



PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated October 25, 2016 which found that the appellant was not eligible to receive a child care subsidy because the family's actual monthly net income exceeded the child's threshold and the result of the calculation for the child, under Section 8(2) of the Child Care Subsidy Regulation (CCSR), was not more than zero, pursuant to Section 7 of the CCSR.

PART D – Relevant Legislation

Child Care Subsidy Regulation (CCSR), Sections 1, 7, 8, 9 and 10

PART E – Summary of Facts

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

- 1) Canada Revenue Notices of Assessment for the appellant for the 2013 tax year indicating net income of \$28,128, for the 2014 tax year indicating net income of \$35,445;
- 2) Canada Revenue Notices of Assessment for the appellant's spouse for the 2013 tax year indicating net income of \$11,867, for the 2014 tax year indicating net income of \$29,047;
- 3) Child Care Subsidy- Child Care Arrangement form dated March 15, 2016 indicating that licensed pre-school is required for the appellant's child;
- 4) Child Care Subsidy- Special Needs form dated March 17, 2016 indicating that the appellant's child has a physical, intellectual, emotional, communicative or behavioral impairment and requires additional support services because of that impairment;
- 5) Child Care Subsidy- Application form dated March 30, 2016 indicating that this is the first time the appellant has applied for a child care subsidy, that she is employed and her spouse is self-employed;
- 6) Child Care Subsidy- Self-Employment form dated March 30, 2016 indicating that the appellant's spouse started a business on August 18, 1996;
- 7) Employee Statement of Earnings and Deductions for the appellant indicating net pay of \$1,177.47 on April 28, 2016 and \$979.00 on April 14, 2016;
- 8) Child Care Subsidy- Self-Employment form dated April 26, 2016 indicating gross sales/fees for services of \$78,275, less permitted operating expenses for business insurance of \$12,548, business taxes and fees of \$19,644, maintenance and repairs to business equipment of \$2,557, and rent and utilities of \$616 (total expenses of \$35,365);
- 9) Letter dated August 17, 2016 in which the child care centre manager wrote that the appellant's child has attended the centre from September 2014 and she will end her time on August 31, 2016. The child has significant developmental needs. The centre operates under a group child care license and not a preschool license. The cost for 2 full and one half day is actually \$500 per month and the family has been paying \$400;
- 10) Child Care Subsidy- Child Care Arrangement form dated August 24, 2016 indicating that licensed group child care is required for the appellant's child;
- 11) Undated Scenario Calculator to determine Eligibility for Child Care Subsidy with monthly income of \$5,911.25 and monthly income of \$4,834.30 and both yielding an eligible subsidy of zero; and,
- 12) Request for Reconsideration dated October 12, 2016.

In her Request for Reconsideration, the appellant wrote that they have 3 children and the net income is \$29,977.44 and she requests an explanation for how they do not meet the income requirement for subsidy.

Additional Information

In her Notice of Appeal dated November 8, 2016 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- They have 3 children and the net income is \$29,977.
- She requests an explanation for how they do not meet the income requirement for subsidy.
- The ministry said her husband's income is very high.

Prior to the hearing, the appellant provided an additional document, being an undated letter in which the appellant's employer wrote that the appellant works on average 20 hours a week and she makes \$25.25 an hour.

At the hearing the appellant stated that:

- She usually works 20 hours per week, or sometimes between 15 to 18 hours per week. The ministry looked at when she was working more hours because employees were sick.
- Otherwise, everything is good. She was upset because she tried to contact the child care subsidy office and no one ever answered the phone. The first time, the school license number was wrong and that had to be changed. There was always something that was needed and it took a long time for the ministry to make a decision.
- She and her husband reside together and they are both working. She works part-time and her husband is self-employed. His net income was \$29,977.44.
- They met with their accountant because they were not sure how to fill out the self-employment form, and her husband filled it out. He may have missed putting down some of the expenses because the calculations should have resulted in a net income of \$29,977.44. She does not know how the ministry calculated that her husband's net income was \$42,900.88 as written on the form.
- They have 3 children but 2 of them are over 19 years of age and she was not sure whether to include them on the ministry form or not.

The ministry relied on its reconsideration decision. The facts included:

- The appellant was part of a 2-parent, 3-unit family.
- The appellant is employed and her earnings for April 14, 2016 were \$979 and her earnings for April 28, 2016 were \$1,177.47, for an average monthly pay of \$2,336.18.
- The appellant's spouse is self-employed and for the 2014 calendar year earned gross income of \$78,275.18, minus permitted operating costs of \$35,366.32, as declared on the Child Care Subsidy Self-Employment form dated April 26, 2016, for an average monthly pay calculated as \$3,575.07.
- The total monthly income for the appellant's family unit is \$5,911.25.
- Under Schedule A of the CCSR, the subsidy rate for the child totals \$700 per month.
- Under Section 10 of the CCSR, the total child's income threshold is \$3,000 per month.
- The ministry does not base the calculation of monthly income solely on the amount received in a week or two, but also considers the information about yearly income as found in the Canada Revenue Notices of Assessment.
- There are business expenses that are allowed for income tax purposes that are not permitted expenses for the ministry's purposes.

