

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (“the ministry”) dated 03 October 2019 that found the appellant not eligible for the Affordable Child Care Benefit (also known as a child care subsidy or “CCS”) beginning on 01 July 2019. The ministry determined that the appellant’s reason for the need for child care is not one of the eligible circumstances set out in section 3 of the Child Care Regulation for which a CCS may be provided.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA), section 4 and 5.
Child Care Subsidy Regulation (CCSR), section 3 and 16.

PART E – SUMMARY OF FACTS**Information before the ministry at reconsideration**

1. The appellant is a single parent of 2 children age under 5 years and shares custody of the children with the appellant's ex-spouse on a 50/50 basis.
2. The appellant is a teacher employed with a public School Board.
3. On 27 September 2018 the appellant submitted an Affordable Child Care Benefit Application. On 04 October 2018 the ministry approved the appellant eligible for an Affordable Child Care Benefit for the two children beginning 01 September and ending 30 June 2019 for 10 full days/month in a licensed family child care setting (J3) ("the benefit plan").
4. As noted in the reconsideration decision, on 09 August 2019, the appellant telephoned the Child Care Service Centre to inquire why the benefit plan ended on 30 June 2019. The appellant reported not having a reason for needing care when the ministry asked what the reason for care was for July and August. The ministry advised that to be issued a benefit plan, there must be a reason for needing care. The appellant replied that the children needed to continue attending the daycare during July and August to maintain their spot. The ministry explained that reserving a spot in the daycare is a matter for agreement between the parent and the care provider.
5. As also reported in the reconsideration decision, on 16 August 2019, in a subsequent conversation with the Child Care Service Centre, the appellant advised not having a reason for needing care because, being employed as a teacher, teachers do not work during the summer months. The appellant also stated that the children need to continue attending the daycare during the summer to maintain their spot in the daycare for the fall. The adjudicator at the Child Care Service Centre advised that because there is no reason for needing care, despite the appellant returning to work in the fall, the ministry cannot issue a benefit plan. The adjudicator further noted that it was up to the care provider to determine the terms of registration for enrollment in the daycare.
6. On 26 August 2019, the Child Care Service Centre determined that the appellant was not eligible for the Affordable Child Care Benefit beginning July 1, 2019 because the appellant does not have an eligible reason for care under Section 3 of the Regulation.
7. In the subsequent Request for Reconsideration, the appellant writes:

"As a continuing teacher who does not receive a R.O.E., I take allocated vacation time during the summer months. This benefit is consistent with every other profession but is singled out because of it being highlighted during summer months. Receiving vacation time is not an indication of unemployment. Furthermore, during said vacation time, being a salary worker, I continue to do things inclusive of being a full time employee, including but not limited to: cleaning and setting up classrooms, meetings with parents, staff related sessions, emails, and curriculum preparation. To have only time at Christmas and Spring Break recognized as "vacation time" and therefore the only eligible benefit period is just not appropriate and inconsistent when compared to every other profession."

Notice of Appeal

In the Notice of Appeal dated 17 October 2019, under Reasons for Appeal, the appellant writes:

“The teaching profession is a group who is denied benefits during vacation time as a result of having a publicly highlighted vacation time. Nurses, firefighters, coast guard workers all have rolling schedules and similar downtime and are not denied benefits. Continuing teachers are employed over the summer and are not EI eligible.”

The hearing

At the hearing, the appellant provided argument much along the lines set out in the Request for Reconsideration and Notice of Appeal, emphasizing the unfairness and inconsistency of singling out teachers by not providing the CCS during their summer “downtime,” compared with how other professions such as nurses, coast guard workers and firefighters are provided the subsidy during their extended days-off (see also Part F, Reasons for Panel Decision, below).

The appellant explained that, in early July 2019, child care was needed while recovering from surgery, and that for the rest of the summer child care was also needed while attending to professional responsibilities consistent with preparing for the up-coming school year. The appellant stated that, despite being denied the CCS, the children continued to attend the daycare most Tuesdays, Wednesdays and Thursdays when in the appellant’s custody.

