

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision (the “Reconsideration Decision”) dated January 19, 2023 of the Ministry of Education and Child Care (the “Ministry”), which held that the Appellant was not eligible for the Affordable Child Care Benefit (the “ACCB”) from November 1, 2021 to March 31, 2022.

The Ministry determined that at the time the Appellant and her spouse first applied, the family’s adjusted income was too high to be eligible for either a full or partial subsidy.

The Ministry also determined that the Appellant was not eligible for the ACCB for the period prior to April 1, 2022 because the Appellant did not seek a reconsideration of the Ministry’s initial denial of the ACCB and, instead, re-applied on April 8, 2022, making her eligible for the ACCB from April 1, 2022 only, pursuant to section 13 of the *Child Care Subsidy Regulation* (the “CCSR”).

Part D – Relevant Legislation

CCSR- sections 4(1), 7, 8, 9, 13, and 17

Part E – Summary of Facts

The Appellant, her spouse, and child are a family of three people, none of whom are special needs. The Appellant's child is receiving child care from a licenced child care facility. The information before the Ministry at the time of the Reconsideration Decision included the following:

- the Appellant's application for the ACCB, dated April 8, 2022 (the "2022 Application");
- the Appellant's application for the ACCB, dated November 2, 2021 (the "2021 Application");
- a letter from the Ministry to the Appellant, dated November 22, 2021 (the "November 2021 Letter"), denying the ACCB on the basis of the Appellant's family's adjusted income;
- a letter from the Ministry to the Appellant, dated November 9, 2022 (the "November 2022 Letter"), denying the ACCB for the period from November 1, 2021 to March 31, 2022 on the basis that the Ministry could only pay the ACCB from the first day of the month in which an application was submitted;
- although not in the Appeal Record, the Appellant's and the Appellant's spouse's 2020 assessed incomes of \$19,042.00 and \$110,355.00, respectively;
- the Appellant's Request for Reconsideration to the Ministry of Children and Family Development ("MCFD"), dated November 14, 2022, which included a typed submission from the Appellant setting out that:
 - the 2021 Application had been denied;
 - at the time of the denial of the 2021 Application, the Appellant's spouse's 2020 income tax return was under review with Canada Revenue Agency ("CRA");
 - the review by CRA was completed in March and the Appellant's spouse's 2020 tax return was re-filed; and
 - the re-filed tax return was assessed in November, 2022.

The Appellant's Notice of Appeal was filed on February 1, 2023.

At the hearing, the Appellant reiterated that the rejection of the 2021 Application was because of her family's income being too high to be eligible for the ACCB.

The Appellant explained that her husband's 2020 tax return was the first that he had filed as a self-employed person, resulting in an error in the calculation of his income. The Appellant specifically advised that on July 28, 2021, CRA asked for further documentation, which was provide on August 24, 2021. However, when the Appellant and her spouse applied for the ACCB on November 2, 2021, CRA's review had not yet completed.

The Appellant confirmed that she did not file for Reconsideration, despite the November 2021 Letter setting out that she had a right to do so. However, the Appellant did state that she contacted at the number provided in the November 2021 Letter. When she did so, she stated that she was advised that she should re-submit her income documentation when CRA completed its review of her spouse's 2020 income, leading the Appellant to conclude that she

still had an open file with the Ministry. The Reconsideration Decision does not make reference to this call.

The 2022 Application was filed after the Appellant and her spouse had filed their 2021 tax returns.

The CRA review of the Appellant's spouse's 2020 tax return wasn't complete until approximately April 2022 and a Notice of Assessment was received in or about October, 2022. It was then that the Appellant contacted the Ministry and requested the ACCB in respect of the First Application. The Ministry denied the Appellant's request for payments related to the First Application.

No representative of the Ministry attended at the hearing, which prevented the panel from being able to inquire about whether the Ministry had:

- a record of the call that the Appellant stated she had made after the rejection of the November 2021 Application;
- a record of anyone giving the Appellant the advice that she should re-submit her income documentation when CRA completed its review of her spouse's 2020 income.

