

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision of October 30, 2017 in which the ministry denied the Appellant’s request for an increase to her BC Child Adjustment (“BCCA”) top up supplement. The Ministry determined that the amount of the BCCA supplement has been issued in accordance with Section 2(2) of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

EAPWD Act Section 5
EAPWD Regulations Definitions and Schedule A Section 2(2)

PART E – SUMMARY OF FACTS

The appellant is designated as a sole recipient with Persons With Disabilities (“PWD”) designation with 3 dependent children.

The evidence before the ministry at the time of reconsideration consisted of the following:

- A statement from Canada Revenue Agency (“CRA”) for the period July 2017 to June 2018 which determined that the entitlement for the Canada Child Benefit (“CCB”) is \$17,200 annually or \$1433.33 per month and that the entitlement for the BC Early Childhood Tax Benefit (“BCECTB”) is \$660 annually or \$55 per month;
- A Request for Reconsideration form signed by the appellant on October 4, 2017 indicating that the reasons for requesting the reconsideration were because:
 - her monthly support amount went down by just over \$500 per month because her monthly child tax went up from \$1185 to \$1488 which is a difference of \$303 so she is now living on \$200 per month less than she had been prior to the increase in CCB;
 - she has various medication, equipment and children’s expenses that she must pay for so the \$200 difference is making a big impact on her monthly budget and quality of life;
 - she is asking for the retro amount since the ministry reduced her support in June and July; and
 - she is wondering if the policy updates that came in effect July 1, 2017 affected her situation.

The appellant also made two additional submissions after the Reconsideration Decision and are part of the appeal record.

Submission One submitted November 16, 2017 included:

- a letter from the appellant to the Ministry and Tribunal dated November 16, 2017 which included the following:
 - that prior to July, 2017 she was receiving \$1185 from Child Tax Canada and a Ministry top up over over \$500 per month and that after July she now receives \$1488 from Child Tax Canada and a Ministry top up of only \$7.33;
 - that prior to July, 2017 she was receiving approximately \$2,000 per month from the Ministry and it was then reduced to \$1400 per month in July, 2017;
 - that she was informed that the reduction of approximately \$600 per month was due to an approximate increase of \$300 in her monthly Child Tax; and
 - that it seems unfair that the Ministry is breaking up the total Child Tax amount and stating that top up is only for a portion of Child Tax and how can this be when the Child Tax payments are all combined into one now?
- A copy of the Ministry’s policy on Child Benefits Top Up Supplement

Submission Two submitted November 23, 2017 included:

- A CRA statement for period July, 2017 to June, 2018 which determined that the CCB entitlement is \$17,200 annually or \$1433.33 monthly and that the BCECTB entitlement is \$660 annually or \$55 monthly; and
- A CRA statement for period July, 2016 to June, 2017 which is the same document that was before the minister at time of reconsideration.

In her Notice of Appeal dated November 7, 2017 the appellant reiterated that there is a \$200+ discrepancy and that it is not fair that it is taken dollar for dollar.

At the hearing, the appellant expressed her confusion over the various terminologies used by the federal and provincial governments when they issue child tax benefits. The appellant argues that the ministry top up amount is called the BC child adjustment amount as well as the BC family bonus top up, yet she has been told by the CRA that she does not receive any BC benefit amount. The appellant stated that the CRA informed her that BC family bonus is issued only to persons who have a taxable income of more than \$20,000 per year, and that her taxable income was only \$17,000 which is why she doesn’t receive it. She argues that the ministry should be issuing her some portion of the BC family bonus and that perhaps the automatic top up calculations are not being done correctly due to the recent combining of all the federal child tax benefits. The appellant stated she did not understand how the ministry determines that \$524.41 per month of the \$1433 CCB she receives monthly is for the BC portion that they calculate their top up from, because there is no breakdown shown on her CRA statement nor

did the ministry provide any documents to help explain this. The appellant acknowledges that she also receives \$55 per month for the BC Early Childhood Tax Benefit (BCECTB) for a total of \$1488 per month from the CRA.

