

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Education and Child Care (ministry) reconsideration decision dated October 25, 2022, which determined the appellant was not eligible for the Affordable Child Care Benefit beginning September 1, 2022 due to the appellant's family adjusted annual income being too high.

Part D - Relevant Legislation

Child Care Subsidy Act, (CCSA), section 4

Child Care Subsidy Regulation (CCSR), sections 7, 9 and Schedule A

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****Ministry Records show:**

- On July 12, 2022 an Affordable Child Care Benefit (ACCB) application was received by the ministry.
- There are five people in the appellant's family – the appellant, her spouse and three children. The appellant requested four days of childcare for one child, with an end date of September 6, 2022 and childcare for two children, 20 full days per month, with no end date.
- The appellant's 2021 assessed income is \$25,943.00 and her spouse's is \$95,189.00 - total family income = \$121,132.00.
- The childcare provider is a licensed group childcare facility.
- On July 31, 2022 the ministry denied the ACCB as it was determined the family adjusted annual income was too high.

Request for Reconsideration (September 9, 2022)

The appellant stated that in July two of her children received an autism diagnosis. She applied for the federal disability tax credit for both of them, which is currently under review with the Canada Revenue Agency (CRA). The appellant stated that this will mean the family adjusted income is lower.

Also, the appellant stated with two high needs, special needs children on the autism spectrum, daycare is necessary. For one of the children, it's about integration to start the learning process and set him up for success when he enters kindergarten. On top of being newly diagnosed and supporting those needs, childcare is not something they can afford for all three children, even though it is in their best interest. This means they will have to reduce work schedules to accommodate after school care, lowering their income.

Letter from the Ministry to the Appellant (July 31, 2022)

The ministry determined the appellant is not eligible for the ACCB beginning September 1, 2022.

Additional InformationAppellant

The appellant submitted a Notice of Appeal (NOA) dated October 31, 2022. The "reasons" portion of the NOA was left blank.

At the hearing, the appellant stated that she uploaded documentation, to the ministry, confirming that two of her children have an autism diagnosis. The two documents were attached to the same message. As well, the appellant stated that her husband's work hours have decreased since last year and that she advised the ministry of this reduction in hours.

Ministry

At the hearing, the ministry relied on its record and added that it is bound by the legislation and used the information on line 150 of the CRA tax assessments to determine income. The ministry added that the appellant can request an income review.

The ministry also added that even with confirmation that a second child is considered special needs, the total adjusted deductions would only increase by another \$1,000.00.
\$2,000.00 (spouse) + \$2,000.00 (child without disability) + \$3,000.00 x 2 (children with disabilities)
= \$10,000.00.

The panel determined all the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision that determined the appellant was not eligible for the ACCB beginning September 1, 2022 (due to the appellant's family adjusted annual income being too high), was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Appellant Argument

The appellant argues that as two of her children recently received an autism diagnosis, she believes they are both eligible for the federal disability tax credit and she has applied for this. The appellant argues that this will mean the family adjusted income is lower. Further, she argues she provided documentation for two children, with special needs, to the ministry.

As well, the appellant argues that her husband's work hours have decreased since last year and that she advised the ministry of this.

Ministry Argument

The ministry argues that the appellant's adjusted family income (\$112,132.00), exceeds the income range for a maximum benefit for licensed group childcare as well as for a partial benefit for licensed group childcare. Therefore, as set out in the CCSR, section 7, the appellant is not eligible for the ACCB.

The ministry provided the following details regarding its calculation of the family adjusted income:

- There are five people in the appellant's family – the appellant, her spouse and three children.
- The appellant's 2021 assessed income (as per the CRA) is \$25,943.00 and her spouse's is \$95,189.00 - total family income = \$121,132.00.
- Deductions were made to determine the family's adjusted annual income:
 - \$2000 for every family member after the first two family members
 - \$3000 for each child with special needs
- The appellant's family adjusted annual income is based on one child with special needs (\$3000).
- Additionally, the family adjusted income, based on the family of five minus the first two family members, is \$2000.00 each for three people equaling \$6000.00.

- The total amount of adjustments is \$9000.00.
- The adjusted family income used for calculating the appellant's benefit is \$112,132.00 (\$121,132.00 - \$9,000.00).

The ministry argues further that as per the CCSR, Schedule A, in a license group childcare setting, the adjusted family income range to be eligible for maximum benefit is \$0.00 to \$45,000.00. To be eligible for a partial subsidy the income range is \$45,000.01 to \$110,999.99. The adjusted family income for the appellant's family is \$112,132.00, which is higher than the range for both the maximum benefit range and the partial subsidy range. Because the appellant's adjusted family income exceeds both the income range for a maximum and partial subsidy, the total amount she is eligible to receive is \$0.00.

In addition, the ministry argues that as income ranges for each type of childcare setting are set in legislation, it does not have any discretion to grant subsidy if an applicant's income is higher than regulations permit.

Panel Analysis

Section 4, CCSA - child care subsidies

Section 4 of the CCSA states, subject to the regulations, the minister may pay child care subsidies.

