

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (the ministry) dated October 19, 2017, which held that the appellant was not eligible to receive a child care subsidy beginning September 1, 2017 because the family's lowest 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 Act (CCSA) Section 4
Child Care Subsidy Regulation (CCSR) Sections 1 - Definition of "school age", 7, 8, 9, 10 and Schedule A

The ministry was not in attendance at the hearing. After confirming the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Information before the ministry at reconsideration

- Child Care Subsidy- Special Needs form dated November 25, 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;
- Child Care Subsidy- Child Care Arrangement form dated November 26, 2016 indicating that licensed pre-school is required for the appellant's child;
- Child Care Subsidy- Application form dated November 30, 2016 indicating that the appellant is employed full time and her spouse is a full time at home parent;
- Employee Statement of Earnings and Deductions for the appellant indicating net pay of \$1,119.04 on November 5, 2016 and \$988.37 on November 19, 2016 pay periods;
- The appellant's work schedule for the month of November 2016;
- An undated referral letter from the appellant's family general Pediatrician (GP) to a primary care physician in December 2016;
- A Communication Assessment Report dated May 25, 2017 for the appellant's child;
- An Occupational Therapy Assessment and Discharge Report dated September 1, 2017 for the appellant's child; and
- The appellant's request for Reconsideration dated October 4, 2017 which included a 3 page submission.

The background facts as determined by the ministry included:

- The appellant was part of a 2-parent, 3-unit family.
- The appellant is employed, Monday to Friday – 8 hours per day.
- No employment has been identified for the appellant's spouse.
- The appellant's earnings for August 2, 2017 were \$1,267.49 and her earnings for August 16, 2017 were \$1,274.87, for a total monthly net income of \$2,754.65.
- Under Schedule A of the CCSR, the subsidy rate for the requested child care is \$11.25/day, 14 half days per month (N1- Licensed Preschool) at a cost of \$157.50 per month.
- Under Section 10 of the CCSR, the base income threshold level for the appellant's family is \$1,275.00. The appellant is eligible for an increase to this threshold of \$515/month as the appellant's child is of school age and receives child care in any child care setting. In addition, the appellant is eligible for an increase of \$125/month as the appellant's child has special needs and an increase of \$100/month as the child has special needs and receives a type of child care described in Section 2.
- The total child's income threshold is \$ 2,015.00.

In her Notice of Appeal dated November 1, 2017, the appellant writes that she wishes to plead "special circumstances" outside the legal definition of "school age".

Prior to the Hearing, the appellant submitted the following:

- A personal letter outlining additional circumstances of her case.
- Reference #1 document, "Prematurity Research Disproves the Theory that Premies

Catch Up by Age 3”.

- Reference #2 document, “The Perfect Storm: The High Prevalence Low Severity Outcomes of the Preterm Survivors”.
- Reference #3 document, “Preterm Birth, Age at School Entry and Long Term Educational Achievement”.
- Special Education Policy – BC Ministry of Education.
- Special Needs Order - BC Ministry of Education.
- Individual Education Plan Order - BC Ministry of Education.
- Glossary Definition – Special Education Policy - BC Ministry of Education.
- MLA Appeal Letter from Early Intervention Social Worker.
- Release of Information Consent for Early Intervention Social Worker to present as a witness.

Hearing

At the hearing the appellant’s spouse spoke of the critical medical situation that caused their child’s premature birth, 9 weeks before term and informed the panel that while their child was actually born on December 26, 2012, she only came home on March 21, 2013.

The appellant’s spouse indicated that as a result of a discussion with the ministry, he was led to believe that there was a medical provision in policy related to “school age”. He was unable to find the policy and had hoped the ministry would be available to clarify that information.

The appellant’s advocate who is an Early Intervention Social Worker indicated that for the first time in approximately 25 years, the school board had made special arrangements for funding for support services for the appellant’s child to remain in pre-school after her calendar age of 6 years in order to optimize her potential.

Admissibility of information provided on appeal

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under Section 24 of the EAA – to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel has determined that the information received after the Notice of Appeal and prior to the hearing for the most part corroborated the information at reconsideration and was therefore admissible in accordance with Section 22(4) of the Employment and Assistance Act, as it was in support of the information at reconsideration.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION

The issue on 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 lowest 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.

Relevant Legislation

CCSR provides in part:

Definitions

1 (1) In this regulation:

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

(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.

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.

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.

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

3 persons

Column 2 - Base Threshold Income Level

\$1 275

(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 N1 - Licensed Preschool (child who have reached 30 months of age but who have not reached school age) for 4 hours or less daily, the amount per day is 11.25.

Ministry's Position

The ministry's position is that the appellant does not meet the financial eligibility to receive a child care subsidy beginning September 1, 2017 based on the appellant's family's lowest monthly net income of \$2,754.65 from August 2017, which exceeds the child's income threshold of \$2,015.00 and the amount 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 acknowledges and is sympathetic to the fact that the appellant's child requires an additional year before entering Kindergarten, regardless of being school age. However, as per Section 1(2) of the Regulations, the appellant's child will reach age 5 on or before December 31 of the 2017 school year, and the legislation necessitates a reduction in subsidy payments for her care, resulting in a reduction in the amount the appellant is eligible to receive. Subsidy rates and income thresholds are set in legislation, which means the ministry does not have any discretion to grant subsidy higher than regulations permit.

Appellant's Position

The appellant's position is that her child has had a tough beginning and finds herself in a unique situation directly due to her perinatal stroke and prematurity which has led to significant developmental challenges all her life which in turn place her 12-18 months behind children in the same birth year. The appellant argues that they are a single income household with a gross income of less than \$34,000.00 a year and the only factor preventing approval is her child being deemed "School Age" which effectively reduces their monthly income threshold by over \$1,000. The \$230.00 unsubsidized monthly cost of the appellant's child's preschool is a major financial hardship to the family.

Further, the appellant argues that this "blanket classification" unfairly hinders children like her child born under rare and extreme circumstances such that they are given the "short end of the stick" with respect to getting the same opportunities for development as their peers.

Panel Decision

The panel finds that the ministry reasonably determined that the appellant's child is considered school age on September 1st, 2017, as defined under Section 1(2) of the Child Care Subsidy Regulation. While the panel acknowledges that the appellant's child's was born early due to a severe medical condition and lives with developmental challenges and special needs and requires an additional year of daycare, there can be no dispute of the child's actual birth date of December 26 when the child turns 5 years of age which must be considered pursuant to the legislation.

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.

Regarding the appellant's employment income, the ministry relied on the information from the appellant's employer and used the family's lowest monthly net income for August 2017 of \$2,754.65. The ministry determined that beginning September 1st, 2017 the child base income threshold level changed from \$1500 per month to \$515 per month as set out in Section 10(3) of the CCSR; The appellant did not dispute the ministry's calculation of \$2,015.00 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 is receiving child care in a licensed child care setting. The panel finds that the ministry reasonably concluded that the total of the lowest monthly income for the appellant's family unit of \$2,754.65 exceeds the child's threshold of \$2,015.00. The calculation for the partial subsidy for September 2017 is; $\$157.50$ (A = cost of subsidy) - $\$369.82$ (B = parent portion) = $-\$212.32$ (amount is not more than zero).

As the family's lowest 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 above information.

The CCS Act 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 CCS Act 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.

Conclusion

The panel finds that the ministry's decision, which found that the appellant was not eligible to receive a partial child care subsidy because the family's lowest monthly net income exceeded the child's income 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.