Part F – Reasons for Panel Decision***Panel Decision***

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for the ACCB for the period prior to April 1, 2022.

The ACCB is available to families whose adjusted annual incomes are below the amounts set out in section 7 of the CCSR. Families whose incomes exceed the amounts set out below for various types of child care are not eligible for the ACCB:

- \$111,000 for a child receiving child care in a licensed child care setting;
- \$85,000 for a child receiving child care in a registered licence-not-required child care setting; and
- \$70,000 for a child receiving child care.

Depending on where a family's adjusted annual income falls and which category of child care the family is receiving, a family may be eligible for a full subsidy or a partial subsidy.

Section 9 of the CCSR sets out how a family's adjusted income is calculated. Namely, the Ministry uses the line 150 incomes from each spouse's notice of assessment for the most recent tax year.

A family's taxable income is adjusted based on the number of dependants in the family and the characteristics of the dependants. Where a family has dependants who are not special needs, the family's income is reduced by \$2,000.00 for each dependant after the first dependant. The spouse of the parent applying for the ACCB is defined as a "dependant" for this calculation, pursuant to the definitions set out in section a of the CCSR..

Section 13 of the CCSR sets out that the ACCB may only be paid from the first day of the month in which an application is filed.

The Appellant made two applications for the ACCB, the 2021 Application and the 2022 Application.

The 2022 Application by the Appellant resulted in the Appellant being deemed eligible for the ACCB from April 1, 2022. The eligibility date was based on the 2022 Application having been filed on April 8, 2022. The Panel finds that the Ministry reasonably determined that the Appellant was only eligible for the ACCB from April 1, 2022 and no earlier in respect of the 2022 Application.

When the Appellant filed the 2021 Application, the family income was \$129,397.00. As a result, the adjusted family income was \$127,397.00, after applying the \$2,000.00 adjustment for their dependant child. Although the actual tax documents were not before the panel, the Appellant did not dispute that those were the income figures from the tax documents that the Ministry received with the 2021 Application.

The \$127,397.00 figure was significantly in excess of the income threshold for all types of child care described in section 7 of the CCSR and the Appellant's application was denied. The panel also finds that the denial of the 2021 Application was a reasonable one at the time that it was made and the panel finds that the Appellant did not request a reconsideration of the 2021 Application.

Section 17 of the CCSR requires a request for reconsideration of a Ministry decision to be submitted within 20 days after a person is notified of the decision. Section 17(4) of the CCSA sets out that unless a person requests reconsideration within 20 days, they are deemed to have accepted the decision and the decision is not open to review in court or appeal before a tribunal.

The Appellant did not seek a reconsideration of the denial of the First Application within 20 days of the denial. The reason for this appears to have been advice received by a Ministry representative that she should simply re-submit the income documentation once the CRA review was complete. In the result, the Appellant's failure to apply for reconsideration appears to have been caused (wholly or in part) by advice from a Ministry representative and a belief that the 2021 Application remained open.

When the Appellant did submit the revised tax documentation for 2020, the November 2022 Letter noted only that the 2022 Application had been filed on April 8, 2022 and, as a result, no ACCB could be provided prior to April 1, 2022. The November 2022 Letter made no mention of the 2021 Application or that the Appellant had failed to request reconsideration of the denial of the 2021 Application within the time required by the CCSA.

As noted above, no representative from the Ministry attended the hearing. The panel was left without evidence on a number of issues including

- whether the Ministry exercises discretion in the enforcement of the time limits in section 17 of the CCSR and under what circumstances, it may do so (the panel notes that in a decision 19-272 the ministry representative advised that reconsideration officers can and do take extenuating circumstances into consideration and may decline to enforce the 20 day deadline when the delay was caused by circumstances beyond the applicant's control); and
- whether the Ministry's Reconsideration Decision itself amounted to an extension of the Appellant's time to file for reconsideration of the denial of the November 2021 Application.

In the absence of evidence to the contrary, the panel accepts that the Appellant called the number set out in the November 2021 Letter and was advised by a Ministry representative in November 2021 that she could re-submit her income documentation when CRA completed its review of her spouse's 2020 income..

