

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated December 14, 2015 which found that the appellant was not eligible for child care subsidy from December 1, 2014 to April 30, 2015 because he 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 and 7

Child Care Subsidy Regulation (CCSR), Section 3

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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

- 1) Government of Canada EI Benefit Statement for the appellant dated December 12, 2014;
- 2) Statement of Earnings and Deductions for the appellant in December 2014 and January 2015;
- 3) Letter dated June 10, 2015 to the ministry in which the appellant enclosed requested documents and advised that he is on EI [employment insurance] parental leave and that he has to take care of his child and his wife because both of them have a “critical situation.” His older child has been dangerously bothering the younger child which he has to prevent. His wife has serious back pain that makes her unable to do things which he is responsible for in her place;
- 4) Letter dated June 10, 2015 from the appellant’s employer confirming his full-time employment. The employer confirmed that the appellant is expected to return from his parental leave on July 27, 2015;
- 5) Letter dated October 14, 2015 to the appellant in which the ministry advised that he had received \$1,925 of subsidy funding for which he was not eligible and enclosing the Overpayment Calculation;
- 6) Overpayment Calculation dated October 14, 2015 for the period December 2014 through April 2015 at the rate of \$385 per month and yielding a total of \$1,925;and,
- 7) Request for Reconsideration- Reasons dated November 27, 2015.

In his Request for Reconsideration, the appellant wrote that:

- He is the father of two children and he has contacted a social worker but they were not willing to help him. It is important for him to protect his newborn child from being harmed by the older child and he sent the older child to daycare.
- During his parental leave, his employer has called him to work and he has been to work for 5 days in the last week of December 2014.
- He has had to take more medication after having a heart attack.

In his Notice of Appeal dated December 24, 2015, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that parental leave is for taking care of the newborn child, not for the child that goes to day care.

At the hearing the appellant stated that:

- The ministry told him that he could only get a subsidy while on EI if he was going to training.
- His older child was very naughty when his wife was trying to care for the newborn child and they had to send the older child to day care. They sent him to day care even when they were not receiving the subsidy.
- He was getting tired with all that he has to do around the home. Since his wife has back pain, he must do the vacuuming, shopping, and all the chores. She is not bedridden and she can do some things, including some care for the newborn child, but not any heavy work.
- With his older child at day care 3 days a week he was able to get some things done.
- His boss called him at the end of December 2014 and he worked for 5 days during his leave.

The ministry relied on its reconsideration decision.

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 he 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 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, as set out in the reconsideration decision, is that the appellant was not eligible for child care subsidy from December 1, 2014 to April 30, 2015 because he does not have an eligible reason for needing child care, pursuant to Section 3 of the CCSR. The ministry wrote 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 he ceased working in November 2014 and began collecting EI benefits while on parental leave. The ministry wrote that although the appellant's wife has a medical condition that interferes with her ability to care for the child, during this time the appellant was not employed, self-employed, attending an educational institution, or participating in an employment-related program.

Appellant's position

The appellant's position is that he and his wife have a good reason for needing child care during the period from December 1, 2014 to April 30, 2015 since his wife has a serious medical condition and cannot do much, he was busy and tired from managing the household, and they felt it was dangerous

for their older child to be around their newborn child. In his Notice of Appeal, the appellant argued that parental leave is for taking care of the newborn child, not for the child that goes to day care.

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 his is a two parent family, sets out that the child care must be needed for one of the reasons listed. The ministry acknowledged that the appellant's wife has a medical condition that interferes with an ability to care for their child, but determined that when the appellant went on parental leave in November 2014 and began collecting EI benefits, none of the reasons referred to in Section 3(2)(b)(iii) and (i) of the CCSR applied to the appellant. The panel notes that the appellant was still employed during his parental leave, as confirmed in the June 10, 2015 letter from his employer and, while this is one of the reasons described in Section 3(2)(b)(i) of the CCSR, the panel finds that the ministry reasonably determined that the child care was no longer "needed" as a result of the appellant's employment since he was on leave to fulfill his role as a parent from November 2014 to July 2015.

Although the appellant argued that parental leave is for taking care of the newborn child, not for the older child that goes to day care, since the appellant was on leave and not expected to work the hours for which the child care subsidy had been authorized, the panel finds that the ministry reasonably expected that the appellant was available to provide child care to his older child as well. The appellant stated that his employer called him to work during his parental leave and he worked for 5 days in the last week of December 2014, but he did not argue that he was required to work during his leave. The panel finds that the ministry reasonably concluded that while the appellant was on parental leave from his work he was available to provide child care to his children, and that child care for a two-parent family was not "needed" for one of the reasons set out in Section 3(2)(b)(iii) and (i) of the CCSR.

Conclusion

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