

SHORT- CHANGED:

Ensuring federal benefits
paid to the province reach
caregivers of children with
disabilities



OMBUDSPERSON
BRITISH COLUMBIA

Special Report No. 50

May 2022

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Our office is located on the unceded traditional lands of the Lək'wəŋən (Lekwungen) People and ancestors and our work extends across the homelands of the Indigenous Peoples within what we now call British Columbia. We honour the many territorial keepers of the lands and waters where we work.



OMBUDSPERSON
BRITISH COLUMBIA

May 2022

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Special Report No. 50, *Short-Changed: Ensuring federal benefits paid to the province reach caregivers of children with disabilities*.

The report is presented pursuant to section 31(3) of the *Ombudsperson Act*.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

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FROM THE OMBUDSPERSON

This investigation and report underscore how much the public relies on provincial and federal governments to work together to ensure we all receive the supports we need, and demonstrates what can happen when linkages in our interconnected social support system are broken. The advantages of federalism are many, however the associated complexity demands that governments address the impacts that can arise from multiple levels of government providing services and support.

This investigation focuses on the Taylors, grandparents caring for their granddaughter Jesse. The Ministry of Children and Family Development had supported a court order under a section of the *Child, Family and Community Service Act* that transferred custody and guardianship of Jesse to the Taylors, as her parents were not able to care for her. Jesse is Indigenous, and is living with mental and physical challenges.



The Taylors are an example of what the ministry calls “kinship care” – an approach that seeks to reduce the number of children in the care of the ministry by encouraging family-based caregiving models. The ministry provides families who take on these caregiving responsibilities with financial assistance. While the Taylors were receiving some provincial funding to care for Jesse, after learning she was living with disabilities, the Taylors successfully applied for the federal Disability Tax Credit, which they thought would entitle them to receive the Child Disability Benefit (CDB), a monthly payment from the federal government. However, as this report demonstrates, the Taylors were not able to access the CDB, because the ministry was considered to be “maintaining” Jesse under federal legislation, the *Children’s Special Allowances Act*. This entitled the ministry to receive the CDB on Jesse’s behalf and it deposited the CDB into provincial general revenue. Having received the CDB, the ministry did not find a way to ensure that the Taylors received an equivalent supplemental amount. This injustice was at the heart of our investigation.

As a result, the Taylors were short-changed in their access to federal financial supports. That financial support is intended to help caregivers meet the needs of a child living with a disability, not the province’s general needs. Receiving even a small amount extra each month can make a big difference in a family’s ability to provide for a child living with a disability in their care.

The injustice of this case is accentuated by the fact that by the time that the Taylors complained to us, the ministry had already acknowledged this was a problem. Unfortunately, it then took well over two years to develop a solution. In that time, the Taylors were short-changed more than \$7,000, and other families in the same position were similarly deprived of funds specifically intended for essential care needs.

My recommendations are aimed at putting this right: to ensure that caregivers of children eligible for the CDB actually receive that money both retroactively and moving forward. In

addition, I have recommended that the ministry report to my office on its progress in addressing the inequities resulting from the interaction of federal and provincial legislation as it relates to caregivers of children who are eligible for the Disability Tax Credit.

I am pleased that the ministry has not only accepted all of the recommendations but also taken steps to implement them by writing to families and informing them of both retroactive payments and increased payments moving forward. While the ministry has told us that these recommendations are implemented, my staff will be gathering information about how eligible families have been identified and what payments have been made in order to make our own assessment of implementation. Our office will be reporting publicly on that assessment of the ministry's progress.

Finally, this investigation highlights the ongoing need for all levels of government to work closely to ensure that the needs of children and families remain paramount when federal and provincial legislation intersect. As kinship care models are increasingly used to support permanency for children, all associated financial implications must be considered to ensure children with disabilities are equitably supported. While the federal government's benefit system is outside of our jurisdiction and thus was outside the scope of this investigation, I have written to the Federal Minister of National Revenue to suggest a review of policies and procedures in cases like the Taylors so that the federal government is doing what it can to ensure fairness for caregivers and children.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Chalke', written in a cursive style.

Jay Chalke
Ombudsperson
Province of British Columbia

INTRODUCTION

This report is about the Taylors,¹ one of the many families in the province who have taken on the responsibility of raising a child because the Ministry of Children and Family Development considers it unsafe, or not possible, for a parent to fill this role. The Taylors have been caring for their granddaughter, Jesse, for several years.

The ministry provides financial assistance to help caregivers like the Taylors cover some of the costs associated with this responsibility. However, as the Taylors discovered, when a child has a disability – like their granddaughter Jesse has – the ministry’s funding model fails to ensure that families like the Taylors are fairly and equitably supported compared with other non-parental caregivers.

Jesse is eligible for a federal disability program intended to assist with her added care costs. However, the ministry’s funding practices mean that the Taylors do not receive the federal government supports designed to help caregivers like them, solely because of the legal framework governing their status as caregivers. Instead, it is the ministry that benefits financially from Jesse’s disability designation, even though she is not in the ministry’s care. Under the ministry’s caregiver funding model, funds received by the province from the federal

government each month are retained by the ministry and not passed on to the Taylors. This experience of losing out on funding to support a disabled child is not unique to the Taylors, but rather is an inequity faced by many other caregivers in the province.

When the Taylors raised their concerns about the funding model with the ministry, the ministry agreed that its practices were problematic. Although the ministry said that resolving the issue was a priority, it did not offer the Taylors any immediate solution. After months of repeated inquiries from the Taylors, the ministry suggested to the Taylors that they might want to direct their concerns to our office, which they did.

