



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated November 5, 2015 made by the Ministry of Children and Family Development (the ministry) which determined that the appellant does not qualify to receive the Child Care Subsidy (CCS) for the weekday that she does not work despite the appellant having provided a Child Care Subsidy Medical Condition (MC) form properly completed by her physician indicating that she does require daycare on that day in accordance with section 3(2)(a)(iv) of the CCSR.

PART D – Relevant Legislation

The relevant legislation is section 4 of the Child Care Subsidy Act (CCSA) and sections 3 and 8 of the Child Care Subsidy Regulation (CCSR).

PART E – Summary of Facts

The appellant is a single mother with one child. Her son attends a licenced daycare Monday to Friday 8:00am to 5:00pm. At the time of her application for the CCS in 2014, the appellant reported that she worked Monday to Thursday 8:18am to 3:48pm.

In March 2015, the appellant went on medical leave from her job. On April 2, 2015 the ministry received a MC form dated March 20, 2015 completed by the appellant's physician indicating that she required daycare for her son Monday to Friday 8:00am to 5:00pm. The ministry assessed her as eligible to receive a CCS of \$600/month from May 1, 2015 to October 31, 2015.

On September 25, 2015, the ministry received the appellant's CCS renewal application on which the appellant indicated that she had resumed working Monday, Tuesday, Thursday and Friday 9:12am to 4:40pm. Along with the renewal application was a MC form dated September 24, 2015 completed by the appellant's physician indicating that she required daycare for her son on Wednesdays 8:00am to 5:00pm. The ministry did not consider the MC form and assessed the appellant as eligible to receive a CCS of \$540/month based on her need for child care four days per week while at work.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determined that the appellant does not qualify to receive the CCS for the weekday that she does not work despite the appellant having provided a MC form properly completed by her physician indicating that she does require daycare on that day was reasonably supported by the evidence or a reasonable application of the legislation.

The relevant legislation is section 4 of the CCSA and sections 3 and 8 of the CCSR.

Child care subsidies

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

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.

(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.

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.

This was a written hearing. The appellant writes in her Notice for Appeal:

The ministry has not provided adequate information to demonstrate why the standard Child Care Subsidy Medical Condition Form (CF2914) signed, stamped and dated by a medical physician does not satisfy section 3(2)(a)(iv) of the Child Care Subsidy Regulation. The ministry has not provided adequate information to demonstrate why my combination of reasons for requiring child care (employment and medical condition) has not been found to meet the requirements of the Child Care Subsidy Regulation. I feel that the ministry has not demonstrated administrative fairness.

The ministry relied on its reconsideration decision. That decision states:

Upon review of the ministry finds that your care subsidy was reduced beginning November 1, 2015 because your child care needs have changed and you require fewer days and/or fewer hours of child care. Since resuming your employment ... on September 14, 2015 after returning from medical leave, the ministry assessed your need for child care based on your employment schedule, Monday, Tuesday, Thursday and Friday. Though you submitted a Medical Condition form, with your renewal application on September 25, 2015, in which you report you require care for your son ... on Wednesdays due to your medical condition, the

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ministry finds that there is not enough substantive information to explain why you are unable to care for your son Wednesdays while resuming your employment, with full duties and no modifications, four days of the week ... Therefore, in accordance with section 3 of the Child Care Subsidy Regulation, the ministry finds that you are eligible for reduced amount of child care subsidy based on the number of hours that you are employed and you require child care.

The issue before the panel is whether it was a reasonable application of the legislation for the ministry to decide not to provide the CCS to the appellant on the day she is not working on the basis that she has not established that she has a medical condition that interferes with her ability to care for her child.

Section 3(2)(a)(iv) of the CCSR states that in order for the minister to provide the CCS to an applicant:

... the child care must be needed for one of the following reasons: in a single parent family, because the parent has a medical condition that interferes with the parent's ability to care for his or her child.

In this case, the ministry's position is that "there is not enough substantive information" to explain why the appellant can return to work 'full time' and also have a medical condition that interferes with her ability to care for her child. The panel observes that the ministry's MC form does not ask the physician to provide any "substantive information" regarding an applicant's condition. The panel also observes that there is no indication that the ministry at any time asked the appellant for "substantive information" regarding her medical condition. Furthermore, the CCSR provisions do not require that the applicant provide such information nor that 'the minister be satisfied' (as is the case in other similar provisions) that an applicant has a medical condition that interferes with their ability to care for their child. The MC form is sufficient to establish this.

The appellant submitted a properly completed MC form. Based on the content of that form as established by the ministry itself, the ministry's own practice and the relevant legislative provisions, the appellant therefore qualifies to receive the CCS as requested in the MC form.

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify to receive the CCS for the weekday that she does not work despite the appellant having provided a MC form properly completed by her physician indicating that she does require daycare on that day was not a reasonable application of the legislation, and rescinds the ministry's decision.