

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”), dated June 11, 2024 (the “**Reconsideration Decision**”), in which the Ministry determined that the Appellant was denied her request for the Affordable Child Care Benefit.

- The Ministry determined that the Appellant was not eligible for the Affordable Child Care Benefit beginning May 1, 2024, due to her family’s adjusted annual income being too high.

Part D – Relevant Legislation

Child Care Subsidy Act Section 4 Child Care Subsidy Regulation Sections 7, 8, 9

Schedule A

Employment and Assistance Act Section 22(4)

Note: The full text of the applicable legislation is available at the end of this decision.

Part E – Summary of Facts

The Appellant’s hearing was held via telephone on July 23, 2024, with the Appellant and the Ministry in attendance.

The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- On May 21, 2024, an Affordable Child Care Benefit Application, CF2900 was received at the Child Care Service Centre which was signed and dated by the Appellant on May 21, 2024. On this form, the Appellant gave consent for the disclosure of information from her income tax records.
- On May 30, 2024, the Appellant was denied the Affordable Child Care Benefit beginning May 1, 2024, as the Ministry determined that the Appellant’s family’s adjusted annual income was too high. A denial letter and supporting legislation were sent to the Appellant.
- On May 31, 2024, a request for a reconsideration of that decision was received at the Child Care Service Centre.
- On May 31, 2024, the Request for Reconsideration was received at the Reconsideration, Litigation and Administrative Fairness Branch. The following documents were submitted:
 - An Affordable Child Care Benefit Application, CF2900 dated May 21, 2024.
 - A Child Care Arrangement form dated September 13, 2023, where in section 2 the type of child care provided was checked as “License-not-required (LNR) child care.
- On June 11, 2024, the Ministry completed its review of the Appellant’s Request for Reconsideration and determined the Appellant was not eligible for the Affordable Child Care Benefit beginning May 1, 2024, as her income and the child care setting she had chosen, made her ineligible to receive the Affordable Child Care Benefit.

The Appeal

On July 2, 2024, the Appellant filed a Notice of Appeal in which the Appellant stated:

- She acknowledges that the Ministry is following the guidelines;
- The guidelines are discriminatory against a child with special needs;
- And consideration should be given to children as child care and kids are not one

size fits all.

The Hearing

At the hearing, the Appellant stated:

- She is a single mother with a six-year-old child with special needs.
- She acknowledges the Ministry is following the legislative guidelines but feels these guidelines are discriminatory.
- Her child functions more successfully in a smaller group setting but unfortunately the choice of childcare makes her ineligible for the Child Care Benefit.
- The legislation must be more flexible to meet all children's needs, not a "one size fits all" policy.
- When placing her child in the License Not Required daycare, she had cancer and was working less and had a lower income. As she began working more and she reapplied for the Child Care Benefit, she was informed she was not eligible as her income was too high for the day care she had selected.
- Everyone talks about inclusion, but nobody addresses the issue.

At the hearing, the Ministry representative stated:

- They were empathic to the Appellant's situation, but they are unable to override or rewrite legislation to address her concerns.
- As set out in the Child Care Subsidy Regulation Section 7, the Appellant is not eligible for the Affordable Child Care Benefit. As the Appellant's adjusted family income is \$105,178.00, her family's adjusted income exceeds the income range for a maximum benefit for license-not-required childcare. Also, the Appellant's family's adjusted income exceeds the income range for a partial benefit for license not required childcare.
- The Appellant may wish to write a letter to the Affordable Child Care office to inform them of her situation and concern of discrimination.

Admissibility of new information

Section 22(4) of the *Employment and Assistance Act* says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case the Ministry representative summarized the Reconsideration Decision and did not offer new evidence.

The Appellant's evidence summarized her Request for Reconsideration and included new evidence that she had suffered cancer and as a result had worked less which allowed her to qualify for the Affordable Child Care Benefit. Upon returning to full time employment, the Appellant found she was no longer eligible for the benefit as her salary had increased. The Ministry did not object to the Appellant's evidence.

The panel admits the new information shared by the Appellant under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry determined that the Appellant was not eligible for the Affordable Child Care Benefit.

Appellant's Position

The Appellant agrees the Ministry has followed the legislation but argues the legislation is discriminatory towards families with special needs children. The Appellant argued the Ministry should be more flexible when addressing funding support for families with special needs children.

Ministry's Position

The Ministry maintains that the Appellant is not eligible for the Affordable Child Care Benefit as her adjusted family income exceeds the maximum for partial benefits in the type of child care the Appellant uses as set out below.

Panel Decision

For this Appeal, the panel considered the legislation relevant to the Appellant's request for the Affordable Child Care Benefit.

Section 7 of Child Care Subsidy Regulation states 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).