Rarely does our office receive a complaint where the public organization has already acknowledged that its administrative practices are causing hardship, without any clear indication of how it intends to resolve the situation. This report is about one of those rare cases.

Our investigation confirmed what was known by both the Taylors and the ministry: the Taylors, and other caregivers in similar situations, had not been treated fairly. Our report’s recommendations present a course of action for the ministry so it can address an acknowledged unfairness, both retroactively and moving forward.

¹ The names of the complainant and their grandchild have been changed to protect their identities.

BACKGROUND

The Ministry of Children and Family Development administers programs and services for the purpose of ensuring that children and youth in the province are living in safe, healthy and nurturing environments.² When a parent is unable, or unwilling, to provide care in a manner that is consistent with these goals, the ministry offers voluntary services or undertakes direct interventions as authorized by the *Child, Family and Community Service Act* (CFCSA).³

In circumstances where remaining with, or returning to, a parent following a period of temporary alternative care would not be in the child's "best interests,"⁴ a court can issue an order under section 54.01 of the CFCSA to permanently transfer custody of the child to an extended family member or other person with an existing relationship with the child. Section 54.1 of the CFCSA authorizes the same form of permanent transfer of

custody after a child or youth has already been placed in the ministry's continuing care.

When an order under s. 54.01 or s. 54.1 is being considered, the ministry participates in the screening and assessment process to ensure that the proposed guardians will be able to provide for the safety and well-being of the child and understand that, in consenting to the plan for a permanent transfer, they will be assuming the roles and responsibilities of a legal guardian.⁵ Transferring custody through an order under s. 54.01 or s. 54.1 is a means of preserving family connection and achieving permanency, and offers an alternative to keeping children in ministry care.

However, some individuals who agree to take on this responsibility require assistance in meeting the added financial pressures of looking after a child, which is why the

² Ministry of Children and Family Development, <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/ministries/children-and-family-development>.

³ *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46.

⁴ The "best interests of a child" is the guiding principle for the application of the CFCSA. It underlies both judicial decision-making and the ministry in its administration of the Act and related policies and procedures. The factors to be considered in determining the child's best interest are set out in section 4 of the Act. Examples are the child's safety and physical and emotional needs, the importance of continuity of care, and the child's cultural, racial, linguistic and religious heritage. If the child is an Indigenous child, in addition to these factors there must also be consideration of the importance of the child belonging to their Indigenous community and being able to learn about and practice their traditions, customs and language.

⁵ Ministry of Children and Family Development, *Out of Care Policies – Chapter 4*, revised September 2021, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/policies/ch_4_out_of_care_policies.pdf.

ministry offers “Post Transfer of Custody Assistance Agreements.” Under these agreements, the ministry provides the family with a monthly maintenance payment until the child turns 19, with the intention that these funds “assist in meeting the costs associated with parenting, specifically to meet the child’s safety, well-being and on-going development needs.”⁶ The ministry refers to these caregivers as “54.01 caregivers” and “54.1 caregivers,” and we have used the same terminology throughout this report.

The funds provided by the ministry under these Assistance Agreements are vitally important because many 54.01 and 54.1 caregivers, like the Taylors, are grandparents living on fixed incomes. However, as the following sections of our report describe, the ministry does not treat all caregivers equally in terms of the amount of financial assistance it provides to help meet these added costs. In addition, caregivers may not be aware that receiving these funds from the ministry has consequential impacts on their ability to benefit from other programs designed to help address costs associated with parenting, particularly when the child has a disability.

The Taylor family’s experience

In 2013, the Taylors⁷ became the legal guardians of their granddaughter Jesse by an order made under s. 54.01 of the CFCSA. Jesse was two years old at the

time. Jesse is the child of the Taylor’s daughter, and is of Indigenous heritage through her birth father.

Since that time, the ministry has entered into consecutive Post Transfer of Custody Assistance Agreements with the Taylors. Each of these agreements has lasted for two years. Based on current caregiver rates and Jesse’s age, the Taylors currently receive \$1,010.98 per month.

As Jesse grew older, it became apparent that she was experiencing challenges as a result of both mental and physical impairments. Given the impact of these conditions on Jesse’s functioning, and the costs of recommended early interventions, health professionals encouraged the Taylors to apply for the federal Disability Tax Credit (DTC).

⁶ Ministry of Children and Family Development, Contract Management for Child and Family Services, *Post Transfer of Custody Assistance Agreement*, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/data-monitoring-quality-assurance/information-for-service-providers/contract-mgmt/post_transfer_of_custody_assistance_agreement.pdf

⁷ The names of the complainant and their grandchild have been changed to protect their identities.

The Disability Tax Credit, Registered Disability Saving Plans and Child Disability Benefit

The Disability Tax Credit (DTC), a program administered by the Canada Revenue Agency (CRA), is a non-refundable tax credit. According to the CRA's website, "the purpose of the DTC is to provide for greater tax equity by allowing some relief for disability costs, since these are unavoidable additional expenses that other taxpayers don't have to face."⁸ To be eligible, a medical practitioner must certify that the person has a severe and prolonged impairment that causes limitations in one or more categories of physical or mental functioning. Qualified individuals, or those caring for a DTC-eligible dependant or spouse, can apply the credit to their taxable income amount and may request adjustments for up to 10 years under the CRA's taxpayer relief provisions.

