Federal Court Cour fédérale

Date: 20250606

Docket: T-582-24

Citation: 2025 FC 1027

Ottawa, Ontario, June 6, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

KELLIE WUTTUNEE, KELLIE WUTTUNEE AS LEGAL REPRESENTATIVE OF HER CHILD NOAH WUTTUNEE

Applicant

and

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In a notice of application dated March 8, 2024, which was amended on March 23, 2024, the Applicant seeks to judicially review a March 5, 2024 decision of the Appeals Secretariat [Decision or EA Decision]. The Decision dismissed the Applicant's appeal of a Jordan's

Principle funding refusal for an education assistant [EA] for her minor son who suffers from physical and developmental issues.

[2] In her Memorandum of Fact and Law, the Applicant makes submissions on the unreasonableness of the Decision as well as an April 23, 2024 decision from the Appeals Secretariat dismissing her appeal of a Jordan's Principle funding refusal for a service dog and service dog training [SD/T] for the Applicant's minor child.

[3] In correspondence dated February 21, 2025, the Respondent conceded, on behalf of Indigenous Services Canada [ISC], that the EA Decision is unreasonable and should be remitted for redetermination. However, the Respondent disputes that the SD/T decision is properly before the Court and submits that certain paragraphs of the Applicant's affidavit should be disregarded as they do not relate to the EA Decision.

[4] Prior to hearing arguments, I allowed the parties to discuss the February 21, 2025 correspondence. The Applicant agreed that the Decision is unreasonable but disagreed with a redetermination remedy. The Applicant indicated that the Court should order ISC to provide the funding requested.

[5] The parties agree that the EA Decision is unreasonable. The only issues surround remedy, and whether the SD/T issue is properly before the Court.

II. Background

[6] The Applicant, on behalf of her minor child, applied for funding to pay for an EA. The funding was granted for the 2020-2021 school year, then renewed for the 2021-2022 school year. For the 2022-2023 school year the Applicant was required to complete a new application, which she did.

[7] The application was refused by the Dedicated Decision Maker [DDM]. The DDM found there was a lack of supporting documentation from licensed registered professionals directly involved in the child's circle of care, identifying an unmet health, social, or educational need for an EA to provide services and supports.

[8] The Applicant appealed to the Appeal Committee, which received advice from an External Expert Review Committee [EERC] recommending the appeal be dismissed. In the Decision dated March 5, 2024, the Appeal Committee notified the Applicant that her appeal was dismissed.

III. The Decision

[9] The relevant excerpts of the March 5, 2024 Decision read as follows:

> Please accept this letter as formal notification advising that the decision to deny your request for funding for an EA 2024-2025 (April-June), an EA 2023-2024 (September-March), and an EA 2022-2023 reimbursement (September-June), originally denied on December 13, 2023, has been upheld as of March 4, 2024. The decision on your appeal, submitted on February 13, 2024, was made by the External Expert Review Committee ("the committee"). This committee is comprised of health, education,

> and social professionals outside of government who are Indigenous or have longstanding expertise in serving Indigenous communities across Canada.
>
> In evaluating your request, the committee reviewed the previous decision and reconsidered the unique needs of Noah, and whether the requests should be provided in order to ensure the application of substantive equality, culturally appropriate services, and/or to safeguard the best interest of the child in the provision of services. Whether a support is available to all other children is a minimum standard, and unique circumstances and needs that stem from historical disadvantage may support requests for products, services and supports that go beyond the normative standard of care.

[10] In making its decision, the committee considered the new information provided and determined that the Applicant's request did not meet the minimum requirements and could be approved under Jordan's Principle/Inuit Child First Initiative, as the supporting documentation does not directly link the requested products/services/supports to a specific unmet medical, educational or social need of the child. The Applicant sought judicial review before this Court.

IV. Issues and Standard of Review

[11] The issues are:

(a) *Is the decision concerning the service dog, and service dog training, subject to judicial review?*

(b) *What is the appropriate remedy in light of the concession by the Respondent that the EA Decision is unreasonable?*

[12] In light of the Respondent's concession that the Decision is unreasonable, it is unnecessary to delve into the appropriate standard of review except to confirm that the

presumption of the reasonableness standard has not been rebutted (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25).

