

**Part C – Decision Under Appeal**

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (“Ministry”) dated April 17, 2023, in which the Ministry determined that the Appellant was not eligible for the Affordable Child Care Benefit between September 1 and December 31, 2022.

The Ministry considered the Appellant’s request for an income review, submitted on December 21, 2022. When the Ministry decided that the Appellant was eligible for the benefit based on the income review, it determined that, under Section 9.1(5) of the Child Care Subsidy Regulation, eligibility began on the first day of the next month, which was January 1, 2023.

**Part D – Relevant Legislation**

Child Care Subsidy Act (“Act”), Section 4  
Child Care Subsidy Regulation (“Regulation”), Sections 4, 7, 9, 9.1 and 13  
Employment and Assistance Act, Section 22(4)

**Part E – Summary of Facts**Evidence Before the Ministry at Reconsideration:

The Appellant had been receiving the Child Care Subsidy Benefit for one of her children, and the authorization expired on June 30, 2022. The Appellant did not renew the benefit before the authorization expired, but on October 28, 2022, she submitted an Affordable Child Care application, form CF2900, online through the MyFS portal.

On November 15, 2022, the Ministry sent the Appellant notification in writing of the outcome of her application, advising that she was not eligible for the benefit beginning September 1, 2022, because the family's adjusted annual income was too high, based on Canada Revenue Agency ("CRA") Assessed Income. The Appellant contacted the Ministry to advise that her self-employment income in 2022 was lower, and on November 20, 2022, the Ministry sent the Appellant a message through MyFS, stating that:

- if her or her spouse's income had decreased since they last filed their taxes, she could request an income review by submitting a new application through MyFS; and
- if she disagreed with the Reconsideration Decision, she could ask the Ministry to reconsider, by submitting a Request for Reconsideration form within 20 business days.

On November 21, 2022, the Appellant requested an "appeal form" through MyFS, and provided a copy of the CRA Notice of Assessment showing that her earnings were \$26,000 less than the gross income reported by CRA for 2021.

On December 1, 2022, the Appellant contacted the Ministry about the request for reconsideration and said she would like to update her income information. The Ministry told the Appellant to submit a new application, form CF2900, and an Affordable Child Care Benefit Income Declaration, form CF2933, to request an income review, both of which she submitted on December 21, 2022. When the Ministry received the CF2933, it cancelled the request for reconsideration.

The Ministry requested additional school documents from the Appellant, which she provided. The Ministry approved the Appellant's December application. In a letter dated March 28, 2023, the Ministry stated:

- the benefit could only be paid from the first day of the month in which the parent completes the application;
- the Appellant completed the Application on February 16, 2023;
- therefore, the Appellant was eligible to receive the benefit from January 9, 2023.

At Reconsideration, the Ministry stated that the Appellant's eligibility was based on the change in her self-employment income and began on the first day of the month following the month in which the income review was requested. As the Appellant requested the income review in December 2022, the Ministry determined that eligibility began in January 2023.

Additional Evidence:

The Appellant provided a written submission with her Notice of Appeal, part of which is argument, in which she stated:

- She mailed documents to the Ministry in September 2022, and did not receive a response, so she followed up by email on October 23, 2022 (copy of email provided);
- After she received an email from the Ministry on November 15<sup>th</sup>, 2022, advising that she was ineligible for the benefit based on the family income, she sent the Ministry her Notice of Assessment from CRA (copy of email provided);
- She called the Ministry "several times" between November 15 and November 20;
- When she was able to speak to someone at the Ministry on the phone, she told them that her self-employment income was one-third of her gross income. The person to whom she spoke told her to apply with another form for self-employed individuals, and said that someone should have given her that information before;
- On November 20, 2022, she received an email from the Ministry stating that her application had been denied, with an option to appeal, and she replied by email to ask for the appeal forms;
- She tried, but still was not able to contact the Ministry by phone, so she sent 3 emails, one on November 21 and two on December 1, 2022, asking for the form to request an appeal of the decision about eligibility;
- On December 1, 2022, she got through to the Ministry by phone and the person she spoke to suggested she should apply based on her expected income starting in January 2023, which she did.

At the hearing, the Appellant stated:

- She tried to contact the Ministry by telephone many times in the fall of 2022 to ask about providing correct income information, and either could not get through, or the call was cut off;
- She does not remember the names of the forms she was supposed to submit, but after the Ministry first told her she was not eligible because their income was too high, she was told to fill out a form to ask for a reconsideration, and then when she phoned to follow up, she was told no, she had to do something else.

At the hearing, the Ministry was represented by the Ministry of Social Development and Poverty Reduction. In answer to questions from the Panel, that representative advised:

- While they have access to Ministry files for the appeal, those files would not have information about how many times the Appellant may have tried to contact the Ministry without success, so they could not comment on the Appellant's evidence about her difficulty contacting the Ministry;
- To the best of their knowledge, there are no prompts, and no person available to help a parent with an online application for the benefit;
- There are text boxes in the online application form where an applicant can mention that their income has decreased from previous years;
- When an applicant requests reconsideration of a Ministry decision, they can provide additional information for the reconsideration;
- The Appellant could have requested an income review for her October application;
- It is unclear from Ministry records why the request for reconsideration was cancelled and the Appellant was told to submit a request for income review with a new application;
- The statement in the Ministry's March 28, 2023 letter that the Appellant's application "was completed on February 16, 2023" refers to the date the Ministry received additional school documents it requested from the Appellant, and completed its assessment of the Appellant's December 2022 application;
  - The January 9, 2023 date for eligibility for the benefit refers to the date that school started.

