

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (“the ministry”) dated April 23, 2018, which held that the appellant was not eligible to receive a child care subsidy (“CCS”) beginning March 1, 2018 because the family’s monthly net income exceeded the child’s threshold as calculated under Section 8 (2) of the Child Care Subsidy Regulation (CCSR) and the result of the calculation was not more than zero, pursuant to Section 7 (1) of the CCSR. The ministry also determined that the appellant did not meet any of the criteria set out in Section 7(2), which lists the circumstances under which Section 7(1) does not apply.

PART D – RELEVANT LEGISLATION

CCSR Sections 7, 8, 9 and 10

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration included:

- appellant's "Child Care Subsidy Request – Self-Employment" (CCSR) dated February 6, 2018 indicating that during the period January 1, 2017 – December 31, 2017 the appellant earned a gross income of \$26,178 from self-employment less permitted operating expenses of \$6,425, resulting in a net income from self-employment of \$19,753 for the year 2017.
- appellant's request for reconsideration received by the ministry on March 19, 2018 in which the appellant noted:
 - she has sole guardianship and sole parenting responsibilities for her grandchild ("C");
 - with police assistance she rescued C from a neglectful environment in another province;
 - on September 26, 2016 she obtained a custody order for C in the Supreme Court of British Columbia.
- copy of Supreme Court of British Columbia (BCSC) court order dated September 26, 2016 granting to the appellant interim sole guardianship and sole parenting responsibilities of C pursuant to the *Family Law Act*.
- Child Care Subsidy Assessment income calculation form completed by the ministry covering the period March 1 – June 30, 2018 indicating that the appellant has a total monthly family income of \$2,834.50 from the following sources:
 - rental income from property: \$ 800.00
 - CPP benefit: 395.00
 - net income from self-employment: 1,639.50
 - Total Family Income: \$2,834.50

The Child Care Subsidy Assessment also indicated that C's Child Income Exemption is \$1,597.00. Potential Subsidy was calculated at \$210.00 and Parent Portion was calculated at \$618.75.

Information received at the Hearing

The appellant submitted 2 documents that were not before the ministry at reconsideration:

1. "CCS – Notice of Benefit Plan Ending" dated January 17, 2018 asking the appellant to submit documents supporting proof of family income, including federal CPP benefits;
2. "CCS – Request to Renew" (Page 2 of 2) in which the appellant reported income from 3 sources: self-employment, CPP benefits and rental income from a suite.

At the hearing the appellant explained that when she learned that C was at risk while living with her parents in another province she was advised to obtain an interim custody order from the BCSC because it was enforceable outside British Columbia. The initial interim custody order was granted in February, 2013. For a brief period in 2016 the appellant shared custody with C's mother but the mother was unable to care for the child, and in September 2016 the appellant obtained a new BCSC court order granting her interim sole custody and sole parenting responsibilities. From 2013 to the present the ministry has not considered C to be a child in need of protection.

The ministry did not object to the admission of documents 1 and 2 or to the oral evidence provided by the appellant at the hearing. The panel considered documents 1 and 2 and admitted them under EAA Section 22 (4) as evidence in support of the information that was before the ministry at reconsideration because they confirmed the income sources provided by the appellant in her CCS Request to Renew and supplied the missing 2nd page which was not included in the appeal record. The panel also admitted the appellant's oral testimony under EAA Section 22 (4) because it provided further background to the BCSC custody order and confirmed that C had never been designated by the ministry as a child in need of protection.

The facts on which the ministry relied at reconsideration are contained in the reconsideration decision, summarized as follows:

- the appellant's family unit consists of 2 persons (the appellant and C);
- the appellant's previous CCS authorization expired February 28, 2017;
- during the period September 5, 2017 – February 28, 2018 the appellant was issued a benefit plan with a CCS rate of \$10/day, 5 days per week;
- on February 6, 2018 the ministry received the appellant's completed "CCS - Request to Renew";
- on February 9, 2018 the ministry received the appellant's CCS self-employment form;
- on February 15, 2018 the ministry determined that the appellant's total family income was \$2,834.50 per month.

