

**Part C - Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (the “ministry”) dated January 8, 2024. The ministry determined that the appellant was not eligible for the Affordable Child Care Subsidy beginning November 1, 2023 because her family’s adjusted annual net income is too high.

**Part D - Relevant Legislation**

Child Care Subsidy Regulation (the Regulation) sections 7, 8, 9 and Schedule A.

Full text of the legislation is provided at the end of the decision.

**Part E – Summary of Facts**Evidence before the ministry at reconsideration

From the ministry file:

- There are 3 people in the appellant's family unit – she, her spouse, and her child who was born on November 4, 2020.
- The appellant was requesting child care for her child as per the Affordable Child Care Benefit Child Care Arrangement form CF2798, signed and dated November 9, 2023.
- The appellant's Canada Revenue assessed income for 2022 is \$61,144.00, her spouses is \$159,102.00, which adds up to a total family gross income of \$220,246.00.
- The adjustments applied to the family's annual income are:
  - \$2000 for every family member after the first two family members, and
  - \$3000 for each child with special needs (the appellant's child is a child with special needs).
- The total family gross income of \$220,246.00 minus the adjustment of \$5000 equals the adjusted family income of \$215,246.00.

An Affordable Child Care Benefit Application form was signed and dated November 9, 2023 by the appellant and signed and dated November 20, 2023 by her spouse.

- The start date of the need for childcare is November 1, 2023.
- No end date is identified.

A Child Care Arrangement form was dated November 9, 2023, and signed by the child care provider and the appellant.

- The type of childcare is a licensed preschool.
- Childcare is provided from 8:45 – 12:45 on Tuesdays, Wednesdays, and Thursdays.
- The fee is \$325 monthly.
- Start date is September 1, 2023. End date is June 30, 2024.

A Special Needs application form is completed by an infant development consultant and dated July 27, 2023.

- The child will require additional support services until September 1, 2029.

In her Request for Reconsideration dated December 22, 2023 the appellant stated that

- her husband's income has decreased by approximately \$15,100 from 2022 to 2023, which is significant.

- The change in financial circumstances combined with an increased need to be at home more often to provide additional care and support for her child has substantially impacted their ability to meet the increasing costs associated with raising a child with special needs as well as the high costs of living in the Lower Mainland.
- The appellant's tax contribution of \$31000 reflects their commitment to supporting public services including education and childcare and should be taken into account by the ministry.
- The income threshold of \$111000 does not appear to have been adjusted to inflation since 1996.
- The Lower Mainland is one of the most expensive areas in the country, if not in the world. Covering the rising costs of housing, transportation and other essential needs has become increasingly challenging. An adjustment for inflation would more accurately reflect the economic realities of their specific geographic location.
- Caring for a child with autism involves unique and ongoing challenges. The costs associated with therapies, educational support and specialized intervention can be considerable.
- Access to the Child Care Subsidy would help alleviate the family's financial burden and allow for the best possible support for the child.

Additional Evidence:

In her Notice of Appeal dated January 15, 2024 the appellant wrote:

- Neither cost of living nor inflation have been taken into consideration by the ministry.
- The family lives in an expensive area where their child can receive the best care.
- Many supportive services for their child do not consider family income but instead focus on the care needed.

On February 1, 2024, the appellant's spouse provided a written submission where he repeated previous information and explained in more detail the financial challenges that are augmented by the needs of their autistic child:

- The cost for a private autism assessment was \$3250, and the cost for a speech-language therapist is \$105 per week.
- The child requires active involvement by the parents, including organizing additional activities to supplement their child's learning. This involves a significant amount of driving which increases the cost of gas and vehicle repairs.

- The family has a bi-weekly mortgage payment of \$936.50, school costs of \$325 per month, and childcare costs of a minimum of \$20 per hour due to limited availability and difficulty of finding caregivers willing to accommodate a child with autism.
- The parents anticipate that their mortgage payments may double after renewal in the next two years.
- The reduction of the husband's annual income is significant; he lost \$15,000 due to the additional time he had to take off work to care for the child and the family.
- When the child had to be removed from daycare facilities the appellant had to work more extensively from home.