The appellant acknowledged not noticing that the letter from the ministry dated 04 October 2018 regarding “Affordable Child Care Benefit - Summary” stated, “Your Affordable Child Care Benefit expires June 30, 2019.” The appellant stated that a similar letter to the ex-spouse, who is also a teacher, gave an expiration date of August 31, 2019, and the appellant assumed the former would have read the same.

In answer to a question, the appellant acknowledged not having completed, along with the child care provider, an Affordable Child Care Benefit - Child Care Arrangement form for the July - August 2019 period.

In answer to a question, the appellant stated that the children have been attending kindergarten since school started in September, so reserving a spot for the full-time care during the school year turned out not to be an issue (though after-school care is still required).

The ministry stood by its position at reconsideration. The ministry representative, in commenting on the difference between the expiration date for the appellant and for the ex-spouse, and differences with those in other professions, stated that each Affordable Child Care Benefit plan depends on the unique circumstance of each individual, and that in any event, the benefit plan is usually reviewed each July when the most recent income information becomes available.

Admissibility of new information

The panel accepts the new information provided by the appellant in his Notice of Appeal and at the hearing as argument.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in finding that the appellant is not eligible for the Affordable Child Care Benefit beginning on 01 July 2019. More specifically, the issue is whether the ministry's determination, which held that the appellant's reason for the need for child care is not one of the eligible circumstances set out in section 3 of the CCSR for which a CCS may be provided, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the CCSA:

Child care subsidies

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

Information and verification

- 5 (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:
- (a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;
 - (b) seek verification of any information supplied by a person referred to in paragraph (a);
 - (c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
 - (d) collect from a person information about another person if
 - (i) the information relates to the application for or payment of a child care subsidy, and
 - (ii) the minister has not solicited the information from the person who provides it.
- (2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.
- (3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may
- (a) declare the person ineligible for a child care subsidy until the person complies, or
 - (b) reduce the person's child care subsidy.
- (4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

And from the CCSR:

Circumstances in which subsidy may be provided

- 3 (1) The minister may pay a child care subsidy only if
- (a) the minister is satisfied that the child care is needed for one of the reasons set out in subsection (2),
 - (b) the child care is arranged or recommended under the [Child, Family and Community Service Act](#), or
 - (c) the child care is recommended under the [Community Living Authority Act](#) in respect of a child who has a parent approved for or receiving community living support under the [Community Living Authority Act](#) and the minister is satisfied that the child care is needed.
- (2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:
- (a) in a single parent family, because the parent
 - (i) is employed or self-employed,
 - (ii) attends an educational institution,
 - (iii) is seeking employment or participating in an employment-related program, or
 - (iv) has a medical condition that interferes with the parent's ability to care for his or her child;
- (4) The restriction in subsection (1) (a) does not apply in respect of child care provided in a licensed preschool unless the child care is provided to a child of school age.

And

If a child is absent or is withdrawn

16 (1) The minister may continue to pay a child care subsidy for child care provided in a licensed child care setting, a registered licence-not-required child care setting or a licence-not-required child care setting as follows:

- (a) for a period of up to 2 weeks in one month but not for more than 4 weeks in total in one calendar year if a child is absent because the child is on vacation;
- (b) for a period of up to 2 weeks in one month if the child is absent because the child or parent is ill.

(2) Unless the child care is provided through a Young Parent Program, the child care provider must record the reason for the absence in an attendance register.

(3) If a child for whom a child care subsidy is paid is withdrawn from a child care setting, other than the child's own home, at any time before the end of a month and the vacancy

- (a) is filled before the end of the month, the minister may pay to the child care provider operating the child care setting the monthly child care subsidy prorated based on the number of days the child received child care, or
- (b) is not filled before the end of the month, the minister may pay the following to the child care provider operating the child care setting:
 - (i) the monthly child care subsidy, if the child is withdrawn after the 15th of the month;
 - (ii) 1/2 of the monthly child care subsidy, if the child is withdrawn on or before the 15th of the month.

