

APPEAL NUMBER  
2021-0182

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated September 7, 2021 which found the appellant not eligible for the Affordable Child Care Benefit beginning August 1, 2021 because her adjusted family income exceeds the income range used to calculate a maximum benefit and a partial subsidy.

### **Part D – Relevant Legislation**

Child Care Subsidy Regulation (CCSR) Sections 7 and 9

## Part E – Summary of Facts

- In a letter dated July 27, 2021 the ministry informed the appellant that her Affordable Child Care Benefit would expire on July 31, 2021.
- There are 4 people in the appellant's family unit including 2 children.
- The appellant requires child care three days per week.
- Both children would be attending licensed child care.
- Neither of the children have special needs.
- Beginning October 1, 2020, the appellant's earnings based on EI income were \$13,000. At the hearing the ministry clarified that this amount was taken from line 150 of the appellant's 2020 income tax return notice of assessment.
- The appellant's husband's earnings, based on his Canada Revenue Assessed income, beginning August 1, 2021 are \$107,027.00. At the hearing the ministry clarified that this amount was taken from line 150 of the appellant's husband's 2020 income tax return notice of assessment.
- Neither the ministry nor the appellant mentioned any amount in line 145 of the tax return of the appellant or the appellant's spouse.
- The appellant's 2020 total family gross income combines the appellant's earnings with her husband's earnings and equals \$120,027.00.
- The ministry calculated the appellant's adjusted family income as \$116,027 (\$120,027 minus 2x\$2000 for each child).

In her Request for Reconsideration dated August 25, 2021, the appellant advised:

- The appellant understands the decision was based on her 2020 adjusted family net income.
- The total income is higher than it would normally be because it reflects a top-up payment from her husband's employer for taking parental leave between August 2019 and March 2020. The top-up is from the EI amount received to 95% of his salary.
- The \$36,922.38 parental reimbursement inflates the 2020 total income.
- However, 5 of the 8 months were for 2019 (August, September, October, November, December). So perhaps  $\frac{3}{8} * 36,922.38 = \$13,845.89$  should count towards the 2020 adjusted family net income.
- If the appellant's 2020 family net income is reduced by \$23,076.49, then perhaps they may still qualify for the childcare benefit.

The appellant did not attend the hearing. Upon confirming that the appellant was notified the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry explained key issues of the reconsideration decision and clarified that both the appellant's and the appellant's husband's 2020 notices of assessment were available to the ministry.

## Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision which found the appellant not eligible for the Affordable Child Care Benefit beginning August 1, 2021 is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The appellant argues that her husband's income in the 2020 notice of assessment is inflated because it includes a 'top-up' payment of \$36,922.38 from his employer for parental leave between August 2019 and March 2020. Because 5 of the 8 months reimbursed were for 2019 (August, September, October, November, December), only the remaining \$13,845.89 should count towards the 2020 adjusted family net income. This would reduce their 2020 family net income and as a result the family may still qualify for the childcare benefit.

The ministry determined that the appellant is not eligible for the Affordable Child Care Benefit because the appellant's adjusted family income of \$116,027.00 exceeds the income range for a maximum as well as partial benefit for licensed child care. Therefore, the appellant is not eligible for the Affordable Child Care Benefit beginning August 1, 2021. Income ranges are set out in the legislation, which means that the ministry does not have any discretion to grant a subsidy if an applicant's income is higher than legislation permits. Should the appellant's circumstances change, she may re-apply for child care subsidy and her eligibility will be re-assessed.

### Panel Decision

Section 7 of the CCSR sets out that an applicant is not eligible for any child care subsidy if the family's adjusted annual income equals or exceeds \$111,000 in a licensed child care setting. The panel notes that Section 7 does not differentiate between full- or part-time child care subsidies. The panel finds that the children would be attending a licensed child care setting.

Section 9 sets out how the family's adjusted annual income is calculated. It is based on line 150 of the tax return notice of assessment of both spouses and allows for a deduction of \$2000 for each child provided the children do not have special needs. It also allows for a deduction for any amounts in line 145 of the tax return notice of assessment of both spouses. The panel finds that the children of the appellant do not have special needs. There was no information submitted from the appellant or the ministry as to any amount indicated in line 145 of the appellant and the appellant's husband's tax return notices of assessment. The panel finds the ministry's determination that this amount is \$0 reasonable.

According to line 150 of the appellant's 2020 notice of assessment the appellant's annual income is \$13,000. Line 150 of the appellant's spouse's 2020 notice of assessment shows an annual income of \$107,027.00. Their combined family income is therefore \$120,027.00. The legislated deduction of \$2,000 per child brings the family's adjusted annual income to \$116,027.00. This amount exceeds the legislated amount of \$111,000. Consequently, the panel finds the ministry reasonably determined that the appellant is not eligible for any child care subsidy beginning August 1, 2021.

The panel is sympathetic to the appellant's argument that only a portion of the parental leave top-up is for months in 2020; however, the panel finds that the ministry's determination that it had no discretion in calculating income to be reasonable. The ministry decision is confirmed and the appellant is not successful on appeal.

Relevant Legislation

**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 ...

**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 apply under paragraph (a).
- ...
- (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.

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

**Part H – Signatures**

PRINT NAME  
Inge Morrissey

SIGNATURE OF CHAIR

Date (Year/Month/Day)  
2021/10/02

PRINT NAME  
Kulwant Bal

SIGNATURE OF MEMBER

Date (Year/Month/Day)  
2021/10/02

PRINT NAME  
Vivienne Chin

SIGNATURE OF MEMBER

Date (Year/Month/Day)  
2021/10/02