As per section 9 of the Child Care Subsidy Regulation, the calculation of family's adjusted annual income was determined to be \$105,178. As this amount exceeds the \$85 000 for a child receiving child care in a registered licence-not-required child care setting, the Panel finds the Ministry was reasonable when it determined the Appellant was ineligible

for the Affordable Child Care Benefit. The Panel agrees the Ministry is not able to adjust its criteria based on the Appellant's particular situation and must follow the legislation.

Conclusion

The Panel is empathetic towards the Appellant in her quest for additional support for her special needs child. The Panel finds that the Ministry's Reconsideration Decision determining that the Appellant was ineligible for the Affordable Child Care Benefit was a reasonable application of the applicable legislation in the Appellant's circumstances.

The Appellant is not successful on appeal.

Legislation

CHILD CARE SUBSIDY ACT

Child care subsidies

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

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;
- (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.

[en. B.C. Reg. 281/2005, s. 4; am. B.C. Regs. 271/2006, s. 1; 143/2012, s. 2; 37/2013, Sch. s. 1; 148/2018, App. 1, s. 5.]

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.

[en. B.C. Reg. 148/2018, App. 1, s. 7; am. B.C. Regs. 148/2019, s. 1; 228/2021, s. 3.]

Income review

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.

[en. B.C. Reg. 148/2018, App. 1, s. 7; am. B.C. Regs. 148/2019, s. 2; 228/2021, s. 4.]

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:

$$(0.728 \times \text{maximum benefit}) \times \left[1 - \frac{(\text{family's adjusted annual income} - 80\,000)}{31\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in a Licensed Child Care Setting	Column 3 Maximum Benefit per Month
Group Child Care / Multi-Age Child Care / School Age Care on School Grounds			
1	G1	children under 19 months	\$1 250
2	G2	children 19 months and over but under 37 months	\$1 060
3	G3	children 37 months and over but who have not reached school age	\$550
4	G4	children of school age	\$415
Family Child Care / In-Home Multi-Age Child Care			
5	J1 – L	children under 19 months	\$1 000
6	J2 – L	children 19 months and over but under 37 months	\$1 000
7	J3 – L	children 37 months and over but who have not reached school age	\$550
8	J4 – L	children of school age	\$415
Item	Column 1 Care Code	Column 2 Type of Child Care Provided in a Licensed Child Care Setting	Column 3 Maximum Benefit per Month
Licensed Preschool			
9	N1	children 29 months and over but who have not reached school age or who have reached school age but who are not enrolled in school	\$225
Other			
10	L2	care surrounding school day	\$210

Subsidy rates for registered licence-not-required child care setting

3 If a family's adjusted annual income is more than \$39 000 but less than \$85 000, the monthly child care subsidy for a child receiving a type of child care provided in a registered

licence-not-required child care setting is to be determined in accordance with the following formula and the table in this section:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 39\,000)}{46\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in a Registered Licence-Not-Required Child Care Setting	Column 3 Maximum Benefit per Month
1	R1	children under 19 months	\$600
2	R2	children 19 months and over but under 37 months	\$600
3	R3	children 37 months and over but who have not reached school age	\$550
4	R4	children of school age	\$415
5	L2	care surrounding school day	\$210

Subsidy rates for licence-not-required child care setting

4 If a family's adjusted annual income is more than \$24 000 but less than \$70 000, the monthly child care subsidy for a child receiving a type of child care provided in a licence-not-required child care setting is to be determined in accordance with the following formula and the table in this section:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 24\,000)}{46\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in Licence-Not -Required Child Care Setting	Column 3 Maximum Benefit per Month
1	F1	children under 19 months	\$438
2	F2	children 19 months and over but under 37 months	\$404
3	F3	children 37 months and over	\$354
4	L2	care surrounding school day	\$210

Subsidy rates for child care provided in child's own home

5 If a family's adjusted annual income is more than \$24 000 but less than \$70 000, the monthly child care subsidy for a child receiving a type of child care provided in the child's own home as described in section 2 (c) of the regulation is to be determined in accordance with the following formula and the table in this section:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 24\,000)}{46\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in Child's Own Home	Column 3 Maximum Benefit per Month
1	H1	1st child under 19 months	\$394
2	H2	1st child 19 months and over	\$318
3	H3	2nd child under 19 months	\$198
4	H4	(a) 1st child of school age receiving care surrounding school day if another child in the family, who has not reached school age, is in care code H1 or H2 (b) 2nd child, unless the child is under 19 months, whether or not receiving care surrounding school day (c) each child in addition to the 1st or 2nd child, as applicable, whether or not receiving care surrounding school day	\$147
5	L2	care surrounding school day — 1st child of school age unless another child in the family, who has not reached school age, is in care code H1 or H2	\$210

Employment and Assistance Act

Panels of the tribunal to conduct appeals

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.

2024-0257

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

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2024/07/24

Print Name

Corrie Campbell

Signature of Member

Date (Year/Month/Day)

2024/07/24

Print Name

Gordon Thompson

Signature of Member

Date (Year/Month/Day)

2024/07/24