her pay stubs so that her child care subsidy could be assessed.

Included on the appellant's pay stubs were amounts reimbursed for fuel for her car. These reimbursements are considered taxable income and therefore considered by the ministry to be earned income in assessing the amount of the child care subsidy. Over a number of months the appellant verbally reported her income to the ministry excluding the fuel reimbursement amounts.

A review by the Verification and Audit Branch determined that during the period June 1, 2013 to March 31, 2015, the appellant received child care subsidy to which she was not entitled because she did not report the fuel reimbursement amounts.

## PART F – Reasons for Panel Decision

The decision under appeal is the ministry's reconsideration decision dated July 22, 2015, which found that the appellant was not eligible to receive certain amounts of child care subsidy that she received between June 2013 and March 2015 and which the appellant was required to repay in accordance with section 7 of the CCSA.

The relevant legislation is sections 5 and 7 of the CCSA, and sections 7, 8 and 9 of the CCSR.

### **Information and verification**

**5** (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

(a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;

(b) seek verification of any information supplied by a person referred to in paragraph (a);

(c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;

(d) collect from a person information about another person if

(i) the information relates to the application for or payment of a child care subsidy, and

(ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

(3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may

(a) declare the person ineligible for a child care subsidy until the person complies, or

(b) reduce the person's child care subsidy.

(4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

### **Overpayments, repayments and assignments**

**7** (1) If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.

(2) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy.

(3) A repayment agreement may be entered into before or after a child care subsidy is paid.

(4) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is a debt due to the government and may

(a) be recovered by it in a court of competent jurisdiction, or

(b) be deducted by it from any subsequent child care subsidy or from an amount payable to that person by the government under a prescribed enactment.

(5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

### **Income test**

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- 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.
- (2) Subsection (1) does not apply to an applicant if the child care is for a child
- (a) in relation to whom the applicant has entered into an agreement with a director under section 8 of the *Child, Family and Community Service Act*,
  - (b) in relation to whom the applicant, by agreement under section 94 of the *Child, Family and Community Service Act*, exercises a director's rights or carries out a director's responsibilities,
  - (c) of whom the applicant has interim or temporary custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c), 49 (7) (b) or 54.01 (9) (b) of the *Child, Family and Community Service Act*,
  - (c.1) of whom the applicant has been permanently transferred custody under an order of the court under section 54.01 (5) or 54.1 (3) of the *Child, Family and Community Service Act*,
  - (d) of whom the applicant has custody under an order of the court under section 42.2 (4) (a) of the *Child, Family and Community Service Act*, if the applicant is the other person referred to in section 42.2 (4) (a) (i),
  - (e) who is receiving assistance under the authority of the Child in the Home of a Relative Program Transition Regulation, B.C. Reg. 48/2010, and the applicant is the relative with whom that child resides, or
  - (f) who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e), provided
  - (i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or
  - (ii) by the Nisga'a Nation or a treaty first nation.

### **Amount of subsidy**

**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.
- (5) In this section, "**parent fee**" means the payment made by the parent for a child care space.

### **How monthly net income is calculated**

**9** (1) The monthly net income of a family is calculated by adding the income that each person in the family receives per month, including, but not limited to, the following:

- (a) employment income;
  - (b) self-employment income;
  - (c) spousal or child support paid to a spouse or child in the family;
  - (d) employment insurance benefits;
  - (e) workers' compensation benefits;
  - (f) training allowances;
  - (g) investment income, including interest;
  - (h) tips and gratuities;
  - (i) money earned by providing room and board, less essential operating costs;
  - (j) rental income of any kind, less essential operating costs;
  - (k) grants, bursaries or scholarships, except
    - (i) the amount for tuition or books, and
    - (ii) with respect to grants provided under the British Columbia Student Assistance Program, \$50 for each week covered by the grant.
- (2) When calculating net income under subsection (1), the following are considered not to be income:
- (a) income earned by a dependent child;
  - (b) the basic family care rate for foster homes;
  - (c) assistance paid under the *Employment and Assistance Act* or assistance paid under the *Employment and Assistance for Persons with Disabilities Act*;
  - (c.1) assistance that is similar in nature to any of the types of assistance provided under an Act referred to in paragraph (c) and that is paid under a program provided
    - (i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or
    - (ii) by the Nisga'a Nation or a treaty first nation;
  - (d) a family bonus;
  - (e) the basic child tax benefit;
  - (f) a goods and services tax credit under the *Income Tax Act* (Canada);
  - (g) a sales tax credit under the *Income Tax Act* (British Columbia);
  - (h) the BC earned income benefit;
  - (i) child support paid for, and passed on to,
    - (i) a person with disabilities, or
    - (ii) a person who received child support before reaching 19 years of age and who continues to receive it after reaching that age.

- (j) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (k) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (l) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (m) post adoption assistance payments provided under section 28 (1) or 30 (1) of the Adoption Regulation, B.C. Reg. 291/96;
- (n) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (o) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program;
- (p) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Ages 6-18 Program;
- (q) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the *Child, Family and Community Service Act*;
- (r) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*;
- (s) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (t) loans provided under the British Columbia Student Assistance Program or under a student loan program of the federal government, the government of a province or the government of a jurisdiction outside Canada;
- (u) a benefit paid under section 4 (1) of the *Universal Child Care Benefit Act (Canada)*;
- (v) the low income climate action tax credit under section 8.1 of the *Income Tax Act* (British Columbia);
- (w) the climate action dividend under section 13.02 of the *Income Tax Act* (British Columbia);
- (x) the BC early childhood tax benefit under section 13.071 of the *Income Tax Act* (British Columbia);
- (y) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (z) payments granted by the government of British Columbia under the Temporary Education Support for Parents program.
- (3) If the monthly net income of the family varies during a calendar year, the minister may calculate their monthly net income by
- (a) estimating the annual net income that everyone in the family, other than a dependent child, will receive in the calendar year, and
- (b) dividing the estimated annual net income by 12.

In her reasons for appeal the appellant states:

"Overpayment has been miscalculated. In certain months [the appellant] received three paycheques, each for two week periods, portions of which fall outside the calendar month. For those months it is unfair to calculate overpayment on six weeks' wages and benefits."

As part of for reconsideration application the appellant's submitted a letter from a lawyer indicating that the ministry may have incorrectly calculated the appellant's income because there were a number of months in which the appellant received three paycheques, so increasing her monthly income and decreasing the amount of her child care subsidy entitlement. The lawyer argues that had the ministry followed the direction found in section 9(3) of the CCSR to estimate a recipients average monthly income by estimating the annual income and then dividing by 12, the appellant would have been paid less in each of the months that she received three paycheques and been entitled to a higher amount of child care subsidy.

The panel finds that section 9(3) of the CCSR states that the minister "may" estimate a recipient's average monthly income in this fashion. That is, the ministry is not *required* to estimate a recipient's income in this way. There is nothing in the legislation preventing the ministry from calculating the recipient's monthly income by requiring a recipient to report their actual monthly income to the ministry as it did in this case.

Accordingly, the panel concludes that the ministry's determination that as a result of under-reported income the appellant received child care subsidy to which she was not entitled and which she is required to repay pursuant to s. 7 of the CCSA was a reasonable interpretation of the legislation in the circumstances and confirms the ministry's decision.

In accordance with section 7(5) of the CCSA, the amount a person is liable to repay is not open to appeal.