Analysis

The ministry's position

In the reconsideration decision, the ministry noted that in Section 3 of the CCSR, to be eligible for the Affordable Child Care Benefit in a single parent family, the parent must be either employed or self-employed, attend an educational institution or participate in an employment-related program or have a medical condition that interferes with the parent's ability to care for his or her child. The ministry found that the appellant does not meet any of the criteria in Section 3 of the Regulation during the period July and August. The ministry acknowledged that to maintain the children's registration in the daycare the appellant requires them to resume care during the months of July and August. However, the ministry noted that the terms of registration in the daycare is determined by the care provider and the Affordable Child Care Benefit is not intended for the purpose of holding a position in the daycare for future needs. Accordingly, the ministry found that the appellant is not eligible for the Affordable Child Care Benefit beginning July 1, 2019 because there is not an eligible reason for care as outlined in Section 3 of the Regulation.

In its decision, the ministry also noted that in the Request for Reconsideration the appellant stated that teachers have teaching related obligations throughout July and August. If so, the Child Care Service Centre should be advised of such circumstances, such as the hours of work, to have a benefit reassessed. The ministry noted that without a definitive reason for needing care as outlined in Section 3 of the Regulation, the ministry is unable to issue a benefit plan.

Further, the ministry noted that as per Section 16 (1) of the CCSR, the minister may continue to pay a child care subsidy for child care provided in a licensed child care setting, a registered licence-not-required child care setting or a licence-not-required child care setting as follows: (a) for a period of up to 2 weeks in one month but not for more than 4 weeks in total in one calendar year if a child is absent because the child is on vacation. Accordingly, the ministry is unable to

pay the child care benefit for the period July and August, in addition to the time at Christmas and Spring Break, because the time exceeds the amount of allocated vacation time that is allowed under Section 16 of the Regulation. Further, the ministry may only issue vacation time if a benefit plan has been issued for this period.

The appellant's position

The appellant's position, as discussed at the hearing, is that as a permanent teacher under contract with a School Board, the requirement in the legislation of being "employed" as a condition for CCS eligibility has been met. Further, the appellant argues that the ministry was unfair and inconsistent in viewing teachers, and their assumed lack of need for child care during the summer months, different from those in other professions who also have regularly scheduled downtime/time-off and who can readily access the CCS. The appellant submits that for these reasons the ministry's decision to not provide a CCS under these circumstances was unreasonable and asks the panel to rescind this decision. The appellant emphasized that this appeal was also on behalf of all teachers in similar situations needing child care during the summer months.

Panel finding

Section 3 of the CCSR sets out the basic eligibility criteria for a CCS. First, under subsection 1(a), the minister must be satisfied that a CCR is needed. Secondly, under subsection 2(a) for a single parent, the minister must also be satisfied that the CCR must be needed under one of the prescribed circumstances, including the parent being employed. The panel accepts that the appellant, as a permanent teacher with a public School Board, is "employed," in the generally understood sense that the appellant "has a job" and is "not unemployed," thus meeting the second half of the eligibility requirement.

This still leaves open the first issue, whether the minister is satisfied that the child care is needed during the summer months.

The appellant's Affordable Child Care Benefit for the 2018/19 school year expired on 30 June 2019. In July 2019 the appellant asked about the CCS for the summer months (the appellant never actually submitted a formal application for the CCS). Given the appellant's employment as a teacher and, as the appellant refers to it, their "publicly known" downtime during the summer months, the panel considers it reasonable that, as it stated in the reconsideration decision, the ministry would expect the appellant to provide the ministry with sufficiently detailed information regarding the planned or estimated time spent preparing for the up-coming school year in order to establish the need for child care in the appellant's circumstances. Requiring such information is consistent with the information and verification provisions of section 5 of the CCSA and the general principle of administrative law that it is the responsibility of a person applying for a public benefit to provide the information necessary to establish eligibility for the benefit. Without such information, the panel finds that the ministry was reasonable in determining that the need for child care has not been established.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision, which found the appellant not eligible for the Affordable Child Care Benefit beginning in July 2019, is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.

APPEAL NUMBER

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

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 November 08

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 November 08

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 November 08