V. Analysis

A. *Is the Service Dog and Service Dog Training Decision subject to Judicial Review?*

[13] At the outset of the hearing, I allowed the parties a brief period of time to discuss the February 21, 2025 correspondence. As stated, the Respondent conceded the EA Decision was unreasonable and that it should be quashed and remitted for redetermination. The Respondent also indicated that it would limit the scope of its submissions to the SD/T issue, the applicable remedies under the *Federal Courts Act* and costs.

[14] After the pause, the Applicant agreed the EA Decision was unreasonable, but she disputed the remedy of redetermination. The Applicant is also of the understanding that the February 21, 2025 letter or some other email, which was not pointed out to the Court, indicated an agreement or an acceptance of the service dog request.

[15] The Respondent submits that the SD/T request is not at issue in this judicial review. Both the Notice of Application and the Amended Notice of Application refer only to the EA Decision dated March 5, 2024. The Applicant's Memorandum of Fact and Law improperly makes submissions on the April 23, 2024 SD/T funding refusal. The addition of the SD/T decision is contrary to Rule 302 of the *Federal Courts Rules* which provide that, unless the Court orders

otherwise, an application for judicial review shall be limited to a single order in which relief is sought.

[16] The Applicant has not sought leave of the Court to challenge more than one decision.

[17] Further, the Amended Notice of Application is dated March 23, 2024 while the SD/T decision is dated April 23, 2024. As such, the Notice of Application for judicial review of the EA Decision could not logically contemplate the review of a decision not yet rendered.

[18] I agree with the Respondent. The SD/T decision is not properly before this Court for two reasons. First, both the Notice of Application and the Amended Notice of Application refer only to the challenge to the EA Decision, dated March 5, 2024. Second, leave was not sought to challenge more than one decision in this judicial review.

B. *What is the appropriate remedy?*

[19] The parties agree the EA Decision is unreasonable but disagree on the appropriate remedy.

[20] The Applicant asks the Court to order ISC to pay the EA funding. No authority was given for seeking this remedy. The Applicant states that she and her child have waited for years to have this matter resolved and they cannot afford any further delays. The Applicant states that ISC has all the information they need, and she was unsure why she needed to submit more.

[21] The Respondent submits that the *Federal Courts Act* limits what the Applicant can seek in terms of a remedy. The only available remedy is to have the matter redetermined. The Respondent indicated that the redetermination could be ordered in accordance with the ISC guidelines for redetermination. First, if the Court agrees with the remedy, the Court could order that the matter be redetermined as follows:

a. The Applicant could re-apply to Indigenous Services Canada with an assessment from an education professional and any other information that she wishes to provide;

b. The Dedicated Decision Maker of first instance would have 5 days in which to either make a decision, or seek additional information that it requires to make a decision;

c. If information was requested, and once the Applicant provides such information, the Dedicated Decision Maker will make a decision within 5 days.

[22] I agree with the Respondent. The only remedy that this Court can make on judicial review in these circumstances is to send the matter back for redetermination. The Respondent's proposed process is acceptable to the Court, and it is so ordered.

JUDGMENT in T-582-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the March 5, 2024 Decision of the Appeals Secretariat is granted and the matter is to be redetermined as follows:

    a) The Applicant could re-apply to Indigenous Services Canada with an assessment from an education professional and any other information that she wishes to provide;

    b) The Dedicated Decision Maker of first instance will have 5 days in which to either make a decision, or seek additional information that it requires to make a decision;

    c) If information was requested, and once the Applicant provides such information, the Dedicated Decision Maker will make a decision within 5 days.

2. The decision concerning the service dog and service dog training is not properly before the Court and is not considered.

3. There is no order for costs.

"Paul Favel"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-582-24
STYLE OF CAUSE:	KELLIE WUTTUNEE, KELLIE WUTTUNEE AS LEGAL REPRESENTATIVE OF HER CHILD NOAH, WUTTUNEE v HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 27, 2025
JUDGMENT AND REASONS:	FAVEL J.
DATED:	JUNE 6, 2025

APPEARANCES:

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TRAVIS KUSCH	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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DEPARTMENT OF JUSTICE CANADA SASKATOON, SK	FOR THE RESPONDENT