



Social Security (Childcare Assistance) Regulations 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 30th day of August 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 132AC of the Social Security Act 1964, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

| | | | |
|----|--|----|--|
| 1 | Title | 11 | Applications and evidence |
| 2 | Commencement | | |
| | Part 1 | | Part 2 |
| | Provisions applying generally | | Childcare subsidy |
| 3 | Interpretation | 12 | Eligibility of child for payment of childcare subsidy |
| 4 | Child not eligible for both childcare subsidy and OSCAR subsidy | 13 | Childcare subsidy available only if payable under regulation 14, 16, or 17 |
| 5 | Hours to be calculated weekly | 14 | Payment of childcare subsidy if principal caregiver engaged in approved activity |
| 6 | Assistance to be no more than hourly fee payable | 15 | Activities in respect of which childcare subsidy available under regulation 14 |
| 7 | Assistance may continue if caregiver not working because of illness, injury, or disability | 16 | Payment of childcare subsidy if principal caregiver not engaged in approved activity but has serious disability or illness |
| 8 | Assistance may continue if caregiver changes employment | | |
| 9 | Absence of child to be notified | | |
| 10 | Payment of assistance during child's absence | | |

| | | | |
|----|--|----|---|
| 17 | Payment of childcare subsidy if principal caregiver neither engaged in approved activity nor has serious disability or illness | 26 | Suspension and revocation of approvals |
| 18 | Rate of childcare subsidy | 27 | Matters to be considered before programmes approved or approvals suspended or revoked |
| 19 | Childcare subsidy usually payable to service | | |
| | Part 3 | | Part 4 |
| | Out-of-school care and recreation subsidy | | Miscellaneous |
| | <i>OSCAR subsidy</i> | | <i>Overpayments</i> |
| 20 | Eligibility of child for payment of OSCAR subsidy | 28 | Recovery of overpayments |
| 21 | Activities in respect of which OSCAR subsidy available | | <i>Transitional provisions</i> |
| 22 | Payment of OSCAR subsidy | 29 | Subsidies granted before commencement of regulations |
| 23 | OSCAR subsidy payable to provider or principal caregiver | 30 | Approvals given before commencement of regulations |
| 24 | Rate of OSCAR subsidy | | — |
| | <i>Approval of OSCAR programmes</i> | | Schedule |
| 25 | Approval of programmes | | Rates of childcare and OSCAR subsidies |

Regulations

1 Title

These regulations are the Social Security (Childcare Assistance) Regulations 2004.

2 Commencement

These regulations come into force on 4 October 2004.

Part 1

Provisions applying generally

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

applicant means a person who has applied for childcare assistance under regulation 11, and includes a person to whom childcare assistance has been granted

approved activity—

- (a) in Part 2, means an activity listed in regulation 15; and
- (b) in Part 3, means an activity listed in regulation 21

approved early-childhood care arranger means a service—

- (a) that is a chartered care arranger within the meaning of Part XXVI of the Education Act 1989; and

- (b) that charges a uniform monetary fee for the participation of children in the schemes of home-based care it arranges

approved early-childhood education service means a service—

- (a) that is—
 - (i) an early childhood centre licensed under the Education (Early Childhood Centres) Regulations 1998; or
 - (ii) a Kohanga Reo chartered by Te Kohanga Reo National Trust; and
- (b) that charges a uniform monetary fee for the participation of children in the programmes of early-childhood education it provides

approved early-childhood programme means—

- (a) a programme of early-childhood education provided by an approved early-childhood education service; or
- (b) care (not being care provided in the home of the child concerned) provided under a home-based care scheme arranged by an approved early-childhood care arranger

childcare assistance means a childcare subsidy or an OSCAR subsidy

childcare subsidy means the subsidy of the kind provided for in Part 2

eligible child—

- (a) in Part 2 means a child for whom a childcare subsidy may be paid by virtue of regulation 12; and
- (b) in Part 3 means a child for whom an OSCAR subsidy may be paid by virtue of regulation 20

household income, in relation to a child or the child's principal caregiver, means the sum of—

- (a) the total income of the child's principal caregiver; and
- (b) whether or not he or she is also the child's other caregiver, the total income of the spouse (if any) of the child's principal caregiver

job seeker agreement means an agreement of the kind described in section 105A of the principal Act

OSCAR programme,—

- (a) means a programme for children's out-of-school care and recreation approved under regulation 25; and
- (b) subject to regulation 30, includes a programme for children's out-of-school care and recreation approved by the chief executive of the Department of Child, Youth, and Family Services before the commencement of these regulations for the purpose of the granting of the special assistance that before that commencement was known as the OSCAR subsidy