The appellant argues that the ministry had been paying her a top up last year of \$524.41 per month because the amount that the CRA was giving her, which was \$1135 for the CCB portion, was reduced due to her taxable income in 2015, yet this year when her taxable income decreased and CRA gave her \$1433 CCB per month the ministry only issued a top up of \$7.33 per month. The appellant does not understand how her CRA benefits went up \$303 per month yet the ministry stopped issuing \$524.41 per month top up and only issues \$7.33 per month now, which is a difference of just over \$200 per month less.

At the hearing, the ministry relied on the reconsideration decision and attempted to answer the appellant's questions. The ministry explained that there is a Memorandum of Understanding between the provincial and federal governments that allows the provincial government to receive a data match from the federal government, which shows the amount of Child Tax Benefit (CTB) issued and how that payment is broken down.

The ministry argues that in the appellant's situation the data match shows a total CTB payment of \$1488.33 per month which is broken down as: the basic federal CTB amount being \$908.92; the National Child Tax Benefit (also called the BC Child Adjustment as each provincial amount is different) amount being \$524.41; and the BCECTB being \$55. It is the BC Child Adjustment amount that the ministry automatically reviews and will issue a top up for if the amount being issued is less than the amount stipulated in the EAPWDR definition of the "BC child adjustment amount", which is currently \$195.02 for first dependent child, \$172.54 for the second dependent child and \$164.18 for each additional dependent child for a total of \$531.74 per month. The ministry argues that pursuant to EAPWDR Schedule A section 2(2), which stipulates that if a family unit includes one or more dependent children then the support allowance is increased by an amount equal to the total BC child adjustment amount minus the sum of any family bonus and the Canada child benefit paid to the family up to a maximum of the BC child adjustment amount so therefore the ministry calculates the appellant's eligibility for the automatic child top up as: \$531.74 per month less the \$524.41 per month currently issued by CRA, for a total of \$7.33 per month.

Admissibility of New Evidence

Section 22(4) of the Employment and Assistance Act states that the panel is empowered to admit as evidence only "the information and records that were before the minister when the decision being appealed was made" and "oral or written testimony in support of" the record of the ministry decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the Employment and Assistance Act and should not be admitted.

The appellant submitted two additional CRA statements which outline the calculation of her CCB entitlement for the 2015 and 2016 tax years as well as a letter in which she writes that the amount of her child tax payments from CRA plus the amount that the ministry is giving her is less than what she received in the previous tax year. The ministry did not object to these submissions. The ministry representative provided a more thorough breakdown of the CRA payment based upon the data match, of which the amount stated of \$524.41 is relative to the top up under consideration and is consistent with what was explained in the reconsideration decision. The panel accepts that the statements collaborate the information and records that were before the minister at the reconsideration stage and therefore considers that they meet the test of admissibility under s. 22(4)(b) of the Employment and Assistance Act and therefore will be admitted.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the ministry reconsideration decision of October 30, 2017 in which the ministry denied the Appellant's request for an increase to her BC Child Adjustment ("BCCA") top up supplement. The ministry determined that the amount of the BCCA supplement has been issued in accordance with Section 2(2) of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The relevant sections of the legislation are as follows:

Employment and Assistance for Persons with Disabilities Act Section 5

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation

Definitions

"**basic child tax benefit**" means the Canada child tax benefit minus the national child benefit supplement.

"**BC basic family bonus**" means an amount calculated for the purposes of section 10(3)(a) of the *Income Tax Act*.

"**BC child adjustment amount**", in relation to a dependent child in a family unit, means the amount of

- (a) \$195.02 for the first dependent child in the family unit,
- (b) \$172.54 for the second dependent child in the family unit, or
- (c) \$164.18 for each additional dependent child in the family unit,

"**Canada child benefit**" means an amount deemed to be an overpayment on account of a person's liability for the taxation year determined under section 122.61 of the *Income Tax Act (Canada)* as it read on or after July 1, 2016.

