

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision (the Decision) of the Ministry of Children and Family Development (the Ministry) dated May 1, 2023. Based on the family income information provided by the Canada Revenue Agency (the CRA), the Ministry decided that the Appellant's Affordable Child Care Benefit (the Benefit) for the current year would be reduced, beginning March 1, 2023.

Part D – Relevant Legislation

Child Care Subsidy Regulation (the Regulation), sections 1 and 9

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below

Part E – Summary of Facts

The Ministry has an information sharing agreement with the CRA, under which the Ministry can obtain information about a child care subsidy applicant's family income as reported by individuals when they file their annual income tax returns.

The evidence the Ministry had when it made the Decision included:

- Total income as reported on line 15000 (previously line 150) of the Appellant's 2022 income tax return. The Ministry determined that the amount of the Appellant's total income for tax purposes was \$0; and,
- Total income as reported on line 15000 of the Appellant's spouses 2022 income tax return. The Ministry determined that the amount of the Appellant's total income for tax purposes was \$112,607.

Additional Evidence After Reconsideration

In the Appellant's Notice of Appeal, dated May 10, 2023, the Appellant provided copies of her 2022 Notice of Assessment. In the Notice of Assessment, the Appellant's total income in the 2022 tax year as reported on line 15000 of her income tax return is a negative \$26,911 [“\$ *Final Amount ... (26,911)*”]. Also included in the Appellant's Notice of Assessment is the Appellant's “*Spouse or common-law partner's net (not total) income*” in the amount of \$112,147, as reported on line 51050 of the Appellant's 2022 income tax return.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision that the Appellant's Benefit would be for a reduced amount, beginning March 1, 2023, based on its calculation of the Appellant's family's adjusted total income of \$112,607, was reasonably supported by the evidence, or a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that the Ministry has calculated the Benefit based on an incorrect calculation of her family's adjusted total income. Specifically, the Appellant argues that her family's adjusted total income is \$85,696, not \$112,607 as calculated by the Ministry.

Ministry's Position

The Ministry's position is that the CRA reported the Appellant's assessed income for 2022 as \$0.00 because a benefit cannot be assessed using a negative amount for assessed income, and the ministry is not permitted to apply business loss deductions when determining an individual's income. In addition, Ministry determined that the Appellant has not provided any evidence to show that the amounts reported by the CRA are inaccurate.

Panel Decision

Section 9(2) of the Regulation says that the Benefit is determined based on a family's adjusted annual income, which is calculated by *adding*, for the applicant and the applicant's spouse, the annual income for the person determined under Section 9(3). Where a "*previous year*" (defined in the legislation as "*the year previous to the current calendar year*") notice of assessment is available, Section 9(3) says that the Ministry must calculate the annual income of the applicant and the applicant's spouse by the amount reported on line 150 of the person's notice of assessment for the applicable year.

The Appellant's Notice of Assessment for the applicable year, i.e. the Appellant's 2022 Notice of Assessment, is total income, as reported on line 15000 of the Appellant's 2022 tax return of \$(26,911), which is a negative amount. According to all available evidence, the Appellant's spouse's total income reported on line 15000 of the spouse's tax return is \$112,607, an amount which the parties do not dispute.

When the two total income amounts are added together, the Appellant's family's adjusted total income is \$85,696 [$\$112,607 + (-\$26,911)$]. The Panel notes that there are no provisions in the legislation to set the total income amount at \$0 when a negative value appears on line 15000.

Conclusion

The Panel finds that the Ministry's Decision, which determined that the Appellant's benefit would be reduced based on its calculation of the Appellant's family's adjusted total income of \$112,607, was not a reasonable interpretation of the legislation in the Appellant's circumstances because the family's adjusted total income, as calculated under the Regulation section 9.1, is actually \$85,696.

The Decision is rescinded and the Appellant's appeal is successful. A new calculation of the Benefit amount to which the Appellant is entitled must be made based on the correct total income of the family.

Schedule of Legislation

CHILD CARE SUBSIDY REGULATION

Definitions

1 (1) In this regulation: ...

"family's adjusted annual income" means the income calculated for the family under the following:

(a) section 9 (2) [*calculation of family's adjusted annual income*] ...

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) ...

(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 ...

(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).

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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

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/05/26

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/05/26

Print Name

Elaine Jeffery

Signature of Member

Date (Year/Month/Day)

2023/05/26