OSCAR subsidy (except in the definition in this subclause of **OSCAR programme**) means the out-of-school care and recreation subsidy provided for in Part 3

other caregiver, in relation to a child, means a person who—

- (a) lives together with the child's principal caregiver; and
- (b) is a parent, step-parent, or person having the responsibilities of a parent, of the child

principal Act means the Social Security Act 1964

serious disability or illness,—

- (a) in relation to deciding whether a person should be granted childcare assistance because he or she, or some other person has a serious disability or illness, means a physical, medical, psychological, or psychiatric condition that—
 - (i) reduces (as the case may be) his or her or the other person's independent function; and
 - (ii) is likely to continue for more than 6 months; but
- (b) in relation to deciding whether childcare assistance granted to a person because he or she, or some other person has a serious disability or illness should continue to be paid, means a physical, medical, psychological, or psychiatric condition that reduces (as the case may be) his or her or the other person's independent function

tertiary educational institution means an institution within the meaning of section 159(1) of the Education Act 1989

total income, in relation to a child's caregiver, means the sum of—

- (a) the caregiver's income; and
- (b) the amount of any benefit (other than childcare assistance, a child disability allowance, an orphan's benefit,

or an unsupported child's benefit) received by the caregiver; and

- (c) the amount of any child support received under the Child Support Act 1991 by the caregiver

week means a period of 7 days commencing at midnight on a Sunday.

- (2) For the purposes of the definitions of **approved early-childhood care arranger** and **approved early-childhood education service** in subclause (1), an arranger or service charges a uniform monetary fee for the participation of children even if, in the case of families with 2 or more children participating, it charges for a second or further child a uniform fee less than the uniform fee charged for a first or only child.
- (3) In these regulations, terms defined in section 3(1) of the principal Act have the meanings so defined.

4 Child not eligible for both childcare subsidy and OSCAR subsidy

In relation to any period, payments may be made under a childcare subsidy granted for a child or an OSCAR subsidy granted for that child, but not under both.

5 Hours to be calculated weekly

The hours an eligible child participates in an approved early-childhood programme or OSCAR programme must be calculated by the week.

6 Assistance to be no more than hourly fee payable

- (1) The hourly rate of childcare assistance paid in respect of a child's participation in an approved early-childhood programme or OSCAR programme must be no more than the actual hourly fee payable (or, if subclause (2) applies, the averaged hourly fee payable)—
- (a) for that participation; or
- (b) where regulation 10 applies, for keeping open the child's place in that programme.
- (2) If a periodic flat fee is payable for a child's participation in a programme, or for keeping open a child's place in a programme, the averaged hourly fee payable for the purposes of subclause (1) is the amount obtained by dividing the flat fee

by the number of hours during the period concerned for which the child is enrolled to participate in the programme.

7 Assistance may continue if caregiver not working because of illness, injury, or disability

Childcare assistance may continue to be paid for up to 12 weeks of any period when the principal caregiver of the child concerned (or, where applicable, the child's other caregiver) is not working if—

- (a) the assistance would not otherwise be payable because the caregiver is not working; but
- (b) the caregiver is unable to work because of illness, injury, or disability.

8 Assistance may continue if caregiver changes employment

Childcare assistance may continue to be paid for up to 10 working days before the start of the new employment concerned if—

- (a) the assistance has been granted on the basis of the employment of the principal caregiver of the child concerned (or, where applicable, of the child's other caregiver); and
- (b) the employment has ended but the caregiver has arranged new employment.

9 Absence of child to be notified

Within a reasonable time after a child for whom childcare assistance is payable is absent from the early-childhood programme or OSCAR programme concerned, the applicant must notify an officer of the department of the child's absence.

10 Payment of assistance during child's absence

If an early-childhood programme or OSCAR programme charges a fee for holding open the places of children who are absent, childcare assistance may continue to be paid for a child for a total of up to 35 working days in any year (being a year commencing on the day on which the subsidy concerned was granted, or on an anniversary of that day) when—

- (a) the programme is available; and
- (b) the child is absent from it—
 - (i) because the child is injured or ill; or
 - (ii) because of a family bereavement; or
 - (iii) because the child is on holiday.

11 Applications and evidence

No person can be granted a childcare subsidy or an OSCAR subsidy unless he or she—

- (a) has applied for it on a form required by the chief executive; and
- (b) has given the chief executive the evidence the chief executive requires to satisfy the chief executive that the person is eligible for the subsidy.