Admissibility of Additional Evidence:

Neither party objected to the admissibility of any of the additional evidence.

The Panel finds that the additional evidence is reasonably necessary for the full and fair disclosure of all matters relating 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 was reasonable in determining that the Appellant was not eligible for the Affordable Child Care Subsidy benefit between September 1 and December 31, 2022.

Appellant's Position:

The Appellant says that she has told the Ministry many times that her current self-employment income is about one-third of the gross amount shown on CRA records, but she was not told until December 2022 that there was a separate form she had to submit to have her net income considered. She says that information needs to be clearer, and more readily available to applicants. She says that she, and other applicants, rely on the Ministry for advice about how to apply for the benefit, and how to have Ministry decisions reviewed.

She argues that her net income can be verified through CRA Notices of Assessment, which she provided to the Ministry. She says that, if she had been given accurate information from the Ministry in October 2022, about how to report her net income from self-employment, she could have had the benefit in place in September 2022.

Ministry's Position:

The Ministry maintains that decisions about eligibility are governed by the legislation and are based on income reported to CRA. If an applicant's income has decreased, the Ministry relies on the applicant to provide that information. Based on the Appellant's request for income review submitted on December 21, 2022, the Ministry determined that the Appellant was eligible for the benefit. Under the legislation, when an applicant meets the income criteria, they are eligible for the benefit on the first day of the month following the month they requested an income review. Therefore, the Ministry says that the Appellant is not eligible for the benefit between September 1 and December 31, 2022.

In the reconsideration decision, the Ministry stated that the Appellant is eligible for the benefit on January 9, 2023. At the hearing, the Ministry's representative confirmed that January 9 was the first day that school opened and child care would be provided for the Appellant's child.

Panel Decision:

The reconsideration decision under appeal is the decision about the Appellant's application for the Affordable Child Care Benefit, submitted in December 2022. The request for income review was submitted with that application, with an Income Declaration setting out that the Appellant's self-employment income had decreased from 2021.

The Regulations set out the way the Ministry must determine a family's adjusted annual income based on information from the Canada Revenue Agency. If the income of an applicant or their spouse has decreased, they may request an income review under section 9.1.

The Appellant had applied for the benefit in October 2022, and the Ministry determined that she was ineligible because the family's adjusted annual income was higher than the amount set out in section 7 of the Regulation. She requested the form to submit a Request for Reconsideration of that decision, but in a subsequent conversation with the Ministry, she was told to submit a new application with a request for income review instead. The Ministry cancelled the request for a reconsideration package for the decision about the October 2022 application.

The Panel finds that, as the Ministry had advised the Appellant in writing of the outcome of the October application and no Request for Reconsideration was submitted, that application was concluded. When she submitted the new application and requested an income review in December 2022, the Appellant was not currently receiving a child care subsidy, and no determination of eligibility had yet been made about the December 2022 application. Therefore, the Panel finds that the Appellant was a "new applicant" as defined in section 9.1(1) of the Regulation.

The Ministry has determined that, based on the Appellant's self-employment income, she was eligible for the benefit. However, the Ministry then determined that the Appellant was eligible for the benefit on the first day of the month following the month in which she requested the income review, which would be January 1, 2023. (The Panel notes that the Ministry states in the reconsideration decision that the date of eligibility is January 9, 2023, which the Panel understands to be the date that child care would have started, based on school opening in January 2023, rather than the date the Appellant became eligible for the benefit.)

Under section 9.1(5)(a) of the Regulation, if a new applicant is eligible for the child care subsidy after an income review under section 9.1(4), the subsidy is paid from the first day of the month in which the parent completes an application under section 4 of the

Regulation. The Appellant completed the application on December 21, 2022, and therefore she is eligible for the subsidy commencing December 1, 2022.

If the Appellant had submitted the request for income review in December, without also submitting the new application, she would not have been a “new applicant”, as there had been a determination of eligibility for the October 2022 application. In the explanation of its decision in the reconsideration, the Ministry only refers to the request for income review and fails to refer to the new application in December 2022. Therefore, the Panel finds that the Ministry’s reconsideration decision is not a reasonable application of the legislation in the Appellant’s circumstances.

Additional Comments:

The Panel acknowledges the frustration the Appellant has expressed about her efforts to contact the Ministry and obtain clear, consistent, and timely information. However, the Panel’s jurisdiction is limited to determining whether the Ministry’s reconsideration decision is reasonably supported by the evidence or is a reasonable application of the legislation in the Appellant’s circumstances.

