

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development's (the ministry) reconsideration decision dated November 22, 2018, which determined that the appellant was not eligible for the Affordable Child Care Benefit (CCB) beginning October 1, 2018 as the appellant's family's adjusted annual income exceeds the threshold for the maximum benefit.

In particular, the ministry found that the appellant's adjusted annual income was \$74,313 which exceeds the maximum allowable amount of \$70,000 for a child receiving child care in a licence-not-required child care setting, as set out in section 7(1)(c) of the *Child Care Subsidy Regulation* (CCSR).

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act Section 4
CCSR Sections 7, 8, 9 and Schedule A

PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration indicates the following:

- CCB Child Care Arrangement form dated October 3, 2018
- CCB Application dated October 9, 2018
- CCB Child Care Arrangement form dated October 16, 2018
- Letter from the ministry to the appellant dated October 26, 2018 advising that she is not eligible for the CCB
- Letter from the ministry to the appellant dated October 29, 2018 regarding the appellant's eligibility for the CCB with a benefit summary
- Request for Reconsideration form (RFR) dated November 7, 2018 in which the appellant states that her youngest son is on every waitlist for licensed child care but the wait is over one year long and that no licensed facilities offer care on Saturdays, which is when the appellant and her partner work. The appellant states that not having the CCB is causing financial hardship and she is at the point where she has to choose between food and child care costs. The appellant states that her current child care provider is in the process of becoming licensed so the appellant requests a partial subsidy on the basis that her family's income will be within the approved allowance amount once their childcare provider is licensed

Additional Information

In her Notice of Appeal dated November 27, 2018 (NOA) the appellant says that the refusal is causing undue hardship on her finances and no licensed care is available. The appellant says that her care provider is in the process of becoming registered and if she were, then her family would qualify for the CCB.

At the hearing the appellant repeated the information previously provided that her daycare provider was in the process of being registered and there were no other daycare or options for a licensed caregiver available on Saturdays. The appellant says that because their family is so close to the financial threshold and their daycare provider is in the process of being licensed, the ministry should allow her family the CCB.

Admissibility of New Information

The panel accepted the appellant's oral testimony as argument.

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PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on this appeal is whether the ministry's decision denying the appellant the CCB was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that the appellant's family's adjusted annual income exceeds the threshold for the maximum CCB benefit as set out in section 7(1)(c) of the CCSR for a child receiving child care in a licence-not-required child care setting?

Relevant Legislation

Child Care Subsidy Act

Child care subsidies

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

Child Care Subsidy Regulation

Income test

7 (1) An applicant is not eligible for a child care subsidy if the family's adjusted annual income equals or exceeds the following:

- (a) \$111 000 for a child receiving child care in a licensed child care setting;
- (b) \$85 000 for a child receiving child care in a registered licence-not-required child care setting;
- (c) \$70 000 for a child receiving child care

- (i) in a licence-not-required child care setting, or
- (ii) in the child's own home as described in section 2 (c).

(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),

(e) who is receiving assistance under the authority of the Child in the Home of a Relative Program Transition

Regulation, B.C. Reg. 48/2010, and the applicant is the relative with whom that child resides, or

(f) who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e), provided

(i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or

(ii) by the Nisga'a Nation or a treaty first nation.

[en. B.C. Reg. 281/2005, s. 4; am. B.C. Regs. 271/2006, s. 1; 143/2012, s. 2; 37/2013, Sch. s. 1; 148/2018, App. 1, s. 5.]

Calculation of family's adjusted annual income

9 (1) In this section, "**previous year**" means the year previous to the current calendar year.

(2) In relation to a child care subsidy that is to be determined based on a family's adjusted annual income, the minister must calculate the family's adjusted annual income as follows:

(a) by adding, for the applicant and the applicant's spouse, if any, the annual income for the person determined under subsection (3) or (4), as applicable;

(b) by deducting from the amount calculated under paragraph (a) any applicable amounts under subsection (5).