DTC eligibility is a prerequisite for establishing a Registered Disability Savings Plan; these plans help disabled Canadians save for their long-term financial security through a combination of direct contributions, grants and bonds.⁹

Children who meet the eligibility criteria for the DTC qualify to receive the Child Disability Benefit (CDB).¹⁰ The Child Disability Benefit is a tax-free monthly payment paid by the federal government to help families address the added costs of raising a child with disability-related expenses. The amount is calculated based on a family's net income, is available until the child reaches age 18, and is provided on top of the monthly Canada Child Benefit.¹¹

⁸ See Government of Canada, "Disability Tax Credit (DTC)," <https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/disability-tax-credit.html>.

⁹ See Canada Revenue Agency, "Registered Disability Savings Plan (RDSP)," <https://www.canada.ca/en/revenue-agency/services/tax/individuals/topics/registered-disability-savings-plan-rdsp.html>.

¹⁰ See Government of Canada, "Child Disability Benefit (CDB)," <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/child-disability-benefit.html>.

¹¹ The Canada Child Benefit is a monthly, non-taxable payment issued by the CRA to individuals who have primary responsibility for the care and upbringing of a child in their home. To be eligible, the child must be under 18 years of age. Like the CDB, the benefit amount is adjusted based on a family's net income. Families whose annual net income is under \$32,000 receive the maximum entitlement, with progressive reductions for those with higher incomes. See Government of Canada, "Canada Child Benefit," <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/t4114/canada-child-benefit.html#toc3>.

In June 2019, the Taylors received a decision letter from the CRA informing them that Jesse met the DTC eligibility criteria retroactive to 2015. However, the CRA also informed the Taylors that they would not be able to claim the credit on their taxes, nor would they receive a monthly CDB payment. The CRA said that according to its records, Jesse was “under the care of an agency” at all times during the period of DTC eligibility and not dependent on the Taylors for support.

The Taylors were surprised by this outcome because they’d had legal guardianship of Jesse since 2013. They later learned that the CRA’s determination was based on the fact that the ministry had been claiming Jesse’s benefits under the federal *Children’s Special Allowances Act*. According to this legislation, when a child is “maintained” by a protection agency in the home of a foster parent, or a private guardian who has the rights, duties and responsibilities of a parent as a result of a court order, the agency may apply to the CRA to receive the child’s federal benefits in the form of the Children’s Special Allowance.¹² The allowance includes both a child’s Canada Child Benefit and, where applicable, CDB entitlement.

Because the Taylors had been receiving a monthly payment from the ministry to assist with parenting costs, the ministry was considered to be “maintaining” Jesse and therefore, under the *Children’s Special Allowances Act*, the ministry, not the Taylors, received her federal benefits.

With Jesse approved for the DTC, the retroactive and ongoing CDB was added to the monthly allowance received by the ministry as the maintaining agency. This

meant the ministry would now receive an additional \$236 per month¹³ from the CRA on top of the existing Canada Child Benefit amount, for a total Children’s Special Allowance payment of \$702.

The Taylors contacted the ministry social worker responsible for renewing their Assistance Agreement to ask whether their maintenance payment could be amended to reflect the increase in Jesse’s federal benefits. They were told there was no mechanism within the Assistance Agreement to do so. When they later asked where the additional CDB funds went, if not to the guardians responsible for caring for their disabled dependants, they were told these funds were added to “general ministry revenue.”

The Taylors also learned there was no option in the existing funding arrangement between the CRA and the ministry that would enable them to access the tax benefits associated with Jesse’s DTC eligibility. Under the DTC rules, the Taylors would have been able to claim up to \$3,000 per year in tax credits, depending on their income.

On August 20, 2019, the Taylors wrote to the Minister of Children and Family Development describing their experiences and outlining why they believed the ministry’s funding arrangement with 54.01 caregivers of disabled children was unfair. An August 27, 2019, reply from a ministry staff person appeared to confirm the Taylors’ belief that the ministry’s practice created a hardship for families such as theirs. Further, the response indicated that the ministry was already aware of the issue and working to find a solution:

¹² See Government of Canada, Revenue Services, “Children’s Special Allowances,” <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/childrens-special-allowances.html>.

¹³ When Jesse first became eligible, her monthly CDB rate was \$236 per month. The rate has since increased and the amount she is currently eligible for is \$242.19. See Government of Canada, “Children’s special allowances (CSA) payment amounts for base years 2017-2020,” <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/on-net/childrens-special-allowances-calculation-sheet-2016-2018.html#shr-pg0>.

I advised that I did not disagree that the circumstances regarding access to the Child Disability Benefit was problematic as a result of your 54.01 status. I advised that I contacted a consultant regarding possible options for your family and other 54.01 guardians and was informed that this is a current issue that is being investigated by a working group who is aware that the current provincial/federal agreement creates hardship for families who would otherwise be eligible for the benefit were it not for the 54.01 status. It is hoped that this will be addressed at a provincial level so that children with disabilities under 54.01 status may receive the benefits. While this does not provide an immediate solution to the issue there is momentum to address it.

On November 26, 2019, the Taylors again wrote to the minister with their concerns. On January 31, 2020, an email response from the ministry's chief financial officer confirmed the information previously communicated about this issue, adding:

As noted in the ministry's response dated August 28, 2019 to your initial letter, the ministry is currently engaged in developing long-term policy solutions to address discrepancies such as those you have identified in your letter for families that would otherwise be eligible for federal benefits were it not for the 54.01 status. This is a priority item for the ministry, but it will require appropriate consultation, reviews, and approvals prior to being enacted. Accordingly, we are not able to make any policy changes in advance of this work being completed, including requesting exemptions to current policy for

54.01 Permanent Custody families (with or without children with disabilities) through the Children's Special Allowance Form.