Part 2 Childcare subsidy

12 Eligibility of child for payment of childcare subsidy

A childcare subsidy may be paid for a child only if he or she is a dependent child—

- (a) who is under 5; or
- (b) who is no older than 5 years and 28 days, and is not yet attending school; or
- (c) who is under 6, and for whom a child disability allowance is payable.

13 Childcare subsidy available only if payable under regulation 14, 16, or 17

A childcare subsidy for an eligible child's participation in approved early-childhood programmes is payable only if regulation 14 or regulation 16 or regulation 17 provides that it is payable.

14 Payment of childcare subsidy if principal caregiver engaged in approved activity

- (1) A childcare subsidy for an eligible child's participation in approved early-childhood programmes is payable for periods of a total of up to 50 hours a week if the child is participating in (or will participate in) one or more approved early-childhood programmes for a total of 3 or more hours a week, and—

- (a) subclause (2) applies to the child, and either subclause (3) or subclause (4) applies to each of those periods; or
 - (b) a child disability allowance is payable for the child; or
 - (c) the child's principal caregiver is also the principal caregiver of some other child, who is either in hospital or is a child for whom a child disability allowance is payable.
- (2) This subclause applies to a child if at least one of the following applies:
- (a) the child has no other caregiver;
 - (b) the child's other caregiver is engaged in an approved activity;
 - (c) the child's other caregiver is not engaged in an approved activity, but the chief executive is satisfied that for some good reason the other caregiver cannot care for the child.
- (3) This subclause applies to a period if, during that period,—
- (a) the child is participating in an approved early-childhood programme; and
 - (b) his or her principal caregiver is engaged in an approved activity or travelling between the place where the programme is provided and the place where the activity is engaged in.
- (4) This subclause applies to a period if the child's principal caregiver is engaged in shift employment and (whether the child is participating in an approved early-childhood programme then, or participates in such a programme at other times when the caregiver usually sleeps), during that period, the child's principal caregiver—
- (a) is undertaking that employment; or
 - (b) travelling between the place where that employment is engaged in and—
 - (i) an approved early-childhood programme that the child is participating in; or
 - (ii) the caregiver's home.

15 Activities in respect of which childcare subsidy available under regulation 14

A childcare subsidy for a child is available under regulation 14 only to enable the child's principal caregiver or other caregiver to undertake one of the following:

- (a) employment (whether full-time or part-time, and whether permanent, temporary, or casual);
- (b) a rehabilitation programme approved by the chief executive;
- (c) a job seeker development activity under a job seeker agreement or section 123B of the principal Act;
- (d) an employment-related training course offered by a course-provider accredited by the New Zealand Qualifications Authority;
- (e) any other employment-related training course approved by the chief executive;
- (f) a course of study at a secondary school (within the meaning of section 145(1) of the Education Act 1989) or a tertiary educational institution.

16 Payment of childcare subsidy if principal caregiver not engaged in approved activity but has serious disability or illness

A childcare subsidy for a child's participation in approved early-childhood programmes is payable for up to 50 hours a week if—

- (a) the child is participating in (or will participate in) one or more approved early-childhood programmes for a total of 3 or more hours a week; and
- (b) the chief executive is satisfied, in the light of a certificate from a medical practitioner, that the child's principal caregiver—
 - (i) has a serious disability or illness; and
 - (ii) needs childcare for the child for more than 9 hours a week; and
- (c) at least one of the following applies:
 - (i) the child has no other caregiver;
 - (ii) the child's other caregiver is engaged in an approved activity;

- (iii) the child's other caregiver is not engaged in an approved activity, but the chief executive is satisfied that for some good reason the other caregiver cannot care for the child:
- (iv) a child disability allowance is payable for the child.

17 Payment of childcare subsidy if principal caregiver neither engaged in approved activity nor has serious disability or illness

A childcare subsidy for an eligible child's participation in approved early-childhood programmes is payable for up to 9 hours a week if—

- (a) the child is participating in (or will participate in) one or more approved early-childhood programmes for a total of 3 or more hours a week; and
- (b) the child's principal caregiver is not engaged in an approved activity; and
- (c) regulation 16 does not apply.

18 Rate of childcare subsidy

- (1) A childcare subsidy is payable at the appropriate rate stated in the Schedule.
- (2) Subclause (1) is subject to regulation 6 (which provides that the hourly rate of childcare assistance paid in respect of a child's participation in an approved early-childhood programme must be no more than the actual hourly fee payable).