It is unclear to the Panel why the Ministry cancelled the Appellant’s request for forms to submit for reconsideration of the eligibility decision about the October 2022 application. If she had submitted a Request for Reconsideration, the Appellant would have had the opportunity to provide additional evidence of decreased income at reconsideration, or on appeal if the reconsideration decision was not in her favour. If the October application had not been concluded under the Act and Regulation, and additional evidence established that the family’s adjusted annual income was lower than the amount set out in section 7 of the Regulation, the Appellant may have been eligible to receive the benefit as of October 1, 2022.

Conclusion:

The Panel finds that the Ministry’s reconsideration decision is not a reasonable application of the legislation in the Appellant’s circumstances.

The Panel rescinds the Ministry’s reconsideration decision. The Panel finds that the Ministry was reasonable in determining that the Appellant is not eligible for the Affordable Child Care Benefit between September 1 and November 30, 2022, but finds that the Ministry was not reasonable in determining that the Appellant was eligible starting January 1, 2023. The Panel finds that, as a new applicant, under s. 9.1(5) of the Regulation

the Appellant is eligible for the benefit starting December 1, 2022. The Appellant is partially successful in the appeal.



Schedule of Legislation

Child Care Subsidy Act

*Child care subsidies*

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

*Income test*

s. 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).

*Calculation of family's adjusted annual income*

s. 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.

#### *Income review*

s. 9.1 (1) In this section:

"estimated decreased annual income" means the estimated income from all sources except social assistance payments, stated in Canadian dollars, for the applicant or the applicant's spouse, if any, for the 12-month period beginning the month after the month in which the applicant requests an income review under this section;

"estimated increased annual income" means the estimated income from all sources except social assistance payments, stated in Canadian dollars, for the applicant, or the applicant's spouse, if any, for the 12-month period beginning the month after the month in which the income of the applicant or the applicant's spouse, as applicable, increased;

"new applicant" means a parent who

(a) is not currently receiving a child care subsidy, and

(b) has applied for a child care subsidy under section 4 but no determination has yet been made whether the parent is eligible for a child care subsidy.

- (2) Despite section 9 (3), if the income of the applicant or of the applicant's spouse, if any, has decreased,
- (a) the applicant may request the minister to conduct an income review by giving to the minister a statement, in the form required by the minister, attesting to the estimated decreased annual income of the applicant or the applicant's spouse, as applicable, and
  - (b) the minister may determine the annual income of the person based on that information.
- (3) Despite section 9 (2), on receiving a request for an income review under this section, if the minister is satisfied that the income decrease may result in an increase in the amount of child care subsidy, 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,
    - (i) the lesser of
      - (A) the annual income of the person referred to in subsection (2) of this section whose income decreased as determined in accordance with subsection (2) (b) of this section, or
      - (B) the annual income of that person as determined in accordance with section 9 (3) or (4), as applicable, and
    - (ii) the annual income of the applicant or the applicant's spouse, if any, determined in accordance with section 9 (3) or (4), if applicable;
  - (b) by deducting from the amount calculated under paragraph (a) the applicable amounts under section 9 (5).
- (4) If the minister is satisfied that the family's adjusted annual income calculated under subsection (3) of this section will result in an increase in the amount of child care subsidy, the minister must redetermine the amount of child care subsidy using the family's adjusted annual income calculated under subsection (3) of this section as the basis for the calculation under section 8 [*amount of subsidy*].
- (5) If an applicant is eligible for an increased amount of child care subsidy determined in accordance with subsection (4) of this section, the increased amount of child care subsidy may be paid as follows:
- (a) in the case of a new applicant, from the first day of the month in which the parent completes an application under section 4;
  - (b) in all other cases, despite section 13 (1), from the first day of the month after the month in which the applicant requests an income review under this section.
- (6) Despite section 9 (3),

(a) an applicant to or for whom an increased amount of child care subsidy is paid in accordance with this section must give to the minister a statement, in the form required by the minister, attesting to the estimated increased annual income of the person referred to in subsection (2) of this section whose income decreased if

(i) the income of that person increases, and

(ii) the family's adjusted annual income was calculated under subsection (3) of this section using the annual income of that person referred to in paragraph (a) (i) (A) of that subsection, and

(b) the minister may determine the annual income of the person based on that information.

(7) Despite section 9 (2), on receiving a statement referred to in subsection (6) of this section, if the minister is satisfied that the income increase may result in a decrease in the amount of child care subsidy, 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,

(i) the lesser of

(A) the annual income of the person referred to in subsection (6) of this section whose income increased determined in accordance with subsection (6) (b) of this section, or

(B) the annual income of that person determined in accordance with section 9 (3) or (4), as applicable, and

(ii) the annual income of the applicant or the applicant's spouse, if any, determined in accordance with section 9 (3) or (4), if applicable;

(b) by deducting from the amount calculated under paragraph (a) of this subsection, the applicable amounts under section 9 (5).

(8) If the minister is satisfied that the family's adjusted annual income calculated under subsection (7) of this section will result in a decrease in the amount of child care subsidy, the minister must redetermine the amount of child care subsidy using the family's adjusted annual income calculated under subsection (7) of this section as the basis for the calculation under section 8.

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

s. 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.

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2023-0126

**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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2023/05/20

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023/05/20

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2023/05/20