

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Education and Child Care (the ministry) Reconsideration Decision dated September 1, 2022, in which the ministry denied the appellant's request for Affordable Child Care Benefit. The ministry determined the appellant is not eligible for the Affordable Child Care Benefit beginning September 1, 2022, due to the family's adjusted annual income being too high.

Part D – Relevant Legislation

Child Care Subsidy Act (CCS Act), Section 4.
Child Care Subsidy Regulation (CCS Regulation), Sections 7, and 9.

Employment and Assistance Act (EAA), Section 22(4).

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the minister at reconsideration included the following:

- There are 4 people in the family unit – the appellant, her spouse, and her two children. One child has special needs.
- The appellant is employed with a School District and, following a period of maternity leave, will be returning to work beginning September 6, 2022 from 8:30 am to 3:30 pm, 5 days per week, Monday to Friday.
- Her spouse has been employed with a company since June 1, 2018, from 5:30 am to 5:30 pm, 7 days per week, Monday to Sunday. He works out of province, 14 days on and 14 days off (including 2 days to travel).
- As per the Affordable Child Care Benefit Child Care Arrangement forms, signed and dated on July 20, 2022 and August 2, 2022 respectively, the appellant will be receiving child care for both children at a learning center in a Licensed Group Child Care setting from 7:00 am to 6:00 pm Monday through Friday beginning September 1, 2022.
- The appellant's earnings based on her 2021 Canada Revenue Assessed income is \$56,048.00.
- Her spouse's earnings based on his 2021 Canada Revenue Assessed income is \$80,054.00.
- The total family gross income, which combines the appellant's earnings with her spouse's earnings, equals \$136,102.00.
- The Family's Adjusted Annual Income based on the family of 4, minus the first two family members, is \$2000 for 2 people, which equals \$4000. Additionally, one of the children is a child with special needs. Therefore another \$3000 is included in the Family's Adjusted Annual income.
- The total family gross income of \$136,102.00 minus the adjustment for the size of the appellant's family in the amount of \$4000, minus another \$3000 for a child with special needs equals \$129,102.00 which is the adjusted family income used for calculating any benefit.
- In Section 3 of your Request for Reconsideration, the appellant advised:
 - o *Our family is asking you to reconsider our family's current situation. We live in BC, one of the most expensive provinces in Canada. As a mom, I have been on maternity leave since September 2021. My husband has a fulltime job and works out of province. On paper we are a middleclass family, however we are struggling because of our vital bills. (there are then a list of family expenses including such items as rent, hydro, cable, car, life insurance, natural gas, RESP and plane tickets for spouse travel).*
 - o *These are vital bills which do not include groceries, children's personal essentials and our personal expenses, gas for our car, oil changes/car maintenance which changes from \$1500 to \$2000 per month.*
 - o *Moving forward, I will be returning to my classroom as a fulltime teacher this September to help support my family financially. However, we're unable to pay \$2400 daycare fee. We are asking for empathy on behalf of our family.*
 - o *Recently my son [REDACTED] has been diagnosed with Autism and a Global Developmental Delay and this year has already been challenging enough for our*

family. Without childcare, I cannot go back to work to support my family and this will make me seek further social assistance.

- With the appellant's Request for Reconsideration, she submitted the following documents:
 - Bank statements from February 2022 to July 2022
 - Supplier Gas bill
 - Tenancy agreement
 - Carrier mobility bill

- In the Affordable Child Care Benefit application dated 15 July 2022 the appellant stated she has been on Maternity Leave for this past year 2021-2022 and will be returning to work September 2022. Her normal consistent income from her job has changed and decreased since being on Maternity Leave. It has been very difficult for her family.

Additional Information Submitted after Reconsideration

In the Notice of Appeal, the appellant states that the family income is \$136,102.00 on paper however after tax and deductions the family's monthly income is \$6000. There follows a list of 'vital bills' which do not include baby essentials, groceries, car maintenance and personal expenses.

The list is the same letter that was provided to the ministry and is shown above in the information available at reconsideration with an additional sentence that states that their monthly spending is increased from \$6090 to \$6590 and that unfortunately on top of these expenses the family is unable to afford childcare.

On October 12, 2022, the Appellant provided a 22-page submission (the Appellant Submission) comprising:

- Daycare Receipts for September/October - Shows how much daycare costs are monthly between the appellant and her spouse.
- Royal Bank Investment Transaction - Her spouse had to pull \$2400 from his RRSP to pay for September's daycare for the children.
- Western Union Receipt - The appellant's brother-in-law from overseas has sent the family \$1162.00 to help the appellant's family pay for October's daycare fees for the children.
- Renewal of increased home rental agreement - The appellant's landlords have raised the cost of the family monthly rent. From \$2250.00 now to \$2300.00.

Hearing

The hearing was held as a videoconference.

Appellant

At the hearing the appellant was accompanied by her spouse as a support person. The appellant provided verbal authorisation for her spouse to act as her advocate and oral testimony was then provided by both family members during the hearing.

The appellant recounted the information provided to the ministry and contained in both the notice of appeal and the written submission. The advocate stressed that he has had to withdraw monies from his RRSP to pay childcare, which will mean he will also take a tax hit at the end of the year, and also that a family member has sent \$1162 from overseas to pay for October childcare.

The spouse stated that the appellant will have to stop work to care for the children if they cannot get support from the ministry.

