

APPEAL NUMBER
2021-00071

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated March 18, 2021 which determined that the appellant was not eligible for an Affordable Child Care Benefit (ACCB) pursuant to the Child Care Subsidy Act (CCSA) section 4 and Child Care Subsidy Regulation (CCSR) section 7 because the family unit's annual income exceeds the income threshold as set out in legislation.

PART D – RELEVANT LEGISLATION

Child Care Subsidy Act (CCSA) – section 4

Child Care Subsidy Regulation (CCSR) – section 7.

PART E – SUMMARY OF FACTS

Evidence at the Reconsideration

1. Affordable Child Care Benefit (ACCB) Child Care agreement, signed and dated January 26, 2021, which indicates that the CCB is requested for a Licenced-not-required (LNR) child care facility.
2. Social Media post, posted by the appellant which asked for recommendations for child care and one response.
3. Email from a community agency indicating that many child-care facilities stopped providing pick up and drop off services due to covid precautions.
4. Affordable CCB Request for Reconsideration, signed and dated February 17, 2021 (and February 26, 2021), which indicated, in part, the following:
 - The appellant's licensed daycare closed due to Covid concerns.
 - The appellant was unable to find a licensed daycare that would do drop off and pick up services to her child's school.
 - The other daycare that does drop off and pick up services to the child's school does not accommodate early morning drop off which align with the appellant's shift work.
 - The licensed and non-licensed daycares cost about the same amount.
 - The appellant used social media to find a new daycare and received a few responses.
 - The appellant accessed the licensed daycare list provided by the ministry to no avail and was not able to find one that her needs.

Evidence on Appeal

Notice of Appeal (NOA), signed and dated March 31, 2021, which stated that annual income requirements should be the same for all daycares and no licensed daycare allows drop off at 6:30 am or drop off/pick up from the appellant's child's school.

Evidence at the Hearing

At the hearing, the appellant, in part, stated the following:

- Maximum family allowance should be the same regardless to income or type of daycare.
- She had to switch daycare providers due to covid.
- The children's father has also exhausted all options.
- Covid has made things exceedingly difficult because many daycares are closed, or do not pick up or drop off services.
- As a nurse she does not have the option of working at home.
- Looked a licenced daycare but they do not start early in the day and her day starts at 7am so she needs a drop off at 6:30am.
- Due to covid she has to keep her social circle small so the children cannot go to two different daycares.
- If she expands her social circle to two different daycares, it jeopardizes her work as a health care worker.
- The cost of a nanny is too high for her and it is difficult to find one. The appellant's shift work would make it more difficult to find a nanny.
- The appellant does not dispute the calculation of her income. However, the ministry is not considering how Covid has impacted daycare for parents.
- She pays \$40 per day for the younger one and \$20 per day for drop off and pick up from school. Therefore, the cost is more with the LNR daycare she found.

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At the hearing, the ministry relied on its reconsideration decision and added that though there is talk about changing the income rates but at this moment these are the rates that the ministry has to use to determine eligibility. The ministry also pointed out that section 22 of the CCSR has as a Covid provision but this does not apply to the appellant's situation as it does not address the issue of shortages for child care in the pandemic.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision, which determined that the appellant was not eligible for an ACCB pursuant to the CCSR section 7 because the family unit's annual income exceeds the income threshold as set out in legislation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

CCSA

Child care subsidies

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

CCSR

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).

Appellant's Position

The appellant argued that all daycares should have the same annual income requirements, other daycares do not provide the unique services the family needs (such as early morning drop offs, and drop off and pick up service from the child's elementary school) and that the Covid pandemic has created this situation that is no fault of her own. The appellant argued that she had daycare that met her needs and the ministry's requirements, but it closed down due to the Covid pandemic and finding another daycare that meets all of her needs has been impossible for her. As a health care provider, she has to be mindful of keeping her social circle (and that of her children) as small as possible to protect her co-workers and patients. Therefore, it would not be prudent to have her two children in different daycares.

Ministry's Position

The ministry argued that appellant's adjusted annual family income exceeds that range of income amounts used to calculate a maximum benefit and partial subsidy for LNR child-care for both of the appellant's children. Therefore, the appellant is not eligible for the Affordable Child Care Benefit.

Panel's Decision

Section 7 of the CCSR states that an applicant is not eligible for a childcare subsidy if the family's adjusted annual income equals or exceeds \$70, 000 for a child receiving care in a licenced-not-required child care setting. The appellant annual income according to the Canada Revenue Agency is \$92,104.00 and when adjusted under the legislation the appellant's annual income is \$90,104.00 for determination of eligibility. The panel notes that the appellant did not dispute the calculated annual

income and adjusted annual income amount that the ministry determined. Therefore, the panel finds, that the evidence demonstrates that the legislative requirements pursuant to section 7 of the CCRS have not been met.

In this case, the appellant had a childcare arrangement that met her unique needs and it resulted in her being eligible for an ACCB. Due to Covid, the childcare centre had to close down leaving the appellant without childcare. She scrambled to find a childcare provider that met her unique needs of shiftwork as a health-care provider and having children at differing levels of care. Eventually she found a childcare provider, but it is of a different type which resulted in a lower income threshold for eligibility for an ACCB.

Given these facts, the panel has come to this decision with reluctance. The rules that govern this panel restrict the panel to a specific framework which in this case may be seen as disservice to the very people it is meant to service. If the panel had the jurisdiction, it would have rescinded the ministry's reconsideration decision which is based on legislation that does not consider the consequences of the pandemic for British Columbians of all stripes. Though section 22 of CCSA was created, it did not fully address the issues faced by families during a pandemic in a wholistic manner nor did it take into consideration that the health and safety restrictions placed on daycares or those operating them would impact availability. Due to this short-sightedness, there is a chasm left in the legalisation and the ministry had no ability to work beyond the existing pre-pandemic legislation. While the panel cannot, within its jurisdiction, find the application of the legislation was unreasonable, it believes the legislation itself has created an unreasonable result in this situation.

Conclusion

The panel finds that the ministry reasonably concluded that the evidence establishes the appellant was not eligible for an ACCB pursuant to the legislation (CCSR section 7) because the appellant's adjusted annual income exceeded the amount used to calculate full or partial benefits. The panel confirms the ministry's reconsideration decision. The appellant is not successful at 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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/05/03

PRINT NAME

Joan Cotie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/03

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/05/03