(3) For the purposes of subsection (2), the minister must calculate the annual income of the applicant and the applicant's spouse, if any, by

(a) determining the person's income for the previous year, or for the year before the previous year if a notice of assessment is not available for the person for the previous year, as

(i) the amount reported on line 150 of the person's notice of assessment if there has been no notice of reassessment for the applicable year, or

(ii) if there was a notice of reassessment for the person, the amount reported on line 150 of the notice of reassessment, and

(b) deducting from the income determined under paragraph (a) all amounts, if any, reported on line 145 of the notice of assessment or notice of reassessment that applies under paragraph (a).

(4) If a notice of assessment is not available for either of the 2 calendar years before the current year with respect to the applicant or the applicant's spouse, if any,

(a) the applicant may give to the minister a statement, in the form required by the minister, attesting to the applicant's or the applicant's spouse's, as applicable, total income from all sources except social assistance payments, stated in Canadian dollars, for the previous year, and

(b) on receiving income information satisfactory to the minister under paragraph (a), the minister may determine the annual income of the person based on that information.

(5) For the purposes of this section, the following deductions may be made, if applicable:

(a) \$0 for the first dependant in the family who is not a child with special needs;

- (b) \$2 000 for each additional dependant in the family;
- (c) \$3 000 for each child with special needs in the family.

[en. B.C. Reg. 148/2018, App. 1, s. 7.]

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant's family's adjusted annual income exceeds the income range set out in section 7 of the CCSR for license-not-required child care, so the appellant is not eligible for the CCB.

The reconsideration decision indicates that there are five people in the appellant's family unit being the appellant, her spouse, and their three children. The ministry notes that the appellant is seeking childcare for two of the three children in a licence-not-required child care setting.

The reconsideration decision indicates that the appellant's total family gross income is \$80,313. The reconsideration decision indicates that as set out in CCSR section 9(3)(5)(b), deductions of \$2,000 for each additional dependant in the family after the first two family members and after adjustments of \$6000 for the three children, the family's adjusted family income used for calculating the CCB is \$74,313.

The reconsideration decision indicates that as set out in CCSR Schedule A, to be eligible for the maximum benefit the adjusted family income must be below \$24,000. To be eligible for a partial subsidy the income range is from \$24,000 to \$69,999.99. The ministry's position is that as the appellant's adjusted family income is \$74,313, it is higher than the range for both the maximum benefit range and the partial subsidy range, so she is not eligible for any CCB.

The reconsideration decision indicates that although the appellant may be experiencing financial hardship because she is not eligible for the CCB, the ministry does not have any discretion to grant a subsidy if the appellant's income is higher than the legislated amounts set out in the CCSR.

The appellant's position is that although the family's adjusted annual income exceeds the threshold, she asks the ministry to allow a partial CCB as the family is experiencing financial hardship without the subsidy. The appellant states that because the daycare provider is in the process of becoming licensed the ministry ought to make an exception in their circumstances because once the daycare provider is licensed the family's adjusted annual income would be within the threshold provided under section 7(1)(b) of the CCSR, which is \$85,000 rather than \$70,000.

The panel finds that the ministry was reasonable in determining that the appellant is not eligible for the CCB as the appellant's family's adjusted annual income exceeds the amount set out in section 7(1)(c) of the CCSR for a child receiving child care in a license-not-required child care setting. In particular, section 7(1)(c) indicates that an applicant is not eligible for a CCB if the family's adjusted annual income equals or exceeds \$70,000 for a child receiving child care in a license-not-required child care setting.

There is no dispute about the appellant's gross family income, which is \$80,313. As a family of five the panel finds that the ministry's calculation of the adjustments to be applied of \$6,000 were reasonable, based on section 9(5)(b) of the CCSR which allows deductions of \$2,000 for every family member after the first two family members. After applying the adjustment, the adjusted family income is \$74,313, which exceeds the maximum threshold set out in CCSR section 7(1)(c).

Although the appellant argues that the ministry should make an exception as their daycare provider is in the process of becoming licensed, and because the family is experiencing financial hardship without the CCB, the panel finds that the ministry reasonably determined that it does not have discretion to grant the CCB if an applicant's income is higher than the CCSR permits.

The panel finds that the ministry reasonably determined that the appellant is not eligible for the CCB.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for the CCB, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME Helene Walford	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/01/03

PRINT NAME Jennifer Armstrong	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/03

PRINT NAME Sanjay Gulati	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/03