19 Childcare subsidy usually payable to service

- (1) A childcare subsidy must be paid (as the case may be) to—
 - (a) the service providing the programme in respect of which it is payable; or
 - (b) the service that arranged the scheme under which the programme in respect of which it is payable is provided.
- (2) Subclause (1) does not prevent the chief executive from paying a lump sum of childcare subsidy directly to a child's principal caregiver if—
 - (a) the sum represents an underpayment of the amounts—

- (i) that should have been paid to an approved early-childhood service in respect of the child's participation in a programme it provides; or
 - (ii) that should have been paid to an approved early-childhood care arranger in respect of the child's participation in a programme provided under a scheme it arranged; and
- (b) the caregiver has already paid to the service or arranger the amount of the underpayment.

Part 3

Out-of-school care and recreation subsidy

OSCAR subsidy

20 Eligibility of child for payment of OSCAR subsidy

An OSCAR subsidy may be paid for a child only if he or she—

- (a) is a dependent child; and
- (b) is at least 5, and under 14; and
- (c) is participating in (or will participate in) one or more OSCAR programmes for a total of 3 or more hours a week.

21 Activities in respect of which OSCAR subsidy available

An OSCAR subsidy for a child is available only to enable the child's principal caregiver to undertake one of the following:

- (a) employment (whether full-time or part-time, and whether permanent, temporary, or casual);
- (b) a job seeker development activity under a job seeker agreement or section 123B of the principal Act;
- (c) an employment-related training course offered by a course-provider accredited by the New Zealand Qualifications Authority;
- (d) a course of study at a secondary school (within the meaning of section 145(1) of the Education Act 1989) or a tertiary educational institution.

22 Payment of OSCAR subsidy

- (1) An OSCAR subsidy for an eligible child's participation in OSCAR programmes is payable for periods of a total of up to

- 20 hours a week during the school term, or up to 50 hours a week during the school holidays, if, and only if,—
- (a) subclause (2) applies to the child; and
 - (b) either subclause (3) or subclause (4) applies to each of those periods.
- (2) This subclause applies to a child if at least one of the following applies:
- (a) the child has no other caregiver;
 - (b) the child's other caregiver is engaged in an approved activity;
 - (c) the child's other caregiver is not engaged in an approved activity, but the chief executive is satisfied that for some good reason the other caregiver cannot care for the child.
- (3) This subclause applies to a period if, during that period,—
- (a) the child is participating in an OSCAR programme; and
 - (b) his or her principal caregiver is engaged in an approved activity or travelling between the place where the programme is participated in and the place where the activity is engaged in.
- (4) This subclause applies to a period if the child's principal caregiver is engaged in shift employment and (whether the child is participating in an OSCAR programme then, or participates in such a programme at other times when the caregiver usually sleeps), during that period, the child's principal caregiver—
- (a) is undertaking that employment; or
 - (b) travelling between the place where that employment is engaged in and—
 - (i) a place where the child is participating in an OSCAR programme; or
 - (ii) the caregiver's home.

23 OSCAR subsidy payable to provider or principal caregiver

An OSCAR subsidy may be paid to the provider of the OSCAR programme concerned, or to the principal caregiver of the child concerned.

24 Rate of OSCAR subsidy

An OSCAR subsidy is payable at the appropriate rate stated in the Schedule.

*Approval of OSCAR programmes***25 Approval of programmes**

- (1) The chief executive of the Department of Child, Youth, and Family Services, if satisfied, in the light of the matters stated in regulation 27, that an out-of-school programme or proposed out-of-school programme is or will be properly run, may, by written notice to the provider, approve it for the purposes of this Part.
- (2) An approval—
 - (a) may be unconditional or subject to conditions stated in the notice; and
 - (b) may be for an indefinite period or for a period stated in the notice.

26 Suspension and revocation of approvals

The chief executive of the Department of Child, Youth, and Family Services may, by written notice to its provider, suspend or revoke the approval of a programme under regulation 25,—

- (a) if he or she is satisfied, in the light of the matters stated in regulation 27, that it is not properly run; or
- (b) if, after making reasonable efforts to do so, he or she has been unable to obtain enough information to be satisfied, in the light of the matters stated in regulation 27, that it is properly run; or
- (c) if he or she is satisfied that there has been a breach of a condition subject to which the approval was given.

27 Matters to be considered before programmes approved or approvals suspended or revoked

The following matters must be considered in deciding whether an out-of-school programme is properly run (or a proposed out-of-school programme will be properly run):

- (a) the adequacy with which the programme provides for—
 - (i) the health and safety of the children participating:

- (ii) the care and recreation of the children participating:
- (iii) the health and safety of the staff and volunteers involved:
- (b) the competence, training, and suitability of the staff and volunteers involved in the programme:
- (c) the competence of the programme's supervision:
- (d) the suitability and safety of the environment in which the programme is operating:
- (e) the competence of the provider's management (including its financial management):
- (f) the extent of the programme's compliance with relevant enactments and bylaws:
- (g) the programme's responsiveness to applicable cultural issues.