Schedule A Section 2

Monthly support allowance

2 (2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the total BC child adjustment amount for all dependent children and all deemed dependent children in the family unit, minus

(b) the sum of

- (i) the family bonus, if any, paid to the family unit for the preceding month,
- (ii) the Canada child benefit, if any, paid to the family unit for the preceding month in respect of dependent children in the family unit, up to a maximum of the BC child adjustment amount in respect of those dependent children, and
- (iii) the total amount of the supplements, if any, provided to or for the family unit under section 59 [supplement for delayed, suspended or cancelled family bonus] or 59.1 [supplement for delayed, suspended or cancelled Canada child benefit] of this regulation for the current calendar month.

The appellant's position is that she believes that the ministry is not issuing her the BC Child Adjustment top up that she is entitled to because there may be confusion over how much the CRA is paying her for the BC portion of her Child Tax Benefits. The appellant's position is that her total monthly income has decreased by over \$200 since receiving the adjusted CRA Child Tax Benefits and that the ministry decreased her monthly top up from \$524.41 per month to \$7.33 per month, which she considers to be incorrect.

The ministry's position is that the amount being issued is in accordance with the information they have from the CRA regarding the appellant's National Child Benefit (also known as the BC Child Adjustment), which is \$524.41 per month and that per the EAPWDR definition of BC child adjustment amount which sets out that the appellant should be receiving \$531.74 from the CRA, and because she is receiving less than that, they are issuing \$7.33 pursuant to EAPWDR Schedule A section 2(2).

Panel Decision

The panel carefully reviewed EAPWDR definitions regarding “**basic child tax benefit**”, “**BC basic family bonus**”, “**BC child adjustment amount**”, and “**Canada child benefit**” and recognize that there could be confusion when the BC provincial government portion of any tax credits involving children are issued by the federal government in the same monthly entitlement as any federal tax credits.

For the 2015 tax year, the CRA determined that the appellant was eligible for the Canada child benefit in the amount of \$1,130.95 per month and because her net income had been higher, none of this amount was determined to be the BC Child Adjustment amount so the ministry issued the maximum BC Child adjustment top up of \$524.41 to the appellant from August 2016 to July 2017.

For the 2016 tax year, the CRA has determined that the appellant is eligible for the Canada child benefit in the amount of \$1433.33 per month, of which \$524.41 per month was determined by the authorized data match between the federal and provincial governments to be a BC Child Adjustment amount. The panel notes that in tax year 2015 the appellant received Canada child benefit (no BC portion) in the amount of \$1130.95 per month and this tax year her total Canada child benefit was \$1433.33 per month of which \$524.41 was designated as the BC portion, which would leave the remaining Canada child benefit amount of \$908.92 per month. This appears to be approximately \$220 per month less than last year's Canada child benefit and might be an explanation as to why the appellant's total income per month seems to be less this year. The amount issued for the Canada child benefit by the CRA is based upon a person's annual income tax return, which is information not available to the panel nor is it required to for us to determine whether the ministry's reconsideration decision was reasonable.

EAPWDR section 2(2) allows the ministry to increase a family unit's support allowance by an amount equal to the total BC child adjustment amount for all dependent children, minus the sum of any family bonus and Canada child benefit up to a maximum of the BC child adjustment amount in respect of those dependent children. In the appellant's circumstance with 3 dependent children, the maximum child adjustment amount is \$531.74 per month minus \$524.41 per month Canada child benefit which leaves a difference of \$7.33 per month. The panel finds that the ministry reasonably calculated, pursuant to section 2(2), the BC child adjustment top up amount of \$7.33 per month.

Conclusion

The panel finds that the ministry's determination that the appellant was eligible for \$7.33 BC child adjustment top up pursuant to section 2(2) of the EAPWDR was reasonably supported by the evidence and is a reasonable application of the legislation.

The panel therefore confirms the ministry's decision. The appellant is not successful on her appeal.