The appellant's spouse included the following documents with his submission:

- An account statement of February 1, 2024 from a private child development clinic shows a total payment of \$3250.
- His payroll dated December 15, 2022 shows total earnings of \$159,076.12.
- His payroll dated December 14, 2023 shows total earnings of \$143,985.52.
- Insurance claims for speech therapist services show the following:
  - "Processed": November 18, 2022 - \$120; November 25, 2022 - \$98.4, Dec. 2, 2022 - \$105, December 9, 2022 - \$105.
  - "Denied": March 17, 2023, and March 31, 2023. "Payable \$0"

At the hearing, the appellant stated that, as the parents of their child, she and her spouse wanted to contribute and participate together. They repeated previous information and added:

- The legislation the ministry is relying on is outdated.
- They were left with 2 options – either to wait 3 years for a diagnosis, or to wait only 6-12 months and pay \$5000 to a private clinic.
- They had to hire a private nanny and later enroll their child in private schools to ensure the child's best possible care.
- Their child should be in school full-time because the first years of a child's development are so critical. However, they could not find a school that could provide the necessary aid 5 days a week for their child's special needs.
- It was not possible to reduce their taxable income because of their increased expenses.
- The appellant's husband's base salary is approximately \$115, 000, before taxes. This income increases with overtime.
- The appellant would have to give up her job to qualify for the Child Care Subsidy benefit.
- They live in a town home.

- They educated themselves and are working hard to provide a good living for their family, but the result of their efforts is that they don't qualify for financial support and their finances are eaten up by their large child care expenses.

The ministry summarized the reconsideration decision and explained that they must base their decision on the legislation.

- There are no specific benefits set out for special needs children in the legislation, except for the \$3000 adjustment to the appellant's income.
- An income review was offered to the appellant.
- Legislation has not changed since 2013.
- A voter has more power to affect change than a ministry employee. The premier or the local MLA could be approached.

Admissibility of Additional Evidence:

The panel finds that the additional evidence relates to the appellant's Affordable Child Care Benefit application and is therefore reasonably necessary for a full and fair disclosure of all matters relating to the decision under appeal. The panel finds that the evidence 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 decision that the appellant was not eligible for the Affordable Child Care Subsidy beginning November 1, 2023 was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Section 7 sets out that an applicant is not eligible for a Child Care Subsidy if the family's adjusted annual income equals or exceeds \$111 000 for a child receiving child care in a licensed child care setting.

Section 8 sets out how the amount of subsidy is calculated.

Section 9 sets out how the family's adjusted annual income is calculated.

### Appellant's Position

The appellant argues that the Child Care Subsidy benefit would help alleviate the parents' financial burden and allow for the best possible support for the child. Increasing costs associated with raising a child with special needs and the high costs of living in the Lower Mainland add to the family's financial difficulties. The income threshold of \$111000 does not appear to have been adjusted to inflation since 1996. They educated themselves and are working hard to provide a good living for their family, but the result of their efforts is that they don't qualify for financial support and their finances are eaten up by their large child care expenses. The appellant would have to give up her job to qualify for the Child Care Subsidy benefit.

### Ministry's Position

The ministry determined that the appellant was not eligible for the Affordable Child Care Benefit starting November 1, 2023 because her family's adjusted annual net income is too high. The adjusted family income of \$215,246.00 exceeds the income range for a maximum as well as a partial benefit for a licensed preschool. Therefore, the appellant is not eligible for this benefit. The ministry acknowledged the impacts of ongoing inflation, the rise in the cost of living and the expenses related to educational and therapeutic support for the appellant's child. They confirmed that the applicable legislation has not been amended at least since 2013. However, the ministry determined they did not have discretion to consider these factors when calculating a family's annual adjusted income. They do not have the authority to overturn legislation.

**Panel Analysis**

While the appellant and her spouse argue that the Child Care Subsidy Act and Regulation are outdated and do not consider inflation, and while they argue that raising a child with special needs puts an extraordinarily large financial burden on the parents, the panel has no choice but to find the ministry reasonable in their application of the available legislation. The panel finds that the ministry reasonably determined that the appellant was not eligible for the Affordable Child Care Subsidy because her family's adjusted annual net income is too high. The Regulation and Schedule A set out the parameters under which an applicant may be eligible to receive a Child Care Subsidy benefit. In accordance with these parameters, the appellant's gross adjusted family net income of 2022 is too high to qualify for an Affordable Child Care Subsidy in 2023.

The panel finds that the ministry's calculation is correct: The appellant's total family gross income of 2022 is \$220,246.00 (her income of \$61,144.00 plus her spouse's income of \$159,102.00). \$5000 are deducted (\$2000 for a family of 3, plus \$3000 for the special needs child), which equals an adjusted family income of \$215,246.00. This amount exceeds the maximum eligible amount of \$110,999.99.

**Conclusion**

The panel confirms the ministry's decision that the appellant is not eligible for the childcare subsidy beginning November 1, 2023. Their decision is reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances, and the appellant is not successful in her appeal.

## CHILD CARE SUBSIDY REGULATION

### *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

### *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;



...

(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.

*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.

#### *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 2024-0015

**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)  and Section 24(1)(b)

Section 24(2)(a)  or Section 24(2)(b)

**Part H – Signatures**

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2024/02/09

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2024/02/10

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2024/02/10