



PART C – Decision under Appeal

Under appeal is the Ministry of Children and Family Development’s (“the Ministry”) Reconsideration Decision dated June 3, 2016 determining that the Appellant is eligible for a reduced amount of Child Care Subsidy beginning September 1, 2016 in accordance with sections 1(2), 7, 8 and 10 of the Child Care Subsidy Regulation. The reduction is because the Appellant’s child is deemed to be of school age as of that date, and therefore the base threshold income level used to calculate the Subsidy is reduced, resulting in a reduction in the amount the Appellant is eligible to receive.

PART D – Relevant Legislation

Child Care Subsidy Act, section 4 and *Child Care Subsidy Regulation*, sections 1(1), 1(2)(a), 7, 8 and 10.

PART E – Summary of Facts

The information before the Ministry at the time of the Reconsideration Decision consisted of the following:

Appellant's Request for Reconsideration dated 19/MAY/2016

In the Request for Reconsideration, the Appellant submitted:

- That the existing child care subsidy should continue to be paid until September 2017 when the child will be enrolled in kindergarten
- The child was born weeks early through an emergency C-section
- That if the child had not been born four hours before midnight, the Appellant would not be in this predicament, meaning that the child would have been born in the next year and would not have been "of school age" until September 1 of the year following
- The child is a bright happy child but emotionally aged four, who still naps and is prone to meltdowns
- The child requires a little more one on one time; the Appellant is sure the child will not get this attention in kindergarten
- The Appellant fears that the child needing extra attention in kindergarten would be disruptive to the child's growth and success and also disruptive to the child's peers
- The Appellant is a single parent
- The subsidy currently received has allowed the Appellant to return to work and provide the learning opportunities to the Appellant's child that the Appellant might not have otherwise been able to provide
- The present day care placement has been a stable, safe place for the child to grow socially, emotionally, intellectually
- That the child commencing kindergarten in September is not in the child's best interest
- The Appellant does not want the child struggling to catch up with the child's peers
- The Appellant sees what a profound effect being the youngest and smallest child on a team is like because the Appellant's child is that youngest and smallest child on two different teams
- The Appellant does not want the child's experience with teams to also be the child's school experience

A Letter From a Registered Speech Language Pathologist

- The Appellant submitted a letter from a registered speech language pathologist dated May 5, 2016 concerning the Appellant's child, opining that while the child is very verbal, the child is young and in the speech pathologist's opinion would be much better served by a further year in pre-kindergarten to allow the child's social skills to develop
- The speech pathologist establishes her knowledge of children and development given many years in the profession primarily at elementary schools, and says that children born in the last quarter of the school year often encounter difficulty socially and/or academically, especially if the child is the gender that this child is
- If the child is to remain in pre-school for a further year the child would enter kindergarten as a five year rather than a four year old and will possibly turn 6 the day before the eldest child in the class; this would be a child with a January 1 birthday turning 6 and this clearly would be a much stronger position for the child's over-all school success
- The child presents as very bright but socially immature compared to most children born in the

first half of the year

- The speech pathologist strongly recommends that the child continue to be funded for a pre-kindergarten program

A letter from a Child Care Coordinator at the Child's Care Centre dated 16/MAY/2016

- The author says that the child has been enrolled at the care centre since a particular date, and while eligible to enroll in kindergarten for September 2016, the author has concerns with the child's development and social behaviors. The author feels an extra year in the author's child care centre would be beneficial for the child as the child would be better prepared for entering kindergarten
- The child first enrolled in the author's care centre when the child was three years old and had never had previous experience being away from home and family
- The child started two days per week, was shy and inexperienced being around other children
- The child currently attends three days per week and displays behaviours that are consistent with children younger than the child
- The child has difficulty with social interactions with peers and especially knowing how to interplay with them
- When the child does play with others it is mostly parallel play consistent with the younger children at this care centre
- The child naps very consistently during the day and has difficulty when the care centre personnel try to limit the child's naps
- The child can be very dependent on the Appellant for many things and asks for the Appellant many times throughout the day
- The child accepts reassurance from educators and is a happy child throughout the day but does worry when the Appellant will be returning
- The child has an amazing vocabulary and great cognitive abilities but socially and emotionally the author feels the child would be better prepared to enter the school system in 2017 where the child will not be as overwhelmed with transitions at a new situation, will be better prepared to work with peers and will know how to act appropriately with them.

