

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Children and Family Development (the ministry) dated 30 September 2016 that denied the appellant's request for a child care subsidy for her 3 children for child's own home child care for the months of June, July, and August 2016. The ministry determined that, as the family net income exceeds each child's income threshold under section 10 of the Child Care Subsidy Regulation (CCSR), and the amount of the calculation pursuant to section 8(2) of the CCSR is not more than zero, under section 7 of the CCSR the appellant is not eligible for a child care subsidy. The ministry further determined that the ministry does not have the discretion to grant a child care subsidy other than as specified in the legislation.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), section 4.

Child Care Subsidy Regulation (CCSR), sections 7, 8, 9, and 10 and Schedule A.

PART E – Summary of Facts

The information before the ministry at reconsideration consisted of the following:

1. A Child Care Subsidy Child Care Arrangement, dated 21 May 2016, completed by the appellant. The arrangement was for child in own home child care, Monday to Friday, 9:30 AM to 3:30 PM, for the appellant's 3 children, age 4 years, 9 years, and [not shown, but according to the ministry] age 13 years. The child care provider also signed and dated the Arrangement form.
2. Documents relating to net monthly family income:
 - A Child Care Subsidy Self-Employment form, dated 27 June 2016, completed by the appellant showing her self-employment gross income and permitted operating expenses for the 5-month period 01 January to 31 May 2016.
 - Earnings statements (cheque stubs) from the employer of the appellant's spouse showing his net pay for the bi-weekly periods ending 03 June and 17 June 2016.On the basis of this information, the ministry determined that the appellant's total family net income is \$3,324.75
3. A Child Care Subsidy Request to Renew form signed by the appellant and her spouse on 27 June 2016, indicating that the appellant is self employed from 9 AM to 5 PM weekdays and her spouse works from 7:30 AM to 4:00 PM weekdays.
4. A benefit plan prepared by the Child Care Subsidy Service Centre (CCSSC) in accordance with the CCSR. This showed that for the 2 youngest children, the child care subsidy for June, July, and August 2016 is \$0.00. For the oldest child, the benefit plan was not calculated as he is 13 years old and CCSCS was unable to confirm a need for child care.
5. The appellant's Request for Reconsideration, dated 17 September 2016, attached to which is a submission giving reasons for her request. In her submission, she writes that she is not asking for an indefinite exception to the decision denying her subsidy request. She asks only that for this one application period that she be granted a subsidy as a result of the variables she has discussed. For an explanation of these "variables" and summary of her argument, see under *The position of the appellant* in Part F, Reasons for Panel Decision, below.

The appellant's Notice of Appeal is dated 17 October 2016. Under Reasons for Appeal, the appellant notes that the reconsideration decision simply reaffirms the denial of the requested subsidy for at own home childcare and does not address the associated circumstances and considerations outlined in her Request for Reconsideration.

The appellant also notes that her husband works 8 hours/day, not 8.5 hours/day.

The hearing

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

In a submission on appeal received by the Tribunal on 04 November 2016, the appellant states that she does not have any further submissions – she writes, "I want my appeal to be based upon my



'Reasons for Request for Reconsideration.' " She adds that her spouse's earnings should be calculated on an 8 hour day as his start and leave time include 30 minutes of unpaid lunch break.

The ministry did not make any submission on appeal.

The panel accepts the appellant's Notice of Appeal and her submission on appeal as argument.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in decision denying the appellant's request for a child care subsidy for her 3 children for child's own home child care for the months of June, July, and August 2016. More specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

- As the family net income exceeds each child's income threshold under section 10 of the Child Care Subsidy Regulation (CCSR), and the amount of the calculation pursuant to section 8(2) of the CCSR is not more than zero, under section 7 of the CCSR the appellant is not eligible for a child care subsidy; and .
- The ministry does not have the discretion to grant a child care subsidy other than as specified in the legislation.

The applicable legislation is from the CCSA

Definitions

- 1 "child care subsidy" means a payment made under this Act to or for a parent to subsidize the costs of child care;
- "child care setting" means any setting in which child care is provided, including
- (a) a facility licensed under the *Community Care and Assisted Living Act* to provide child care, and
 - (b) the child's own home;

Child care subsidies

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

And from the CCSR:

Definitions

- 1 (1) In this regulation:
- "licence-not-required child care setting" means a child care setting that
- (a) is in the home of the primary caregiver,
 - (b) need not be licensed under the *Community Care and Assisted Living Act*, and
 - (c) is not registered under the Child Care Resource and Referral Program in accordance with the standards specified in the Child Care Resource and Referral Program Standards Manual that is on file with the office of the Deputy Minister, but does not include the family home of a child being cared for in the setting;

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.

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.

(2.2) 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.

(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;

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 Family Size	Column 2 Base Threshold Income Level
5 persons	\$1 571

(3) The base threshold income level for a child is increased as follows:

- (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;

Schedule A sets out a table showing the amount of A for each child as referred to in section 8(2) for different child care settings. For H2, child's own home child care setting, for more than 4 hours daily or both before and after school care, the amount for the 1st child 19 months and over, the amount per month is \$318.00. For H4, each additional child, the amount per month is \$147.00.

The position of the appellant

In her Request for Reconsideration, the appellant writes:

"I proceeded with my application for the summer and school break with what fits in my family's situation the best, living in a rural location and working from home, unaware that this proposed arrangement was the least favoured by your department. It did not occur to me that I would not receive assistance since I received it consistently in the past with different care scenarios and nothing has changed in any significant way with my family's income.

