

Appeal Number 2023-0379

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (the Ministry) dated November 16, 2023. The Ministry determined the Appellant is not eligible for the Affordable Child Care Benefit beginning October 1, 2023 because the family's adjusted annual income is too high.

Part D – Relevant Legislation

Child Care Subsidy Regulation (the Regulation) Sections 1, 7, 8, 9

(The relevant legislation is set out in Appendix A)

Part E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

Information Before the Ministry at Reconsideration

- Notice of Tax Reassessment issued July 31, 2023, which indicates the Appellant’s 2022 income tax return had been reassessed. The assessment indicates that the total income remained the same at \$73,278 and that total federal and BC non-refundable tax credits were increased, and net federal and net BC taxes were decreased. This resulted in an overall credit of \$1,779.50.
- An Affordable Child Care Benefit Program/Child Care Arrangement form dated August 1, 2023, which indicates the Appellant’s child was in a license-not-required (LNR) child care setting weekdays from 7am to 9am and 2:45pm to 5:30pm from September 5, 2023 to June 28, 2024.
- An Affordable Child Care Benefit Program/Child Care Arrangement form dated September 1, 2023, with the same child care provider and arrangements as the August 1, 2023 form, with the only change being the morning time now 7am to 8:45am.
- A letter from the Ministry to the Appellant dated October 3, 2023, denying the Affordable Child Care Benefit from October 1, 2023.
 - The calculation portion indicates that the Appellant’s income was assessed from January 1, 2023 to September 30, 2023 as \$45,990, and from October 1, 2023, as \$73,278. The Appellant receives a \$3,000 adjustment for special needs child.
 - The income ranges for Licence-Not-Required care ranges from \$0 – \$24,000 for maximum benefit and \$24,000.01 to \$69,999.99 at a reduced rate according to calculations provided in Schedule A, Section 4 of the Regulation.
 - The September monthly benefit shows \$210.00 for maximum, \$123.31 adjusted benefit due to income and \$117.14 adjusted benefit due to days of care with monthly benefit determined to be \$98.64.
 - The eligibility assessment for October 1, 2023, to February 29, 2024, determined the Appellant’s family income of \$73,278, less \$3,000 for the special needs adjustment, equals adjusted family income of \$70,278. Because the adjusted

family income is higher than the \$69,999.99 income range, the monthly benefit is \$0.00.

- A Request for Reconsideration form was completed by the Appellant on October 19, 2023. As her reason for requesting the reconsideration the Appellant wrote:
 - Her income in 2023 has been very low because she has been on Employment Insurance Benefits since losing her last full-time job in November, 2022.
 - She has been living off savings and has had a hard time getting funding for her child's current child care provider, who has been caring for her all of last summer despite filling out and sending in all the necessary documents.
 - She is in need of care for her child as she is attending school and starting a new part time job in November 2023.
 - She is a single mother with full custody of her child and she has not received any child support even though she is fully registered with the Family Maintenance Enforcement Program.
 - Since losing her employment, her income has been very low and her expenses are quite high. Her income will be confirmed in the next year's tax return, which won't be until March or April of 2024, however, she needs help with child care fees before that.

Information Submitted After Reconsideration

On the Notice of Appeal form dated December 1, 2023, the Appellant wrote:

- There are inaccuracies in the decision's Summary of Facts. The main one being that the type of care she is currently enrolled in is wrong. Her child attends school and is in the before school care program, which is licensed care, weekdays from 7am – 8:30am.
- Her CRA income from 2022 is outdated and was higher because she had to withdraw from her RRSP after leaving full-time employment in November 2022 because of a medical condition.

- Since November 2022, she has survived off Employment Insurance and life savings until July 2023. She started working again in November 2023 and attaches a pay stub from the only job she has had this year. She does not anticipate her hours to increase in 2024 as her child is not in after school care, only before school care.
- She feels that it is unfair to look at 2022 income as that was a long time again and her income has significantly dropped in 2023.
- Attached with the Notice of Appeal form are:
 - Affordable Child Care Benefit/Child Care Arrangement form dated November 1, 2023. The form shows the Appellant's child is attending licensed group child care weekdays from 7am to 9am from November 1, 2023 to June 30, 2024.
 - Paystub dated November 24, 2023 shows net pay year to date as \$1,154.45

The Appellant did not provide a written submission for the hearing.

The Ministry did not provide a written submission for the hearing.