Several months later, the Taylors again contacted the ministry, this time in reference to the federal government's one-time payment to DTC-eligible individuals for their COVID-19 pandemic-related expenses.¹⁴ According to the federal government's information about the payment, DTC-eligible children "maintained by an agency" would have their special payment directed to the involved agency. The Taylors asked whether the funds would be passed on to them. While the Taylors were initially told that the ministry was evaluating options for distribution, they subsequently received a payment equivalent to the amount issued by the CRA for Jesse's entitlement. The Taylors believed this signalled that it was within the ministry's power to resolve the other acknowledged financial hardship for 54.01 caregivers of disabled children. However, when they asked the ministry about the status of the working group tasked with addressing the broader unfairness, they were told that the ministry was continuing to "examine improvements" and that they could direct their concerns about the ministry's treatment of the CDB to the Ombudsperson.

After reviewing the Taylor's complaint, we initiated an investigation. As part of our investigation, we spoke with staff involved in the working group referenced in the ministry's correspondence with the Taylors.

¹⁴ Government of Canada, "One-Time Payment to Persons with Disabilities," <https://www.canada.ca/en/services/benefits/covid19-emergency-benefits/one-time-payment-persons-disabilities.html>.

INVESTIGATION

The ministry's failure to provide Child Disability Benefit funding to caregivers

The ministry confirmed our understanding of the issue as described by the Taylors in their complaint to our office – specifically, that the ministry's practice of claiming dependants for the purpose of obtaining benefits under the federal *Children's Special Allowances Act* disentitled caregivers to the federal funding their children with disabilities were otherwise qualified to receive. Further, we confirmed that the ministry did not pass on any additional amounts associated with DTC eligibility to the caregivers, even though the ministry received funds from the CRA by claiming these disabled children as dependants.

The ministry's practice is replicated by Delegated Aboriginal Agencies,¹⁵ who may also enter into Assistance Agreements with individuals providing care under s. 54.01 and s. 54.1. In those cases, the caregivers are similarly unable to access the CDB because

of the monthly maintenance payments administered by the agencies.

When we inquired about the status of the ministry's review of the issue, staff acknowledged the funding inequity across different categories of "out-of-care" programs.¹⁶ The ministry understood the effect of the existing provincial/federal funding mechanism but suggested it may be limited in its ability to address the impact of the CRA's policies relating to the administration of the Children's Special Allowance, including families' inability to claim their dependant's DTC.

We learned that the working group had been considering potential solutions, and we were told that one option being considered was the introduction of a separate payment equivalent to the amount of the CDB received by the ministry through the Children's Special Allowance. In effect, the ministry would "flow through" the disability benefits to the 54.01 and 54.1

¹⁵ Delegated Aboriginal Agencies (DAA) receive "delegation" from the Director of Child Welfare to administer some or all aspects of the CFCSA to children and families who identify as having Indigenous, Métis or Inuit descent. Currently there are 24 DAAs in the province operating at varying levels of delegation. Not all DAAs are delegated the legal authority to enter into agreements.

¹⁶ For children who cannot be supported to safely live with their parent, the CFCSA authorizes "out-of-care" placements with relatives or other adults with established relationships as alternatives to living with unfamiliar foster caregivers. The CFCSA prioritizes placing Indigenous and non-Indigenous children in care with a relative before other placements, and allows for the establishment of funding agreements between the ministry and non-parental caregivers. These options include Extended Family Program Agreements (s. 8), interim and temporary custody orders (s. 35(2)(d) and s. 41(1)(b)), and permanent transfers of custody (s. 54.01 and s. 54.1). Ministry of Children and Family Development, *Out of Care Policies – Chapter 4*, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/policies/ch_4_out_of_care_policies.pdf.

care providers, in addition to their existing monthly maintenance payment amount. This change would give families whose children have a disability more money each month.

However, the taxable income deductions associated with their DTC status would remain inaccessible. Staff explained how this was an important consideration, as one of the goals in seeking to address the funding issue was to see an increase in uptake of the DTC and, by extension, the Registered Disability Savings Plan (RDSP) program.

The RDSP is a significant ancillary benefit associated with DTC eligibility. Depending on a person's income and contributions over their lifetime, the federal government will pay up to \$90,000 into a RDSP in the form of bonds and grants.¹⁷ For children or youth not in continuing care, once there is a permanent transfer of custody order, only the 54.01 or 54.1 caregiver is authorized to set up an RDSP.¹⁸

Because they cannot access the DTC, or the CDB, due to the ministry's current funding framework, it is understandable that some caregivers would not see a benefit to completing the application. Further, because the RDSP is intended as a long-term savings plan, with withdrawal limits designed to promote this goal, it is unlikely that 54.01 and 54.1 caregivers would benefit financially from this program until after their dependants were 19 years old and no longer eligible for ministry supports or services.

Implementing a separate payment equivalent to the CDB could create an incentive for 54.01 and 54.1 caregivers

to apply for the DTC and, by extension, increase participation in the RDSP program. It would also be a practical way to mitigate the inequity 54.01 and 54.1 caregivers face under the ministry's existing framework. Although the working group had identified this option, the ministry's rationale for not adopting this strategy was unclear. By deferring to its ongoing review of the issue, instead of implementing a solution, the ministry's inaction maintained a funding structure that its own staff acknowledged is a source of hardship for caregivers of dependants with disabilities.