Part 4

Miscellaneous

Overpayments

28 Recovery of overpayments

- (1) The chief executive may, in accordance with sections 86 and 86A of the principal Act, recover from an applicant any payment of childcare assistance that is a debt due to the Crown by virtue of section 85A of the principal Act.
- (2) If, because a child has ceased to be enrolled or has been absent from an approved early-childhood programme or an OSCAR programme, childcare assistance has been paid to a service in excess of the amount that the service was entitled to be paid, the chief executive may recover the amount of the excess by making one or more deductions from any other amount or amounts payable to the service under these regulations.

Transitional provisions

29 Subsidies granted before commencement of regulations

- (1) This regulation applies to a person who, immediately before the commencement of these regulations, was in receipt of a childcare subsidy or an OSCAR subsidy in respect of a dependent child under the welfare programme for childcare assistance approved under section 124(1)(d) of the principal Act.

- (2) A person to whom this regulation applies is entitled to receive childcare assistance under these regulations without application if the chief executive is satisfied that the person's circumstances have not altered so as to affect the entitlement to, or the rate of, the assistance.
- (3) This subclause applies to a person if, on account of an increase in the rate of an accommodation supplement payable to the person or the person's spouse arising solely as a consequence of an amendment to the Eighteenth Schedule of the principal Act made by the Social Security (Working for Families) Amendment Act 2004 (being an amendment that comes into force on 1 April 2005),—
 - (a) the person would not be entitled to childcare assistance; or
 - (b) the amount of a person's childcare assistance would be reduced.
- (4) When calculating for the purposes of these regulations the household income of a person to whom subclause (3) applies, the chief executive must disregard so much of the increase as would produce the result referred to in subclause (3) until,—
 - (a) the person's household income otherwise increases by any amount; or
 - (b) the person receives childcare assistance in respect of an additional dependant; or
 - (c) the total amount of childcare assistance the person is entitled to receive decreases because the person is no longer entitled to receive childcare assistance in respect of one or more dependent children; or
 - (d) the person has a decrease in household income that entitles the person to receive a higher rate of childcare assistance.
- (5) Subclauses (3) and (4) override subclause (2).
- (6) Nothing in this regulation limits the application of section 81 of the principal Act to these regulations.

30 Approvals given before commencement of regulations

The approval of an out-of-school programme or proposed out of school programme by the chief executive of the Department of Child, Youth, and Family Services given before the commencement of these regulations may be suspended or

revoked under regulation 26 as if it had been given under regulation 25.

Schedule

Rates of childcare and OSCAR subsidies

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| 1. | For a principal caregiver with one dependent child where household income before the deduction of income tax is: | |
| | (a) less than \$770 a week | \$2.84 per hour |
| | (b) \$770 or more but less than \$850 a week | \$1.98 per hour |
| | (c) \$850 or more but less than \$930 a week | \$1.10 per hour |
| | (d) \$930 or more a week | Nil |
| 2. | For a principal caregiver with 2 dependent children where household income before the deduction of income tax is: | |
| | (a) less than \$950.00 a week | \$2.84 per hour |
| | (b) \$950 or more but less than \$1,040 a week | \$1.98 per hour |
| | (c) \$1,040 or more but less than \$1,130 a week | \$1.10 per hour |
| | (d) \$1,130 or more a week | Nil |
| 3. | For a principal caregiver with 3 or more dependent children where household income before the deduction of income tax is: | |
| | (a) less than \$1,110 a week | \$2.84 per hour |
| | (b) \$1,110 or more but less than \$1,220 a week | \$1.98 per hour |
| | (c) \$1,220 or more but less than \$1,330 a week | \$1.10 per hour |
| | (d) \$1,330 or more a week | Nil |

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 4 October 2004, provide assistance for the payment of pre-school and after school childcare. The childcare subsidy aims to assist caregivers entering work or training, caregivers with a serious illness or disability, or caregivers whose dependent child or children have a serious illness or disability, by assisting with the cost of pre-school care. The OSCAR subsidy aims to assist caregivers to take up and remain in paid employment, by assisting with the cost of after-school care.

Subsidies are also available to those undertaking job seeker development activities under the Social Security Act 1964.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 2 September 2004.

These regulations are administered in the Ministry of Social Development.