In answer to questions during the hearing the appellant agreed that they have no dispute with the figure of \$136,102 as annual income but stated that the actual monthly bank income is \$6000 per month. When asked to reconcile how this figure is arrived at the advocate explained that his two monthly pay bank deposits are roughly \$4000 total and the appellant's maternity employment income (EI) payments of roughly \$2000 equals \$6000 actual income.

In a series of questions with the appellant and spouse they confirm that the taxable income reported by their tax return preparation company for the year 2021 totals \$136,102. This figure includes the spouse income and the appellant's part year salary as a teacher for January to June 2021 and maternity employment income payments for September to December 2021.

Ministry

The ministry relied upon the reconsideration decision. At the hearing the ministry states that the legislation uses gross income adjusted for family status and does not take into account family bills or expenses as mentioned in the appellant's written submission. The gross income was adjusted to \$129,102, which is above the maximum legislated amount of \$111,000.00 therefore the family is not eligible for childcare.

The ministry stated that as part of the application the appellant and spouse provide consent to the disclosure of information from their income tax records and the ministry has accessed this information for 2021.

The ministry also stated that if the appellant believes there is going to be a variance in the family income, she can request an income review. However, the ministry believes that as the appellant has gone back to work full time the appellant will be making more money and the actual gross income will increase. The ministry reiterated that the reconsideration was based on last year's tax returns, but they can look at the changes if requested to see if the income threshold test is met.

In answer to questions from the panel the ministry confirmed that the \$111,000.00 threshold test is based on a comparison to the family gross income adjusted for family members, and that there is a sliding scale for eligibility based on the type of childcare required and the total adjusted family income.

In further discussion the appellant stated that her annual salary as a teacher is in the range of \$61,000 to \$62,000 per year.

Admissibility of new information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In this case the appellant provided oral and written testimony providing greater detail on the family finances and childcare expenses.

The panel admits the new information under section 22(4) of the Employment and Assistance Act (“EAA”) as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Findings of Fact

The panel finds the 2021 income for the appellant to be \$56,048.00, inclusive of salary and maternity employment income payments, and the income for the spouse of \$80,054.00 for a total family income of \$136,102.00.

The panel finds the Affordable Child Care Benefit Application, completed by the appellant, requests full time licenced group care for both children.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision that, as the family income exceeds the income range used to calculate a maximum benefit and a partial subsidy, the appellant is not eligible for the Affordable Child Care Benefit beginning September 1, 2022.

In particular, was the ministry reasonable in calculating the amount of subsidy that the family may be eligible to receive through consideration of the type of childcare requested and calculation of the adjusted family income.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that her family live in BC, one of the most expensive provinces in Canada. As a mom, she has been on maternity leave since September 2021. Her husband has a fulltime job and works out of province. On paper they are a middleclass family, however, are struggling because of vital bills.

The appellant argues the family has vital bills which do not include groceries, children's personal essentials and personal expenses, gas for the family car, or oil changes/car maintenance which varies from \$1500 to \$2000 per month, and after tax and deductions the family's monthly income is about \$6000.

Moving forward, the appellant states she will be returning to the classroom as a fulltime teacher this September to help support her family financially. However, they are unable to pay \$2400 daycare fee, and is asking for empathy on behalf of her family.

Recently the appellant's son has been diagnosed with Autism and a Global Developmental Delay and this year has already been challenging enough for her family. Without childcare, she cannot go back to work to support her family, and this will make her seek further social assistance.

Ministry Position

The ministry states that income ranges for each type of childcare setting are set in legislation, which means that the ministry does not have any discretion to grant a subsidy if an applicant's income is higher than regulations permit. To calculate the amount of subsidy that a family is eligible to receive the ministry must consider the type of childcare requested and the adjusted family income.

The ministry argues that as the appellant's adjusted family income is \$129,102.00, it exceeds the income range for a maximum benefit for licensed group childcare, and the income range for a partial benefit for licensed group childcare, and the appellant is therefore not eligible for the Affordable Child Care Benefit.

Panel Decision

The relevant legislation is contained in the Child Care Subsidy Regulation (CCS Regulation), Sections 7 and 9. Section 7 states that an applicant is not eligible for a child care subsidy if the family's adjusted annual income equals or exceeds \$111,000.00 for a child receiving child care in a licensed child care setting.

Section 9 states that the minister must calculate the family's adjusted annual income by adding the applicant and the applicant's spouse annual income, and deducting from the amount any applicable amounts as follows;

- (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.

The panel has found the total annual family income for 2021 to be \$136,102.00. Based on the circumstances of the appellant the panel finds that amount may be reduced by \$4 000 for the two dependent children and by \$3 000 for the child with special needs, for a total adjusted annual income of \$129,102 which exceeds the income range used to calculate a maximum benefit or a partial subsidy.

The panel notes this adjusted family income exceeds the amount of \$111,000 provided in section 7 of the legislation for a child receiving childcare in a licensed childcare setting and the panel therefore finds the ministry was reasonable in finding the appellant is not eligible for a childcare subsidy.

Summary

The panel finds that the family adjusted income exceeds the income range used to calculate a maximum benefit and a partial subsidy and therefore the appellant is currently not eligible for the Affordable Child Care Benefit.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision is supported by the evidence and is a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed.

The appellant is not successful on appeal.

Appendix A

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;

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 applicable notice of assessment or notice of reassessment 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
Don Stedeford

Signature of Chair

Date (Year/Month/Day)
2022 October 20

Print Name
Janet Ward

Signature of Member

Date (Year/Month/Day)
2022 October 20

Print Name
Glenn Prior

Signature of Member

Date (Year/Month/Day)
2022 October 20