PART F – REASONS FOR PANEL DECISION

The issue to be determined upon appeal is the reasonableness of the ministry decision which determined that the appellant was not eligible to receive a child care subsidy beginning March 1, 2018 because the family's monthly net income exceeded the child's threshold as calculated under Section 8(2) of the Child Care Subsidy Regulation (CCSR) and the result of the calculation was not more than zero, pursuant to Section 7 (1) of the CCSR. The ministry also determined that the appellant did not meet the criteria set out in Section 7(2), which lists the circumstances under which Section 7(1) does not apply.

Relevant legislation:

CCSR: 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),

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.

(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.

(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;
- (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.

(2)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*;
- (d)a family bonus;
- (e)the basic child tax benefit;
- (e.1)the Canada child 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;
- (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;

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

- (3) The base threshold income level for a child is increased as follows:
- (b) by \$515 per month for a child who
 - (ii) is of school age and is receiving child care in any child care setting;

The appellant argues that she is eligible for the CCS because she has a custody order for C and pursuant to CCSR Section 7(2) the income test set out in CCSR Section 7 (1) does not apply. She does not argue that the ministry has been unreasonable in determining that the family's monthly net income exceeds that child's threshold or that the result of the calculation under Section 8 (2) is not more than zero.

The ministry's position is that the appellant became ineligible for the CCS because her total family income reported in February 2018 exceeds the child's threshold for a family of 2 persons and the amount of subsidy calculated under CCSR Section 8 is less than zero. The ministry also argues that the appellant does not meet any of the exclusion criteria set out in Section 7 (2) which would render the income test inapplicable in her circumstances.

Panel Decision

1. Income Test under CCSR Section 7 (1):

The information submitted by the appellant in her February 6, 2018 "CCS - Request for Renewal" indicates that the appellant's monthly family income is \$2,834.50. The child's threshold is calculated according to the formulae set out in CCSR Section 10: the base threshold income level for a family of 2 persons is \$1,082 plus \$515 for a child of school age receiving child care in any child care setting, for a total child income threshold of \$1,597. The panel finds that the ministry reasonably determined that the family's net monthly income exceeds the child's threshold by \$1,237.50.

CCSR Section 8 (2) states that if a family's monthly net income exceeds a child's threshold the amount of CCS is determined by $A - B$, where:

A = the amount set out in Schedule A or the parent fee, whichever is less; and

B = the amount of A divided by the amount for the total number of children described in Section 2 multiplied by 50% of the amount by which the family's monthly net income exceeds the child's threshold.

In the appellant's circumstances **A = \$210** (the amount set out in Schedule A for a school-aged child).

B = \$618.75 [\$210 divided by the sole child C's entitlement of \$210 = \$1.00. That \$1 figure is multiplied by $\frac{1}{2}$ of the amount by which the family's net monthly income exceeds the child's threshold, which in the appellant's case is $\$1,237.50 \times \frac{1}{2} = \618.75]. **A - B = -\$408.75**, which is an amount not greater than zero.

The panel finds that the ministry reasonably determined that the appellant is not eligible for a CCS because the family's net monthly income exceeds the child's threshold and the result of the Section 8 (2) calculation is not greater than zero.

2. BCSC Custody Order:

The subsection 7 (1) income test does not apply if the child's need for a CCS falls into one of the 5 categories enumerated in subsections 7 (2) (a) – (e). Categories (a) – (d) refer specifically to agreements entered into with the ministry and court-imposed custody orders under the *Child, Family and Community Service Act*. Category (e) exempts a person who is receiving assistance under the *Employment and Assistance Act*.

None of exemption categories set out in 7 (2) (a) – (e) refers to a custody order made by a court under any enactment other than the *Child, Family and Community Service Act*. The BCSC interim custody order granted to the appellant in February of 2016 is made under the *Family Law Act*, which is not included in the categories listed in Subsection 7 (2) (a) – (e). The panel therefore finds that the ministry reasonably determined that the appellant is subject to the income test set out in Subsection 7 (1) because the BCSC custody order under the *Family Law Act* is not included in the exemption categories set out in subsection 7 (2).

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 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, was a reasonable application of the applicable enactment in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision. The appellant is not successful in her appeal.