Ministry's Submissions at Hearing

The panel confirmed that the Ministry was notified of the time, date and place of the hearing. No Ministry representative appeared at the hearing. The hearing proceeded in accordance with section 86(b) of the *EAR*.

Appellant's Submissions at Hearing

The Appellant submitted argued that her subsidy should not be reduced because:

- As of September 1, technically the child will be of school age
- It is only because the child was born by emergency C-section late December 31 that the child is technically of school age
- Her household consists of herself and the child
- The child is prone to meltdowns and emotional disturbances
- If the child had been born just four hours later this issue would not be present at or before the tribunal
- How someone appears on paper and face-to-face can be very different
- She works two jobs, is 35 years old, and is a cancer survivor for which she underwent surgery



some years ago.

- She returned to work when the child was six months old
- She had no maternity benefits
- She is not on welfare or any form of disability and is not dependent on food banks
- Regardless of the outcome of the appeal the child will continue to attend the current, very structured, day care because it is in the child's best interest
- She left employment in a professional capacity to work in retail as a result of the cancer-related surgery; the shoulder gets better every year but is still difficult
- She is not in receipt of child support and there is no contact with the father and has not been since the pregnancy; she said the relationship ended the day she found she was pregnant and there is no contact with the father or his side of the family, but only with her side of the family
- Her parents provide day care assistance a couple days a week, are in their 60s and are not capable of caring for a rambunctious child of this child's age
- The child needs the level of structure provided at the present daycare
- She is not milking the system and has forgone self-care such as obtaining a pedicure for over 6 years
- She has no evidence from a psychiatrist, psychologist, or social worker or other professional to say that the child is developmentally or physically challenged
- She has evidence from the current Early Childhood Educators at the current daycare, which was in the appeal record, that the child is not as developed as other children who will be entering school in the fall of 2016 and would benefit from being kept out of the formal school system for another year
- Her current day care cost is \$492.00 a month of which she receives a \$385.00 subsidy plus \$16.00 a day for the days the Appellant's mother provides child care and that that subsidy will be reduced to a total of \$155.74 in September 2016, leaving the Appellant to cover the difference between the present \$385.00 per month subsidy and the new subsidy of \$155.74, which means that she will have to pay another \$229.26 per month
- She will also lose the \$16 per day subsidy for the two days per week when the child is with the Appellant's mother
- She works two jobs now and without the present level of subsidy she may have to give up a job in favor of more child care, or change jobs, but that is difficult
- She is legally entitled to defer the child's entry into the formal school system for a year under other legislation but the Ministry has told her that she cannot keep the full subsidy even though she is entitled to defer the child's entry into the formal system
- Regardless of the outcome of the appeal the child will remain in the structured day care because it is best for the child

Issue

The issue in this Appeal is whether the Ministry of Children and Family Development's Reconsideration Decision determining that the Appellant is eligible for a reduced amount of Child Care Subsidy beginning September 1, 2016, in accordance with sections 1(2), 7, 8 and 10 of the Child Care Subsidy Regulation, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. The reduction is because the Appellant's child is deemed to be of school age as of that date, and therefore the base threshold income level used to calculate the Subsidy is reduced, resulting in a reduction in the amount the Appellant is eligible to receive,

Relevant Legislation

Child Care Subsidy Act, Section 4

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

Child Care Subsidy Regulation, Sections 1(1), 1(2)(a), 7, 8 and 10

Section 1 -Excerpts

"**school age**", except in the definition of "licensed child care setting", means school age as determined under subsection (2);

"**child with special needs**" means a child

- (a) who has a physical, intellectual, emotional, communicative or behavioral impairment, and
- (b) who, in the minister's opinion, requires additional support services because of that impairment;

"**person with disabilities**" means a person who is 18 years of age or older and is approved for receipt of, or is receiving, benefits or services under a program of a provincial or the federal government to assist the person to perform daily living activities because that person's capacity to perform those activities is restricted by his or her physical or mental impairment;

Section 1(2)(a)

1(2) A person is deemed

- (a) to be of school age beginning on September 1 in a school year if the person will have reached age 5 on or before December 31 of that school year, and

Section 7

Income test

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.

Section 8

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.

Section 10
How child's threshold is calculated

10 (1) The threshold income level for a child receiving a type of child care is calculated by adding
(a) the base threshold income level applicable under subsection (2) for the child's family, and
(b) the amounts applicable to the child under subsection (3).