Section 7, CCSR - income test

Section 7 of the CCSR states 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. Ministry records show the childcare provider is a licensed group childcare facility.

Section 9, CCSR - calculation of family adjusted annual income

Section 9(2) states, the minister must calculate the family's adjusted annual income by adding the applicant and the applicant's spouse's annual income.

Section 9(5) states the following deductions may be made, if applicable:

- (a) \$0.00 for the first dependant in the family who is not a child with special needs
- (b) \$2,000.00 for each additional dependant in the family
- (c) \$3,000.00 for each child with special needs in the family.

The panel notes the definition of dependant in the CCSR in section 1 is:

In relation to a parent, means anyone who resides with the parent and who

- (a) is the spouse of the parent, or

(b) is a dependent child of the parent.

Ministry records show the appellant's 2021 assessed income as \$25,943.00 and her spouse's assessed income as \$95,189.00 - total family income = \$121,132.00.

Ministry records also show there are five people in the appellant's family - the appellant, her spouse and three children (one with special needs).

As per the definition of "dependent", the panel finds there are four dependents in the family (the appellant's spouse and three children). Therefore, the panel finds the deductions should be applied as follows:

\$2,000.00 x 3 dependents = \$6,000.00

\$3,000.00 x 1 dependent with special needs = \$3,000.00

Total deductions = \$9,000.00

The panel finds the total deductions to be \$9,000.00 and the family adjusted income to be \$112,132.00.

$\$121,132.00 - \$9,000.00 = \$112,132.00.$

Schedule A, CCSR - subsidy rates

Schedule A provides formulas for subsidy rates in licensed childcare settings. The panel notes the adjusted family incomes in the formulas used to calculate maximum subsidy rates, range from \$45,000.00 to \$111,000.00.

Although the panel admitted the information that the appellant uploaded (to the ministry), confirmation that two of her children are special needs and that she advised ministry staff that her husband's work hours have decreased, the panel gave this evidence little weight. The panel found the appellant to be credible; however, the panel would require copies of this documentation in order to give it more weight.

The panel notes that the ministry's application of the deductions under section 9(5) (CCSR), differs between the ministry record and the explanation provided at the hearing. However, without confirmation of a second child with disabilities, the panel finds the maximum deductions are \$9,000.00 and therefore the incongruence is moot.

As \$111,000.00 is the highest amount of adjusted family income available, to be considered for a subsidy in a licensed childcare setting and as \$112,132.00 (family adjusted income) is higher than \$111,000.00 (maximum allowable for income test), the panel finds the ministry reasonably determined the appellant was not eligible for the ACCB as per sections 7 and 9 of the CCSR.

The panel encourages the appellant to contact the ministry, regarding the second autism diagnosis and her husband's reduced hours, and inquire about having her subsidy re-assessed.

Conclusion

In conclusion, the panel finds the ministry decision that determined the appellant was not eligible for the ACCB beginning September 1, 2022 (due to the appellant's family's adjusted annual income being too high), was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

Schedule of Legislation

Child Care Subsidy Act,

Child care subsidies

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

Child Care Subsidy Regulation

Definitions

1 (1)In this regulation:

"dependant", in relation to a parent, means anyone who resides with the parent and who

- (a)is the spouse of the parent, or
- (b)is a dependent child of the parent;

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).
- (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.

Schedule A

Definition and interpretation

- 1** (1)In this Schedule, "maximum benefit" means the amount set out in Column 3 of the applicable table for the type of child care for which a monthly child care subsidy is being determined.
- (2)For the purposes of determining a monthly child care subsidy under this Schedule,
- (a)the maximum benefit for a type of child care set out in Column 2 of a table in this Schedule applies on the first day of the month in which a child reaches the age of 19 months, 29 months and 37 months, as applicable, and
- (b)if a child of school age is receiving a type of child care that is both within the meaning of care surrounding school day and the description of another type of child care, the maximum benefit for care surrounding school day applies.

Subsidy rates for licensed child care setting

- 2** The monthly child care subsidy for a child receiving a type of child care provided in a licensed child care setting is to be determined in accordance with the formula in paragraph (a), (b) or (c), as applicable, and the table in this section:
- (a)if a family's adjusted annual income is more than \$45 000 but less than or equal to \$60 000, the amount of child care subsidy is to be determined in accordance with the following formula:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 45\,000) \times 0.272}{15\,000} \right]$$

- (b)if a family's adjusted annual income is more than \$60 000 but less than or equal to \$80 000, the amount of child care subsidy is to be determined in accordance with the following formula:

$$0.728 \times \text{maximum benefit}$$

(c) if a family's adjusted annual income is more than \$80 000 but less than \$111 000, the amount of child care subsidy is to be determined in accordance with the following formula:

$$(0.728 \times \text{maximum benefit}) \times \left[1 - \frac{(\text{family's adjusted annual income} - 80\,000)}{31\,000} \right]$$

APPEAL NUMBER 2022-0262

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2022/11/25

Print Name

Charles Schellinck

Signature of Member

Date (Year/Month/Day)

2022/11/25

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2022/11/25