Funding model impacts: Unequal financial supports and implications for families

The ministry directs its own staff as well as those of Delegated Aboriginal Agencies to apply for the DTC for any child or youth in all forms of care who may be eligible.¹⁹ However, different amounts of financial supports are available to caregivers, depending not on the needs of the children but instead on the way in which the caregiver relationship is established under the CFCSA. The ministry's funding model could leave 54.01 and 54.1 caregivers under-resourced in comparison to other "out-of-care" caregivers, potentially undermining efforts to create permanency for children. Further, in light of the overrepresentation of Indigenous children in care, these problematic outcomes are likely to be disproportionately borne by Indigenous families and their extended communities of care.

¹⁷ See Canada Revenue Agency, "Canada Disability Savings Grants and Bonds," <https://www.canada.ca/en/employment-social-development/programs/disability/savings/grants-bonds.html>.

¹⁸ Given the financial benefits of an RDSP, ministry staff are instructed to offer support to 54.01 and 54.1 legal guardians to engage in this process, according to the ministry's "Guide for RDSPs for Children and Youth Not in Continuing Care," March 2021.

¹⁹ Ministry of Children and Family Development, Child Disability Benefit and Registered Disability Savings Plan Intranet site.

Table 1: Payment and supplemental benefits: Reference for out-of-care options practitioners

| Program | Maintenance Payment | Basic Medical (MSP) | Extended Medical | Dental Optical | Child Care Subsidy & Surcharge | Canada Child Benefit Child Disability Benefit |
|---|--------------------------------|---------------------|------------------|----------------|--------------------------------|---|
| | M C F D | | | | | Canada Revenue Agency |
| Extended Family Program (s. 8) | ✓ Not income tested | ✓ | ✓ | ✓ | ✓ | Care provider to contact CRA about eligibility |
| Age 0 to 11 | \$1,010.98 | | | | | |
| Age 12 to 19 (ends 19 th birthday) | \$1,112.70 | | | | | |
| Interim and Temporary Custody to Other (s. 35(2)(d); 41(1)(b); 42.2(4)(c) & 49(7)(b)) | ✓ Not income tested | ● | * | * | ✓ | Not Eligible |
| Age 0 to 11 | \$1,010.98 | | | | | |
| Age 12 to 19 (ends 19 th birthday) | \$1,112.70 | | | | | |
| Permanent Transfer of Custody (s. 54.01 & 54.1) | ✓ Not income tested | ● | X | X | ✓ | Not Eligible |
| Age 0 – 11 | \$1,010.98 | | | | | |
| Age 12 to 19 (ends 19 th birthday) | \$1,112.70 | | | | | |
| Family Law Act (FLA) Guardianship | \$0 | ● | X | X | X | Guardian to contact CRA about eligibility |
| MCFD Restricted and Regular Foster Care | ✓ Not income tested | ✓ | ✓ | ✓ | ✓ | Not Eligible |
| Ages 0 – 11 | \$1,010.98 | | | | | |
| Age 12 to 19 (ends 19 th birthday) | \$1,112.70 | | | | Subsidy only | |
| Post Adoption Assistance (PAA)** | Income and asset test Up to | ● | X | X | X | Adoptive parent(s) to contact CRA about eligibility |
| Ages 0 – 11 | \$806.78 | | | | | |
| Age 12 to 19 (ends 19 th birthday) | \$926.53 | | | | | |

* Funding may be available when considered on a case-by-case basis and approved by the Director of Operations (DOO) and may be paid using **Activity Code 14541**. MCFD/DAA MSP and Pacific Blue Cross are not available for interim and temporary OOC care providers. **Activity Code 14541** is used to pay OOC care providers after Removal and prior to interim OOC (s.35(2)(d)) order.

● All children in BC receive MSP premiums at no charge.

X Not available through MCFD. Section 54.01/54.1/FLA guardians and adoptive parents with low incomes may be eligible for Premium Assistance (MSP) and Healthy Kids Program (dental) available through the Ministry of Social Development.

** Adoptive parents may be eligible for additional support services.

Source: Ministry of Children and Family Development, Resources and Supports, Out of Care Payment and Benefit Table – Reference for Out-of-Care Options Practitioners, July 2021.

With the exception of parents who obtain guardianship through the *Family Law Act* or are receiving post-adoption assistance from the ministry, all categories of “out-of-care” caregivers receive the same monthly maintenance payment. The amount of the payment is determined based on the age of the child but is otherwise a “flat rate” benefit, meaning it is not income-tested, nor is it scaled to reflect actual costs of care.

Comparing the availability of other financial supports, it is apparent that certain caregivers have access to additional resources to assist with the costs of caring for a disabled dependant. These benefits are not available to 54.01 or 54.1 care providers.

For example, foster care providers are not entitled to the CDB but may receive a fee-for-service monthly amount from the ministry when caring for children with special needs. This amount, ranging from \$458.02 to \$1,816.66 per child per month, is in addition to the basic monthly rate. According to the ministry, this additional payment “recognizes the special parenting skills and extra time required to meet the needs of a child” who may have physical, mental or behavioural challenges.²⁰

We also noted that individuals currently providing care under the Extended Family Program (EFP) receive the same monthly maintenance as 54.01 and 54.1 care

providers, but also have access to the Canada Child Benefit plus CDB if eligible.

This has not always been the case. A 2016 report on Indigenous child welfare in B.C. identified access to the federal child benefits as an issue of inequality between caregiver types.²¹ The report referenced the importance of harmonizing the financial assistance available to out-of-care caregivers, noting the problematic inequity between amounts paid by the ministry for post-adoption assistance compared with what relatives providing care receive. The report included three recommendations aimed at addressing the disparity between funding models for different caregivers. This included a recommendation that the ministry take immediate steps to harmonize the financial assistance to families who have permanent care of children in order to promote opportunities for Indigenous children. Further, it recommended that government undertake a legislative and financial policy review to “determine the necessary changes that would allow those families under the ‘Extended Family Program’ to receive the Canada Child Benefit and ensure the Canada Child Benefit amount is not deducted from MCFD payments for permanency placements.”²²

²⁰ Ministry of Children and Family Development, “Foster Care Payments in BC,” <https://www2.gov.bc.ca/gov/content/family-social-supports/fostering/for-current-foster-parents/foster-care-payment>.