(2) The base threshold income level for a child's family is the amount set out in Column 2 opposite the family's size in Column 1:

Column 1 Family Size	Column 2 Base Threshold Income Level
2 persons	\$1 082
3 persons	\$1 275
4 persons	\$1 418
5 persons	\$1 571
6 persons	\$1 704
7 persons	\$1 837
8 persons	\$1 960
9 persons	\$2 083
10 persons	\$2 206

more than 10 persons	\$2 206 for the first 10 plus \$123 for each additional person
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(3) The base threshold income level for a child is increased as follows:

(a) by \$125 per month for each person in the child's family who

- (i) is a child with special needs,
- (ii) is a person with disabilities, or
- (iii) has reached 65 years of age;

(b) by \$515 per month for a child who

- (i) has not reached school age and is receiving child care
 - (A) in a licence-not-required child care setting, or
 - (B) in the child's own home as described in section 2 (c), or
- (ii) is of school age and is receiving child care in any child care setting;

(c) by \$1 500 per month if the child has not reached school age and is receiving child care

- (i) in a licensed child care setting, or
- (ii) in a registered licence-not-required child care setting;

(c.1) Repealed. [B.C. Reg. 145/2011, s. 3 (d).]

(d) by \$100 per month if the child

- (i) is a child with special needs, and
- (ii) receives a type of child care described in section 2.

Analysis

Jurisdiction

The panel's jurisdiction to hear the Appeal is pursuant to section 19(1)(c) of the *Employment and Assistance Act*.

Child Care Subsidy Regulation and Schedule A

The *Child Care Subsidy Regulation* (CCSR) and Schedule A provide that there are differing levels of child care subsidy depending on a number of factors, including the age of the child, whether the child has special needs or not, and the type of child care that a child receives.

The Appellant's evidence established and the Ministry found that her household is a "1 parent two person" household. The Appellant's evidence was that her present subsidy is \$385.00 per month plus \$16.00 a day for the days that the Appellant's mother provides child care.

The CCSR section 1(2)(a) deems that a child will be of school age on September 1, in any particular school year if that person will turn age 5 on or before December 31 of that same year.

The Appellant did not dispute that if her child is deemed to be of "school age" on September 1, 2016, then her child care subsidy will decrease to a total of \$155.74 per month. The Appellant's evidence established that her child will turn age 5 a few hours before midnight on December 31, 2016.

The panel observes that there is a difference between the CCSR which deems a child of "school

age” on September 1 of the year in which the child turns age 5, and other provincial legislation which gives a parent the right to choose whether or not the child shall begin school in the year in which the child turns 5 or to withhold the child for a year and have the child’s education commence when the child attains the age of 6.

What the Appellant disputed was the reduction of the child care subsidy if the child is not to attend school commencing September 1, 2016 and she exercises her right under other legislation to enroll the child in school commencing September 1, 2017, thus delaying school registration until the child is a year older.

At Reconsideration, the Ministry reasoned that although the child requires an additional year before commencing school, under section 1(2) of the *Child Care Subsidy Regulation* the child is considered as of school age beginning September 1, 2016. Because the child is of school age, the Appellant’s base income threshold level is lessened. That base income threshold level is used to calculate the subsidy under the CCSR. The Ministry stated that it does not have discretion to grant a subsidy greater than the Regulations permit. The Ministry found that applying the CCSR and Appendix A resulted in the Appellant being eligible to receive a maximum of \$155.74 per month.

Because the Appellant did not appeal the finding as to her base threshold income level and the amount of Child Care Subsidy based on it, but only appealed the issue of whether she may withhold her child from attending school in September, 2016, and keep the present level of subsidy, the Panel finds it unnecessary to consider the calculation of amount of the reduced subsidy.

There is no discretion in the legislation; so long as a child attains the age of 5 by December 31, 2016, then the child is of “school age” on September 1, 2016, and no longer entitled to a subsidy based on full-time child care.

The panel finds that the Reconsideration Officer’s determination that the child will be of “school age” as at September 1, 2016, and that the Appellant’s base threshold income level will therefore be reduced, resulting in a reduction of the amount of the Child Care Subsidy, was a reasonable application of the legislation.

CONCLUSION

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the Ministry’s reconsideration decision dated June 3, 2016 determining that the Appellant is eligible for a reduced amount of child care subsidy beginning September 1, 2016, because the Appellant’s child is deemed to be of school age as of that date and therefore the base threshold income level used to calculate the subsidy is reduced, resulting in a reduction in the amount the Appellant is eligible to receive, was a reasonable application of the applicable enactment in the circumstances of the Appellant, and therefore confirms the decision.

The Appellant was not successful in her appeal.