Admissibility of Additional Information

The panel cannot admit the Appellant's November 1, 2023 Affordable Child Care Arrangement form for licensed group child care or as evidence in this appeal because the Ministry decision under appeal is regarding the previous child care arrangement, which was for license-not-required child care. The Appellant is now seeking another form of childcare, which is a significant change in circumstance and is outside the jurisdiction of the panel hearing this appeal.

Section 22(4) of the Employment and Assistance Act allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. However, that provision goes hand in hand with section 24(1) of the Employment and Assistance Act, which requires panels to determine whether a decision being appealed is (a) reasonably supported by the evidence, or (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. In the panel's view this jurisdiction does not contemplate consideration of an entirely new application that has not yet been considered by the Ministry.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry decision to deny the Affordable Child Care Benefit because the family income is too high is reasonably supported by the evidence or is a reasonable interpretation of the legislation.

Appellant’s Position

The Appellant’s position is that since losing her employment in November 2022 her income has been very low, which will be confirmed in her next year’s tax assessment. She indicated that she will need assistance immediately as she is experiencing difficulty paying the fees right now and will not be able to wait until March or April when the income reassessment will be conducted. She is also attending school and still needs child care.

Ministry’s Position

The Ministry’s position is that the Appellant’s adjusted family income of \$70,278, effective October 1, 2023, is higher than the income range of \$69,999.99, which is legislatively set for the Affordable Child Care Benefit for license-not-required child care. Therefore, she is not eligible from October 1, 2023.

Panel’s Decision

Section 9 of the Regulation sets out that the minister must calculate annual income by determining the person’s income for the “previous year”. Section 9(1) provides that “previous year” means the year previous to the current calendar year.

The Appellant argues that she has not worked since November 2022 and has had limited income in 2023 to pay for child care while she attends a program. She provided a paystub from her current job that she just started November 1, 2023 with her Notice of Appeal submission. She argues that she cannot wait until the next year’s tax assessment is completed in March as she requires assistance with child care now. The Appellant does not dispute that she received the adjusted tax assessment for 2022 income. The Appellant provided a paystub for her new employment with her Notice of Appeal submission, however, at issue in this appeal is the 2022 income. As the legislation clearly sets out that an applicant’s previous year’s income is to be used to determine eligibility, the panel finds the panel finds the ministry was reasonable to use the Appellant’s revised tax assessment for 2022 to calculate the appellant’s annual income to determine eligibility for the Affordable Child Care Benefit.

Section 7 of the Regulation sets out that an applicant is not eligible for 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 license-not required child care setting, or
 - (ii) In the child-s own home as described in section 2(c)

The Appellant received the Affordable Child Care Benefit for child care in a license-not-required child care setting September 1, 2023 to September 30, 2023. Effective October 1, 2023, the Appellant received an adjusted tax assessment notice. It indicates the Appellant's income was previously assessed as \$45,990 and effective October 1, 2023, it was \$73,278. The Affordable Child Care Benefit allows for an adjustment for a special needs child, in the amount of \$3,000, which would still put the Appellant's income above the threshold. The Appellant's adjusted family income is calculated as \$70,278. Although the amount exceeds the maximum threshold by only a small amount, the legislation clearly sets out the maximum threshold for license-not required child care is \$69,999.99 and the Appellant's adjusted annual income exceeds that. Accordingly, as the Appellant's income was higher than the maximum income threshold for child care subsidy, the panel finds the Ministry was reasonable to determine the Appellant's adjusted annual income exceeds the rates set in Section 7 of the Regulation, for license-not-required child care, the type of child care the appellant had as of October 1, 2023.

The panel notes that the Ministry indicated in their decision that if the Appellant's circumstances changed, she could re-apply for Child Care Subsidy and her eligibility would be re-assessed. The Ministry also indicated that the Appellant could submit an Affordable Child Care Benefit Income Declaration form to request an income review, which can be used to assess eligibility for Affordable Child Care Benefits going forward.

Conclusion

The Panel finds that the Ministry's reconsideration decision, which determined that the appellant is not eligible for the Affordable Child Care Subsidy from October 2023, for license-not-required child care, was a reasonable application of the legislation in the Appellant's circumstances and therefore confirms the decision. The Appellant is not successful on appeal.

APPENDIX A

The Regulation

Definitions

1 (1)

"**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];
- (b) section 9.1 (3) [decrease family's adjusted annual income];
- (c) section 9.1 (7) [increase family's adjusted annual income after review]

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.

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:

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

(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:

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

(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:

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

(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:

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

(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.

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

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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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2024/01/15

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2024/01/15

Print Name

Kenneth Smith

Signature of Member

Date (Year/Month/Day)

2024/01/15