Although referencing only the 2022 Application, the panel considers the November 2022 Letter amounted to a second denial of the 2021 decision. Despite the fact that the Appellant's contacting of the Ministry about retroactive payments and providing tax documents for 2020

could only have related to the 2021 Application (the 2022 Application had already been approved based on the documentation provided with the 2022 Application), the November 2022 Letter did not reference the 2021 Application at all or note that the Appellant had failed to request a reconsideration of the denial of the 2021 Application within the time required. Instead, the November 2022 Letter, like the November 2021 Letter, invited the Appellant to seek reconsideration of its decision to deny the ACCB for the period prior to April 1, 2022. The panel finds that the circumstances of this appeal, where the appellant was told to re-submit income documents after the CRA completed its review, amount to the Ministry having effectively extended the time for requesting a reconsideration of the denial of the 2021 Application to the Appellant.

Finally, even if the Appellant had requested reconsideration of the denial of the 2021 Application within the required time, the Ministry would not have been in a position to properly decide the matter until the Appellant's spouse's CRA review was complete in late 2022. In the panel's view fairness would have dictated that the Appellant be given an extension of time to provide the updated documentation which was under review by CRA. For example, section 9.1 of the CCSR provides for an applicant to request an income review when he or she expects a decrease in income.

In view of all of the foregoing, the panel finds that the Ministry did not act reasonably in its second denial of the 2021 Application and the panel rescinds the Reconsideration Decision.

Relevant Legislation

Section 17 of the CCSR sets out the time limits for requesting reconsideration of Ministry decisions:

Reconsideration of decisions

- 17** (1) A person who wishes the minister to reconsider a decision made under the Act must deliver to the Child Care Service Centre a request for reconsideration that
- (a) is in the form specified by the minister, and
 - (b) is delivered within 20 business days after the person is notified of that decision.
- (2) A request for reconsideration may be delivered under subsection (1) by mail or facsimile transmission to the Child Care Service Centre.
- (3) A request for reconsideration that is mailed in accordance with subsection (2) is deemed to have been delivered 3 business days after the mailing date.
- (4) If a request for reconsideration is not delivered in the time required by subsection (1),
- (a) the person is deemed to have accepted the decision, and
 - (b) the decision is not open to review in a court or subject to appeal to a tribunal or other body.
- (5) Within 10 business days after receiving a request for reconsideration under subsection (1), the minister must
- (a) reconsider the decision, and
 - (b) provide the person who delivered the request with a written decision on the request.
- (6) If a request for reconsideration is delivered under this section about a decision that results in a discontinuation or reduction of a child care subsidy, that decision is set aside until the minister
- (a) reconsiders the decision, and
 - (b) provides the person who delivered the request with a written decision on the request.
- (7) If a request for reconsideration is delivered under this section about a decision that results in a refusal of a child care subsidy, that decision stands until the minister
- (a) reconsiders the decision, and
 - (b) provides the person who delivered the request with a written decision on the request.

Section 4 of the CCSR sets out the eligibility criteria for the ACCB:

How to apply for a subsidy

- 4** (1) To be eligible for a child care subsidy, a parent must
- (a) complete an application in the form required by the minister,
 - (b) supply the minister with the social insurance number of the parent and the parent's spouse, if any, and
 - (c) supply the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy.
- (2) Only one parent in the family may apply for a child care subsidy.

Section 7 of the CCSR sets out the income test that applicants for the ACCB must satisfy:

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).
- (2) Subsection (1) does not apply to an applicant if the child care is for a child
- (a) in relation to whom the applicant has entered into an agreement with a director under section 8 of the *Child, Family and Community Service Act*,
 - (b) in relation to whom the applicant, by agreement under section 94 of the *Child, Family and Community Service Act*, exercises a director's rights or carries out a director's responsibilities,
 - (c) of whom the applicant has interim or temporary custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c), 49 (7) (b) or 54.01 (9) (b) of the *Child, Family and Community Service Act*,
 - (c.1) of whom the applicant has been permanently transferred custody under an order of the court under section 54.01 (5) or 54.1 (3) of the *Child, Family and Community Service Act*,
 - (d) of whom the applicant has custody under an order of the court under section 42.2 (4) (a) of the *Child, Family and Community Service Act*, if the applicant is the other person referred to in section 42.2 (4) (a) (i),

(e) who is receiving assistance under the authority of the Child in the Home of a Relative Program Transition Regulation, B.C. Reg. 48/2010, and the applicant is the relative with whom that child resides, or

(f) who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e), provided

(i) on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or

(ii) by the Nisga'a Nation or a treaty first nation.

