

PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the Ministry) reconsideration decision dated March 28, 2017, which reduced the Appellant's Child Care Subsidy (CCS). The Ministry determined that the Appellant's child care needs changed and she required fewer hours of day care, reducing the Appellant's CCS from full days to half days. The Ministry found that the Appellant's need to care for a disabled child is not one of the eligible reasons for child care listed in section 3(2)(b) of the Child Care Subsidy Regulation.

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) section 4

Child Care Subsidy Regulation (CCSR) sections 3, 8, 9; Schedule A

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A letter "To Whom it May Concern" from a registrar, dated September 2, 2016, stating that the Appellant's spouse is a full-time student.
- A copy of account activity from a financial institution in the Appellant's name for the period December 2, 2016 to January 31, 2017.
- A copy of a Notice of Assessment for a student loan for the Appellant's spouse, dated January 16, 2017.
- The Appellant's Child Care Subsidy Work Search Record.
- The Appellant's Child Care Subsidy Child Care Arrangement form signed January 31, 2017.
- The Appellant's Child Care Subsidy Request to Renew signed January 25, 2017, indicating the reason for needing child care as looking for work and the days and hours spent doing this activity as Monday to Friday, 12 PM to 2 PM.
- A copy of a letter from the Ministry to the Appellant dated February 21, 2017, advising her that she is eligible for a reduced amount of CCS.
- A letter "To Whom it May Concern" from a physician, dated March 12, 2017, headed "Sick Note", stating that the Appellant's spouse has severe disabling foot pain.
- A note from a physician dated November 30, 2016, stating that the Appellant's child has been formally diagnosed with Autism spectrum disorder.
- The Appellant's Request for Reconsideration, signed March 8, 2017.

At the hearing, the Appellant stated that the Ministry decision is unfair and that she needs an exemption. She stated that her son's condition which was diagnosed in November, 2016 requires lengthy meetings with professionals. She stated that she is receiving assistance through the Ministry for his treatments which she must attend. In addition, her son does activities at home and at school, and she has not had as much time to devote to her work search as in the past, which is why she wrote on the CCS form that she could look for work for 2 hours a day.

The Ministry responded by referring to the relevant legislation. She stated that the Appellant's hours of daycare were determined by her availability for a work search, which she wrote in her application as 2 hours per day.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which reduced the Appellant's Child Care Subsidy (CCS). The Ministry determined that the Appellant's child care needs changed and she required fewer hours of day care, reducing the Appellant's CCS from full days to half days. The Ministry found that the Appellant's need to care for a disabled child is not one of the reasons for child care listed in section 3(2)(b) of the Child Care Subsidy Regulation.

Legislation

CCSA

Child care subsidies

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

CCSR

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.

How monthly net income is calculated

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.

When calculating net income under subsection (1), the following are considered not to be income:

- (a) income earned by a dependent child;
- (b) the basic family care rate for foster homes;
- (c) assistance paid under the *Employment and Assistance Act* or assistance paid under the *Employment and Assistance for Persons with Disabilities Act*;
- (c.1) assistance that is similar in nature to any of the types of assistance provided under an Act referred to in paragraph (c) and that is paid under a program 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;
- (d) a family bonus;
- (e) the basic child tax benefit;
- (f) a goods and services tax credit under the *Income Tax Act (Canada)*;
- (g) a sales tax credit under the *Income Tax Act (British Columbia)*;
- (h) the BC earned income benefit;
- (i) child support;
- (j) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (k) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (l) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (m) post adoption assistance payments provided under section 28 (1) or 30 (1) of the Adoption Regulation, B.C. Reg. 291/96;
- (n) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
- (o) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program;
- (p) payments granted by the government of British Columbia for the Ministry of Children and Family Development's Autism Funding: Ages 6-18 Program;
- (q) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the *Child, Family and Community Service Act*;
- (r) payments granted by the government of British Columbia under an agreement referred to in section 93 (1)

(g) (ii) of the *Child, Family and Community Service Act*,

(s) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(t) loans provided under the British Columbia Student Assistance Program or under a student loan program of the federal government, the government of a province or the government of a jurisdiction outside Canada;

(u) a benefit paid under section 4 (1) of the *Universal Child Care Benefit Act* (Canada);

(v) the low income climate action tax credit under section 8.1 of the *Income Tax Act* (British Columbia);

(w) the climate action dividend under section 13.02 of the *Income Tax Act* (British Columbia);

(x) the BC early childhood tax benefit under section 13.071 of the *Income Tax Act* (British Columbia);

(y) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(z) payments granted by the government of British Columbia under the Temporary Education Support for Parents program.

or certainty, for the purposes of subsection (2) (i), child support includes support paid to a person who is 19 years of age or older and unable, because of illness, disability or another reason, to obtain the necessities of life or withdraw from the charge of his or her parents or guardians.

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.

Schedule A

(Section 8)

Item	Column 1	Column 2A	Column 2B	Column 3A	Column 3B
	Type of Child Care	4 Hours or Less Daily unless both before and after school care provided		More than 4 Hours Daily or both before and after school care provided	
		\$ Per Day	\$ Per Month	\$ Per Day	\$ Per Month
Subsidy Rates for Licensed Child Care Settings					
Licensed Group Care and Multi-Age Child Care					
1	G1 – Group (children under 19 months)	18.75	375.00	37.50	750.00
2	G2 – Group (children 19 months and over but under 37 months)	15.90	317.50	31.75	635.00
3	G3 – Group (children who have reached 37 months of age but who have not reached school age)	13.75	275.00	27.50	550.00
4	G4 – Group (children of school age)	10.38	207.50	20.75	415.00

The Appellant's position is that she needs an exemption from the reduction in her CCS. She argued that when she initially indicated the hours she could spend on a work search, her child had not been diagnosed with Autism. Now she must have meetings with health care providers for treatment and therapy, which take a great deal of time. The Appellant argued that her son's physician said he needs full-time day care.

The Ministry position is that there are several eligible reasons for child care subsidy in section 3 of the CCSR, and the Appellant qualifies as a person seeking employment. The Ministry argued that the Appellant's application shows that she is seeking employment for 2 hours per day, and that is what she was authorized. The Ministry noted that the Appellant in previous applications had stated that she was seeking work from 10:00AM to 3:00PM daily, and her most recent application indicated that she would be seeking employment from Noon to 2:00PM daily. The Ministry suggested that there may be other types of day care available to the Appellant, but the legislation under which she qualified does not provide for time the parent actually spends with the child. The Ministry stated that the legislation is clear and there is no provision for discretion.

The Panel notes that the Appellant stated in her Child Care Subsidy Request to Renew signed January 25, 2017 that she would be looking for work from 12:00PM to 2:00PM Monday to Friday. The Appellant stated that her son was diagnosed with Autism in November, 2016. The CCCR section 3(2), under which the Appellant qualifies for a child care subsidy, lists the purposes for which a subsidy may be provided, and there is no provision for a parent caring for a disabled child. The only eligibility criteria under which the Appellant qualifies is section 3(2)(b)(ii), as the Appellant's spouse is enrolled in full-time education and the Appellant herself is searching for work. As the Appellant herself indicated in her application for a Child Care Subsidy that she is seeking work from Noon to 2:00PM daily, the Ministry reasonably determined that she was entitled to the CCS for the period of time in which she was engaged in the eligible activity. The Panel finds that the Ministry reasonably determined that the Appellant qualifies for day care for half days.

The Panel therefore confirms the Ministry decision as a reasonable application of the applicable enactment. The Appellant is not successful on appeal.