²¹ Grand Chief Ed John, *Indigenous Resilience, Connectedness and Reunification – From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia*, <https://fns.bc.ca/our-resources/indigenous-resilience-connectedness-and-reunification-from-root-causes-to-root-solutions>.

²² Grand Chief Ed John, *Indigenous Resilience*.

The ministry referenced the 2016 report when announcing a 2019 increase in payments to caregivers, with the minister identifying the impact underfunding had on caregivers and the importance of “addressing a long-standing inequity for extended families, especially Indigenous families.”²³

We asked why the ministry did not also take steps at that time to ameliorate the similar inequity experienced by 54.01 and 54.1 caregivers of CDB-eligible dependants, and learned that the ministry did not consider the situation experienced by 54.01 and 54.1 caregivers as part of these efforts.

This means that a caregiver of a disabled child under an EFP agreement has access to more financial resources than a 54.01 or 54.1 caregiver. As noted above, they receive both a monthly maintenance payment and, where eligible, the CDB. In explaining why the caregiver groups receive different

monthly funding amounts, the ministry noted that under an EFP agreement, parents retain guardianship. Because there is no court order associated with these care arrangements, the *Children’s Special Allowances Act* does not allow the ministry to claim the children or youth subject to the agreement as dependants for the purpose of receiving their CDB.

We are concerned about the impact of this distinction on achieving permanency for children and youth with disabilities in care. For example, when a child or youth has been living with an extended family member or other significant adult under an EFP agreement, and the ministry determines that reunification with the parents will not be possible, staff are directed to consider applying to court to permanently transfer custody under s. 54.01.²⁴

²³ Office of the Premier, “Caregivers for B.C.’s Most Vulnerable Get First Pay Increase in a Decade” [press release, February 28, 2019], https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2019PREM0023-000294.htm.

²⁴ Ministry of Children and Family Development, *Out of Care Policies – Chapter 4*, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/policies/ch_4_out_of_care_policies.pdf.

ANALYSIS AND CONCLUSION

Based on information from the ministry staff we spoke with, and as noted by the Representative for Children and Youth in an August 2019 report,²⁵ the ministry has increasingly used transfers of custody under s. 54.01 as a means to family preservation and an alternative to keeping children in care. According to its public reporting, one of the ministry's strategies to reduce the number of children and youth in care, of which the overwhelming majority are Indigenous, is a greater use of "family preservation strategies" like s. 54.01 orders.²⁶

However, the inequities in the current funding model mean that families participating in the EFP will have access to fewer financial supports to assist with costs of caring for their disabled dependant once they obtain legal guardianship under a s. 54.01 order. In situations like that of the Taylors, where the ministry determines it is in the child's best interests to be cared for by a family member and supports a transfer of

custody, caregivers must consider whether they have the resources needed to take on the responsibility of raising a child. If that child has a disability, becoming a permanent caregiver by agreeing to a 54.01 or 54.1 order means taking on this role with fewer supports to meet even greater costs of care. A disproportionate number of children and youth in care have some form of special need.²⁷ Whether to prioritize permanency or increased financial supports is a troubling dilemma likely faced by many families, given the ministry's current caregiver funding model.

The financial pressures associated with caregiving and in relation to permanency options has been a theme identified in a number of reports and recommendations directed at the ministry.²⁸ In its most recent service plan, the ministry recognized that it needed to engage in a comprehensive review of services and supports for family-based caregivers²⁹ and has identified this is as a current project for its Strategic

²⁵ Representative for Children and Youth, *B.C. Adoption and Permanency Options Update – August 2019*, https://rcybc.ca/wp-content/uploads/2019/09/rcy_adoptionupdate-final-aug2019_0.pdf.

²⁶ MCFD Reporting Portal, "Children and Youth in Care (CYIC)," <https://mcfcd.gov.bc.ca/reporting/services/child-protection/permanency-for-children-and-youth/performance-indicators/children-in-care>.

²⁷ According to a Ministry of Education report on educational outcomes, of the students classified as children and youth in care, 50% were identified as having special needs, versus only 10% of the student population not in ministry care. Ministry of Education, *How Are We Doing? Children and Youth in Government Care*, <https://www2.gov.bc.ca/assets/gov/education/administration/kindergarten-to-grade-12/reports/cyic/cyic-report.pdf>.

²⁸ In addition to the reports identified earlier in this report, see Ministry of Children and Family Development, *What We Heard About Youth Transitions and the Family Based Caregiver Payment Model in British Columbia – February 2019*, https://www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/00-public-ministry-reports/what_we_heard_feb_2019.pdf.

²⁹ MCFD, *2019/2020–2021/22 Service Plan*, <https://www.bcbudget.gov.bc.ca/2019/sp/pdf/ministry/cfd.pdf>.

Initiatives Branch. The purpose of the review is to “investigate the challenges associated with the existing family-based caregiver payment model,” including the equalization of the ministry’s monthly maintenance to ensure that the rate is equivalent for all placement types, inclusive of the Canada Child Benefit and CDB.³⁰

While we acknowledge the value of a broader review to address challenges for all caregiver types, it is clear, based on the correspondence received by the Taylors, that ministry staff were aware as early as August 2019 of the hardship the existing model creates for 54.01 and 54.1 caregivers of dependants with a disability. With no stated time frame for the conclusion of the ministry’s review or implementation of a solution, families will continue to experience this hardship with no resolution in sight.