Sections 8 and 9 of the CCSR describe the amount of the subsidy and how a family's adjusted annual income is determined:

Amount of subsidy

8 (1) In this section:

"full time child care" means child care for which the minister may pay a child care subsidy that is provided for the equivalent of at least 20 full days per month;

"full time subsidy amount", in relation to a child receiving part time child care, means the monthly child care subsidy determined in accordance with subsection (3), (4) or (5), as applicable, that would apply if the child were receiving full time child care;

"number of full days" means the number of full days per month for which the minister may pay a child care subsidy;

"number of half days" means the number of half days per month for which the minister may pay a child care subsidy;

"parent fee" in relation to a parent, means the fee the parent is charged by the applicable child care provider for child care for which the minister may pay a child care subsidy;

"part time child care" means child care for which the minister may pay a child care subsidy that is provided for less than the equivalent of 20 full days per month.

(2) For the purposes of applying the definitions of "full time child care" and "part time child care" in subsection (1), 2 half days are the equivalent of one full day.

(3) If a family's adjusted annual income is less than or equal to the following, the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving:

- (a) \$45 000 for a child receiving child care in a licensed child care setting;
- (b) \$39 000 for a child receiving child care in a registered licence-not-required child care setting;
- (c) \$24 000 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).

(4) If a family's adjusted annual income exceeds the applicable amount under subsection (3) (a), (b) or (c), the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount determined in accordance with the applicable formula in Schedule A, whichever is less, for the type of child care the child is receiving.

(5) Despite subsections (3) and (4), the monthly child care subsidy for a child described in section 7 (2) who is receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving.

(6) If child care is provided through a Young Parent Program and the child care provider operating the Young Parent Program confirms, in the form specified by the minister, that the parent is participating in the Young Parent Program,

(a) despite subsections (3) and (4), the monthly child care subsidy for a child who is receiving full time child care provided through the Young Parent Program is \$1 500, and

(b) despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided through the Young Parent Program is the amount determined in accordance with the following formula:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times 1\,500$$

(7) The monthly child care subsidy for a child receiving part time child care is the parent fee or the amount determined in accordance with the following formula, whichever is less, for the type of child care the child is receiving:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(8) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided in a licensed preschool is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$\left[\frac{\text{number of half days}}{20} \right] \times \text{full time subsidy amount}$$

(9) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care that is care surrounding school day is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$\left[\frac{(\text{number of half days} \times 0.83333) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(10) If the child care is arranged or recommended by staff delegated under the *Child, Family and Community Service Act*, after staff have

- (a) offered support services or agreements to the child and family under section 16
- (2) (a) of that Act,
- (b) begun an assessment under section 16 (2) (b.1) of that Act, or
- (c) begun an investigation under section 16 (2) (c) of that Act,

the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.

[en. B.C. Reg. 148/2018, App. 1, s. 6.]

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.

Section 13 of the CCSR addresses the matter of retroactive payments of the ACCB:

Will a subsidy be paid for child care provided before completion of the application?

- 13** (1) A child care subsidy may be paid from the first day of the month in which the parent completes an application under section 4.
- (2) If an administrative error has been made, a child care subsidy may be paid for child care provided in the 30 days before the parent completes an application under section 4.

2023-0034

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

Adam Shee

Signature of Chair

Date (Year/Month/Day)

2023/February/28

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

March 2, 2023

Print Name

Peter Mennie

Signature of Member

Date (Year/Month/Day)

2023 / March / 2