Unfortunately, by the time I was informed by your department of your decision, much of the time had elapsed and I had applied for and I had accumulated a large child care bill. I didn't have an opportunity to choose a different option in a timely fashion. I assure you that I fully understand at

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this point that using a licensed daycare is my best option for now and in the future until my youngest is school age.

There are two factors that left me in a position in which I could not change my plans in a timely fashion. One is the length of time it took to receive a response after submitting my application. The other, which is significant, is the required period of accounting for my renewal application. I was notified by mail at the end of April that my subsidy would end at the end of May and that I needed to reapply. However, I was asked to provide income information relating to my business including the month of May. As a result, my reapplication could not be submitted until I had accounted for the month of May, which ended up being very close to the beginning of the summer childcare arrangements. My summer care arrangement and work activity began shortly after my reapplication was submitted because of the accounting requirements, and then in turn, I did not receive a response until mid August. At this point, I had already used several weeks of childcare and the period of time I had applied for was almost finished.

Another factor is that this child care expense that is carried by us and applied against our income, it brings us even closer to the threshold of what we applied for.

I am not asking for an indefinite exception to this decision, since I am now fully aware of the parameters of your service. I only ask for this one application period I am granted the subsidy as a result of the variables I have discussed. I am asking for understanding and compassion for the situation – the debt of this summer's child care is substantial and difficult for my family to manage, and if I could have known in any way to have made a different arrangement that fit your criteria, I would have. In addition, I would have qualified for benefits if only the children were not cared for at my home, meaning that had I been given the opportunity to make this decision, I would have, and I would have received benefits for this time period. Perhaps a solution is I could receive benefits calculated for the "License-not-required child care" category."

The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that:

- Section 8 of the CCSR sets out how the amount of child care subsidy is calculated.
- Based on the appellant's lowest monthly income of \$3,324.75,
 - The monthly net income of the appellant's family exceeds the child's income threshold all \$2,086.00.
 - The amount of the calculation under section 8(2) of the CCSR is not more than zero.
 - Therefore, as set out in section 7 of the CCSR, the appellant is not eligible for the child care subsidy.

The reconsideration decision goes on to explain that income thresholds are set in legislation, which means that the ministry does not have any discretion to grant subsidy if an applicant's income is higher than regulations permit.

Panel decision

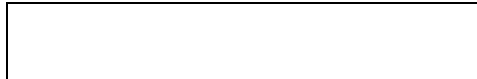
The panel will first address the issue raised on appeal -- that her spouse's earnings should be calculated on an 8 hour day, as his start and leave time include 30 minutes of unpaid lunch break.

The panel does not consider this material to the calculation made by the ministry to determine his net income. The ministry had before it 2 consecutive bi-weekly pay stubs, showing different amounts of take-home pay. The ministry averaged these amounts to obtain a bi-weekly average. It then multiplied this amount by 26 to obtain a yearly total, and then divided this by 12 to determine the monthly rate. The panel finds that the ministry was reasonable in using this approach to calculate her spouse's monthly net income.

In terms of the broader issue under appeal, the appellant's position is that, when she opted to have her children cared for in a "child's at own home" setting for the summer months, she did not realize that as a result she would not be provided any child care subsidy. Previously, the children were under care in another child care setting, and she qualified for the subsidy. As a result of this change in settings, with no subsidy provided, she incurred a substantial debt, making it difficult for her family to manage financially. Had she had known this beforehand, she would have made different arrangements. She argues that under these circumstances, the ministry should show compassion and flexibility and provide her with subsidies based on another setting, such as "license-not-required child care."

The legislation allows the applicant (a parent) to choose a child care setting that best suites the family circumstances. In this case, the appellant applied for, and the children were provided care, in the children's "at own home child care setting" for the months of June, July, and August 2016 . Once chosen, the CCSR describes how monthly subsidy rates for each child are calculated, based on the parameters of family net monthly income, family size and threshold income, and the maximum monthly rates for each child care setting as set out in Schedule A. On the basis of the income information provided by the appellant, the panel finds that the ministry was reasonable in determining that the family net income was \$3,324.75. As this net income exceeds the threshold monthly income of \$2086 ([the base amount of \$1571 under section 10(2) of the CCSR for a family size of 5] + [\$515 for a child of school age and is receiving child care in any child care setting under section 10(3)(b)(ii) of the CCSR]), the monthly subsidy for each child is determined by the application of the A – B formula in section 8(2). For the child's "at own home child care setting", for which the appellant applied, the panel has verified the calculations and finds that ministry reasonably determined that the A – B formula with the applicable parameters yielded a result that was less than zero (i.e. a negative amount) for each month and that therefore the appellant was not eligible for a subsidy.

The CCSA defines a child care subsidy as a "payment made *under this Act* to or for a parent to subsidize the costs of child care." Section 4 of the CCSA further provides that "*Subject to the regulations*, the minister may pay child care subsidies." There is nothing in the Act that would authorize the minister to pay a child care subsidy in circumstances other than that provided in the Act – that is, the legislation does not grant the minister the discretion to pay a child care subsidy other than as calculated using the applicable parameters set out in the CCSR. Thus, there is no legislated authority for the ministry to provide the appellant with child care subsidies for a different child care setting under which the children did not receive care and for which she did not apply. Further, the appellant's suggestion that the ministry pay a subsidy as if the children were cared for in a license-not-required child care setting is not consistent with the definition of "license-not-required day care setting," as this definition specifically excludes care provided in the child's own home.



Conclusion

Based on the foregoing, the panel finds that the ministry's decision denying the appellant's request for a child care subsidy for June, July, and August 2016 is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.