When supports for disabled children and youth engage both federal and provincial government programs, the administration of those programs should focus first and foremost on those who are the intended beneficiaries: children and their caregivers. However, the ministry’s current funding model fails to address caregivers’ disentanglement to federal disability benefits that are intended to help families meet the significant costs of raising a child with a disability. As a result, children with disabilities may not receive all of the supports that they need and that families might previously have relied on while acting as the children’s temporary caregiver.

Not only do families lose access to these important resources when agreeing to

become a child’s permanent legal guardian, but the ministry is unjustly enriched when it does not pass the money it receives from the federal government on to those caregivers. As Jesse’s maintaining agency, the ministry currently receives a CDB supplemental amount of \$242.19 per month.³¹ Since Jesse qualified for the DTC, in June 2019, approximately \$7,400 in additional funding would have been directed to the ministry because of her disability-related care needs. In failing to pass these benefits on to the Taylors, the ministry benefits from Jesse’s disability designation.

The ministry cannot address all of the challenges arising from the application of federal legislation. However, the ministry can address the inequity arising from this scheme, an inequity that is perpetuated by the ministry’s current funding model for 54.1 and 54.01 caregivers.

Throughout our investigation, ministry staff consistently acknowledged the unfairness experienced by families like the Taylors. While we have been encouraged by the ministry’s apparent willingness to see this matter resolved so that all caregivers are fairly supported, any further delay in implementing a solution risks the continuation of an unfairness to those who have taken on the responsibility of raising a child who might otherwise be in the care of the ministry. Further, through the ministry’s failure to act in a timely way to address this inequity, permanency for children and youth with disabilities may be negatively impacted, an outcome contrary to the overarching aim of the ministry, and their caregivers disadvantaged.

³⁰ MCFD, Strategic Initiatives Branch – Family-Based Caregiver Rates Payment Model Project, Intranet site.

³¹ See Government of Canada, “Children’s Special Allowances (CSA) Payment Amounts for Base Years 2017–2020,” <https://www.canada.ca/en/revenue-agency/services/child-family-benefits/on-net/childrens-special-allowances-calculation-sheet-2016-2018.html>.

For these reasons, we have made four recommendations. First, we have recommended that the ministry address the inequitable funding for all 54.1 and 54.01 caregivers by ensuring that future payments under Assistance Agreements include an amount equal to any CDB benefits to which a dependant is entitled.

Second, we have recommended that the ministry provide retroactive payments to all 54.1 or 54.01 caregivers who had an Assistance Agreement with the ministry on April 1, 2019, or later, and on whose children's behalf the ministry received CDB payments. The ministry has been aware of the negative consequences of its funding model since at least as early as August 2019. This was when the ministry gave its assurance to the Taylors that the issue was under investigation after acknowledging the disadvantage imposed on caregivers of similar legal status. However, in making this recommendation we also note the Budget 2019 increase in caregiver payments, which came into effect in April 1, 2019, and was implemented with the goal of addressing funding inequities by making greater supports available to certain categories of caregivers. Given the unfairness similarly experienced by 54.1 and 54.01 caregivers as a result of the ministry's practices, we have recommended that payments be made retroactive to the same date as these funding increases were put in place. Based on discussions with staff, we understand that the ministry has the records needed to identify the caregivers entitled to receive these retroactive payments.

We have also recommended that the ministry assist, including providing financial assistance, any Delegated Aboriginal Agencies that have been using the same funding practices in implementing these ongoing and retroactive payments.

These three recommendations, once implemented, will address the financial inequities faced by 54.01 and 54.1 caregivers of disabled children.

Finally, given that the ministry has acknowledged broader systemic inequities in caregiver funding, we have recommended that the ministry report to us on a regular basis about the work it is doing internally and with the federal government to address the existing broader inequities, such as access to the DTC, to ensure that all children with disabilities in out-of-care situations are properly supported.

Finding 1: The Ministry of Children and Family Development's practice of claiming the federal Child Disability Benefit allocated to dependants of 54.01 and 54.1 caregivers, thereby disentiitling families to these funds and enriching the province by failing to adjust the monthly maintenance payment to reflect this additional amount, is unjust.

Recommendation 1: By June 30, 2022, the Ministry of Children and Family Development provide ongoing funding to all s. 54.01 and s. 54.1 caregivers of Disability Tax Credit–eligible dependents who have an Assistance Agreement with the ministry or a Delegated Aboriginal Agency, in an amount that is equivalent to the amount of the Child Disability Benefit the ministry or the Delegated Aboriginal Agency receives each month from the federal government under the *Children's Special Allowances Act*.

Recommendation 2: By June 30, 2022, the Ministry of Children and Family Development make a retroactive payment to all 54.01 and 54.1 caregivers of Disability Tax Credit–eligible dependants who had Assistance Agreements with the ministry or Delegated Aboriginal Agencies as of April 1, 2019, or later. The amount of the payments must be equal to the Child Disability Benefit and any other federal benefits that the ministry received on the dependant’s behalf and that the ministry has not already passed on to the caregivers. These payments must cover the period from April 1, 2019, to the date on which the ministry changes its funding model for 54.01 and 54.1 caregivers in accordance with Recommendation 1.