Admissibility of Additional Information

The ministry did not object to admitting the letter from the appellant's employer and did not raise an objection to admitting the appellant's oral testimony. The panel considered the letter from the appellant's employer and her oral testimony to be information that supports the amount of the family's income, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

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 to receive a child care subsidy because the family's actual monthly net income exceeded the child's threshold and the result of the calculation for the child, under Section 8(2) of the Child Care Subsidy Regulation (CCSR), was not more than zero, pursuant to Section 7 of the CCSR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 1(1) of the CCSR provides in part:

Definitions

1 (1) In this regulation:

"**dependant**", in relation to a parent, means anyone who resides with the parent and who

- (a) is the spouse of the parent,
- (b) is a dependent child of the parent,
- (c) shares with the parent income or assets or any necessities of life obtained with the income or assets, or
- (d) indicates a parental role for the parent's child;

"**family**" means a parent and the parent's dependants;

"**family's monthly net income**" means the monthly net income calculated for a family under section 9;

"**self-employment income**" means any income earned from self-employment but does not include any amount deducted for permitted operating expenses;

"**permitted operating expenses**" means costs, charges and expenses incurred by a person in self-employment for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in self-employment;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of a person who is self-employed, other than wages paid by that person to his or her family;
- (i) motor vehicle expenses;
- (j) employer contributions to an employee benefit program;
- (k) rent and utilities;
- (l) office expenses;

"**spouse**", in relation to a parent, means anyone who

- (a) is married to the parent, or
- (b) is living with the parent in a marriage-like relationship;

Section 7(1) of the CCSR provides:

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. . . .

Section 8 of the CCSR provides in part:

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.

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- (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. . . .

Section 9 of the CCSR provides in part:

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 support paid to a spouse;
 - (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. . . .
- (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.

Ministry's Position

The ministry's position is that the appellant was not eligible to receive a child care subsidy because the family's actual monthly net income exceeded the child's threshold and the result of the calculation for the child under Section 8(2) of the CCSR, was not more than zero, pursuant to Section 7 of the CCSR. The ministry argued that the total monthly income for the appellant's family unit is \$5,911.25, which exceeded the child's threshold of \$3,000 and the result of the calculation for the child under Section 8(20) of the CCSR is - \$755.63, which is not more than zero.

Appellant's position

The appellant's position is that she works part-time and the income considered by the ministry was high because she had been working over-time and she usually only works 20 hours per week, or sometimes between 15 to 18 hours per week. In her Notice of Appeal, the appellant argued that they have 3 children and the net income is \$29,977 and not as stated by the ministry.

Panel decision

Section 7(1) of the CCSR stipulates that an applicant is not eligible for a child care subsidy for a child receiving a type of child care if the family's monthly net income exceeds the child's threshold, and the result of the calculation under section 8 (2) for the child is not more than zero. According to Section 9 of the CCSR, the monthly net income of a family is calculated by adding the income that each person in the family receives per month, which includes the appellant's employment income [Section 9(1)(a)] plus the self-employment income of the appellant's spouse [Section 9(1)(b)].

Regarding the appellant's employment income, the appellant stated that she works part-time, usually only works 20 hours per week, or sometimes between 15 to 18 hours per week, and the income considered by the ministry was high because she had been working many over-time hours at that particular time. The appellant provided a letter from her employer confirming that she works an average of 20 hours a week and that she makes \$25.25 per hour. The ministry relied on the Employee Statement of Earnings and Deductions for the appellant indicating net pay of \$1,177.47 on April 28, 2016 and \$979.00 on April 14, 2016, and calculated an average monthly pay of \$2,336.16. At the hearing, the ministry clarified that the bi-weekly pay was extrapolated for the yearly amount and then reduced to a monthly average and that the monthly average amount was consistent with the yearly income reported by the appellant to Canada Revenue and reflected in her Notices of Assessment. While the appellant's employer wrote in the undated letter that the appellant works an average of 20 hours per week, the employer does not state a time period for when the appellant commenced working this many hours per week. The panel finds that the ministry reasonably relied on the information obtained from the appellant's employer and from Canada Revenue to determine the amount of her average monthly employment income at the time of her application for the child care subsidy on March 30, 2016.

For the self-employment income of the appellant's spouse, the ministry relied on the Child Care Subsidy- Self-Employment form dated April 26, 2016 indicating gross sales/fees for services of \$78,275, less permitted operating expenses for business insurance of \$12,548, business taxes and fees of \$19,644, maintenance and repairs to business equipment of \$2,557, and rent and utilities of \$616, for total expenses of \$35,365, and yielding net income of \$42,900.88. Although the appellant stated at the hearing that she was not sure how the net income was so high, that perhaps some expenses were missed, the definition of "permitted operating expenses" in Section 1(1) of the CCSR sets out the specific expenses that are allowed by the ministry and this list may exclude some of the expenses allowed for income tax purposes, as clarified by the ministry at the hearing. The appellant acknowledged at the hearing that she and her husband had met with their accountant and that her husband had completed the self-employment form, and the panel finds that the ministry reasonably relied on this information to calculate an average monthly pay for the appellant's spouse of \$3,575.07 and, therefore, the ministry reasonably concluded that the total monthly income for the family unit is \$5,911.25.

The appellant did not dispute the ministry's calculation of \$3,000 for the threshold income level for the child under Section 10 of the CCSR as the ministry considered the number of persons in her family unit as 3, that her child has special needs, and the child has not reached school age and is receiving child care in a licensed child care setting. The panel finds that the ministry reasonably concluded that the total monthly income for the appellant's family unit of \$5,911.25 exceeds the child's threshold of \$3,000.

As the family's monthly net income exceeded the child's threshold, the panel finds that the ministry reasonably made a calculation for the child under Section 8(2) of the CCSR based on the same total monthly income for the family unit (\$5,911.25) and threshold income level for the child (\$3,000), and the subsidy amount as determined under Schedule A of the CCSR (\$700), and that this resulted in the negative amount of - \$755.63, which is not more than zero.

Conclusion

The panel finds that the ministry's decision, which found that the appellant was not eligible to receive a child care subsidy because the family's actual monthly net income exceeded the child's threshold and the result of the calculation for the child, under Section 8(2) of the CCSR, was not more than zero, pursuant to Section 7 of the CCSR, was a reasonable application of the applicable enactment in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision and the appellant's appeal is not successful.