Recommendation 3: The Ministry of Children and Family Development assist, including by way of financial assistance, Delegated Aboriginal Agencies that have been using the same funding practices for 54.01 and 54.1 caregivers under Assistance Agreements in implementing the payment process as set out in Recommendations 1 and 2.

Recommendation 4: By October 31, 2022, and on any other dates as requested by the Ombudsperson, the Ministry of Children and Family Development report to us on its progress in addressing the inequity resulting from the interaction of the federal and provincial legislation as it relates to caregivers of Disability Tax Credit–eligible dependants.

APPENDICES

Appendix A: Findings and Recommendations

Finding

1

The Ministry of Children and Family Development's practice of claiming the federal Child Disability Benefit allocated to dependants of 54.01 and 54.1 caregivers, thereby disintitling families to these funds and enriching the province by failing to adjust the monthly maintenance payment to reflect this additional amount, is unjust.

Recommendations

| | |
|---|---|
| 1 | <p>By June 30, 2022, the Ministry of Children and Family Development provide ongoing funding to all s. 54.01 and s. 54.1 caregivers of Disability Tax Credit–eligible dependents who have an Assistance Agreement with the ministry or a Delegated Aboriginal Agency, in an amount that is equivalent to the amount of the Child Disability Benefit the ministry or the Delegated Aboriginal Agency receives each month from the federal government under the <i>Children’s Special Allowances Act</i>.</p> |
| 2 | <p>By June 30, 2022, the Ministry of Children and Family Development make a retroactive payment to all 54.01 and 54.1 caregivers of Disability Tax Credit–eligible dependants who had Assistance Agreements with the ministry or Delegated Aboriginal Agencies as of April 1, 2019, or later. The amount of the payments must be equal to the Child Disability Benefit and any other federal benefits that the ministry received on the dependant’s behalf and that the ministry has not already passed on to the caregivers. These payments must cover the period from April 1, 2019, to the date on which the ministry changes its funding model for 54.01 and 54.1 caregivers in accordance with Recommendation 1.</p> |
| 3 | <p>The Ministry of Children and Family Development assist, including by way of financial assistance, Delegated Aboriginal Agencies that have been using the same funding practices for 54.01 and 54.1 caregivers under Assistance Agreements in implementing the payment process as set out in Recommendations 1 and 2.</p> |
| 4 | <p>By October 31, 2022, and on any other dates as requested by the Ombudsperson, the Ministry of Children and Family Development report to us on its progress in addressing the inequity resulting from the interaction of the federal and provincial legislation as it relates to caregivers of Disability Tax Credit–eligible dependants.</p> |

Appendix B: Response from the Ministry of Children and Family Development



April 19, 2022

Jay Chalke
Ombudsperson
Email: c/o ABockus-Vanin@bcombudsperson.ca

VIA E-MAIL
Ref: 269278
x-Ref: 267859

Dear Jay Chalke:

Further to my letter of March 11, 2022, and in response to your letter of April 11, 2022, I am pleased to provide the following clarification regarding your investigations into the Ministry of Children and Family Development's (MCFD) practice of claiming out-of-care children as dependants under the federal *Children's Special Allowances Act*, and the resulting impact on families who care for children with disabilities pursuant to s 54.01/54.1 orders under the *Child, Family and Community Service Act*.

As stated in my letter of March 11, MCFD accepts recommendations 1, 2 and 3 and confirms they were implemented on February 17, 2022. Further to this, we also accept recommendation 4.

Regarding your question about how the ministry has identified and contacted all the families who are owed both ongoing and retroactive payments, MCFD has gathered the following data from April 2019 through present:

- **Child 'In-Pay':** Monthly amounts paid in Child Disability Benefits for each child by the Canada Revenue Agency (CRA);
- **Eligible Agreement:** MCFD, Métis Family Services, and VACFSS Child file legal status where a child was (for one or more months) in a qualifying care type (54.1, 54.01, interim or temporary care status);
- **Contracted Care Provider:** All agreements for these care types that were active during any or all of this time period.

In each case where a child was in pay for the Child Disability Benefit and they were in an eligible agreement type, all active care providers were provided a letter from the Honourable Mitzi Dean, Minister of Children and Family Development, via e-mail or post to advise them of their eligibility for the new Disability Supplement. Retroactive amounts from April 2019 through December 2021 were paid through accounts payable in a lump sum, and future amounts were added to agreements as a new aggregate Disability Supplement and will pay with each monthly maintenance payment.

Accounting Operations monitors the 'children in-pay' as monthly reports from CRA are received and will advise resource workers of agreements where a child and contract become eligible (or no longer qualify) for the new supplement.

.../2

Ministry of
Children and
Family Development

Office of the Deputy Minister

Mailing Address:
PO BOX 9721 Stn Prov Govt
Victoria, British Columbia V8W 9S2

Telephone: 778 698-7038
Facsimile: 250 356-2920

Regarding your question about how MCFD is supporting Indigenous Child and Family Service Agencies (ICFSA), formerly known as Delegated Aboriginal Agencies, in implementing these recommendations, I can provide the following response:

- MCFD provided information to the ICFSA Directors and provided information sessions and supporting materials to all ICFSAs.
- For the ICFSAs on whose behalf MCFD collects child disability benefits, MCFD has had direct communications on how MCFD will manage these funds and has inquired how those ICFSAs want to manage the child disability benefit moving forward.

If you have any follow up questions, please contact James Wale, Deputy Director of Child Welfare, at 778 698-5048 or via email at: James.Wale@gov.bc.ca.

Sincerely,



Allison Bond
Deputy Minister for Children and Family Development

pc: James Wale



OMBUDSPERSON

B R I T I S H C O L U M B I A