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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated December 21, 2012 which found that the appellant was not eligible for a child care subsidy from August 1, 2011 to February 29, 2012 due to the total income of the appellant's family unit being in excess of the threshold and there was an overpayment, pursuant to Section 7of the Child Care Subsidy Act (CCSA).

PART D – Relevant Legislation

Child Care Subsidy Act (CCSA), Sections 5 and 7

Child Care Subsidy Regulation (CCSR), Sections 1, 7 and 14

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PART E – Summary of Facts

With the consent of the parties this appeal was conducted in writing in accordance with s. 22(3)(b) of the Employment and Assistance Act (EAA).

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

1) Unsigned Mortgage dated May 15, 2009 in the name of the appellant and her ex-spouse;
2) Copy of the driver's license for the appellant's common law spouse;
3) Statement of Earning and Deductions dated January 6, 2012 for the appellant's common law spouse;
4) Statement of Earnings and Deductions dated January 20, 2012 for the appellant;
5) Child Care Subsidy- Child Care Arrangement, dated February 1, 2012 which sets out the dates and times as well as the rates for care for the appellant's two children;
6) Ministry file notes for December 8, 2011 indicating a telephone call from the appellant regarding her change of address and this was updated as requested, and a telephone call from the appellant on January 31, 2012 regarding her change in marital status, that she is now common law for about 1 1/2 months and appellant was advised to send in a new [form];
7) Child Care Subsidy- Application dated February 2, 2012 which includes information regarding the appellant's need for child care and the appellant has indicated that her marital status is living in a marriage-like relationship and her spouse resides with her, with the note "common law" and that they both receive employment income;
8) Assessment Roll Report dated November 1, 2012 indicating property owned by the appellant's common law spouse with a 2012 value of $343,000;
9) Memo dated November 7, 2012 from the appellant's ex-spouse stating in part that he made regular payments to the appellant while she was on subsidy of $250 bi-weekly when went directly towards mortgage payments;
10) Child Care Subsidy Eligibility Calculator dated November 13, 2012;
11) Child Care Subsidy Overpayment Calculation dated November 13, 2012 which sets out undeclared child support in the form of contributions to the mortgage on the family home for the period August 2011 through November 2011 and unreported marriage-like relationship and spousal income for the period December 2011 through February 2012 for a total outstanding of $2,403.91;
12) Letter from the ministry to the appellant dated November 13, 2012 enclosing the Overpayment Calculation;
13) Letter from the ministry to the appellant dated November 19, 2012 stating in part that the ministry has determined that she received $2,403.91 of subsidy for which she was not eligible and repayment is required; and,
14) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided an additional document, being a letter dated February 2, 2012 from the appellant to the ministry stating in part that she was receiving subsidy as she was previously separated since November 2012. She began living with her common law spouse starting December 1, 2011 and she called the ministry office yesterday and spoke with someone who indicated she needed to resubmit her application for re-evaluation. Both the appellant and the ministry provided written submissions which contained new evidence.

No objections were raised in the written submissions by either the ministry or the appellant to the admissibility of these documents. The panel admitted the letter and the written submissions by the appellant and the ministry, pursuant to Section 22(4) of the Employment and Assistance Act, as providing information regarding the appellant's interactions with the ministry and being in support of information that was before the ministry on reconsideration. The appellant provided a response to the ministry's submission which contained no new evidence and the panel accepted the appellant's response as argument.

In her Request for Reconsideration, the appellant wrote that she received $250 bi-weekly from her ex-husband which was going directly towards the mortgage payment on the family home. She did not know this was

considered a form of child support payment and she is not disputing this charge. The appellant wrote that she is disputing the claim that the ministry was never informed of her common law relationship which began on December 1, 2011. The appellant first called the BC Child Tax Benefit office to find out the rules regarding common law relationships and she was informed that the subsidy was entirely different so she called the ministry in the second week of December 2011. The appellant stated that she told the ministry that she was living with someone effective December 1, 2011 and gave her new address and that was the extent of the phone call. When the ministry called and told her that she was liable for repayment of the subsidy because she did not report her common law relationship, she said this was false. The appellant stated that when she called on December 8, 2011, the ministry only noted her change in address and she cannot be liable for an administrative error or omission by the ministry. The appellant stated that she should not be held accountable when she followed all the rules. She contacted the ministry on February 1, 2012 followed by a letter which asks the ministry for re-evaluation of subsidy. The appellant stated that she indicates in the letter the date she starting living with her common law spouse and she thought this was information the ministry already had in the system.

In her Notice of Appeal, the appellant expresses her disagreement with the ministry's reconsideration decision because the ministry insists that she did not notify her common law relationship until January 31, 2012 and that is completely false. The appellant stated that she notified the ministry on December 8, 2011 that she had a new address as of December 1, 2011 and was living with someone starting that same date. The appellant stated that the ministry, for whatever reason, only noted her change of address. The appellant stated that she is now being held liable for an overpayment when she went through the proper channels.

In her written submission, the appellant added that on December 8, 2011 she made two phone calls to the government. The first call was to the Canada Revenue Agency regarding the money she was receiving for her children (Child Tax Benefit and HST credit) and to advise of her new address and that she was living with someone. The appellant stated that, according to their rules, she would not be considered common law until she had lived with someone for 12 consecutive months. The appellant stated that she was advised that the rules for the child care subsidy are very different and she needed to call the ministry right away. The appellant stated that there was absolutely no reason for her to ignore this advice. The appellant stated that she proceeded to call the ministry, which was her second call, and she gave the ministry her new address and said that she was living with someone effective December 1, 2011. The appellant referred to her letter dated February 2, 2012 in which she indicated the date she started living with her common law spouse as she thought this was information that the ministry already had in the system from her previous phone call on December 8, 2011. The appellant asked that if the ministry did not properly log the information from her phone call, how can she be held liable when she followed the rules. The appellant stated that she believes the ministry made a mistake with not properly logging her phone call on December 8, 2011 and she made the mistake of not properly following up with the ministry.

In the ministry written submission, the ministry stated its position that the appellant contacted the ministry on December 8, 2011 and advised of a change of address and that the ministry was not made aware of the appellant's change in her marital status until January 31, 2012. The ministry position is that the ministry would record a change in marital status if it had been notified of one as this change of circumstances has a greater effect on eligibility than a change of address. The ministry stated that if the appellant had advised of a change in marital status on December 8, 2011, the ministry would have asked her to submit a new Child Care Subsidy application and other documents as it did on January 31, 2012. The ministry record of January 31, 2012 indicates that the appellant understood that a new eligibility term for up to a year would be issued based on her eligibility and the record does not indicate that the appellant advised then that she had already contacted the ministry in December about the change in marital status. The ministry stated that, upon review of the documents the appellant subsequently submitted, the ministry determined that the appellant was not eligible for the Child Care Subsidy for the period December 2011 to February 2012 due to the increased family income. The ministry also relies on its reconsideration decision.

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In her response to the ministry's submission, the appellant stated that she has never disputed the ministry's statement that the change in marital status has a greater effect on eligibility than a change of address. The appellant reiterated that the ministry still did not properly log or record her phone call for whatever reason. The appellant stated that she is not aware of the ministry procedures or policies and she did not know which documents to expect the ministry to mail out to her.

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PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found that the appellant was not eligible for a child care subsidy from August 1, 2011 to February 29, 2012 due to the total income of the appellant's family unit being in excess of the threshold and that there was an overpayment, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 7 of the Child Care Subsidy Act (CCSA), provides that:

Overpayments, repayments and assignments

7 (1) If a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled.
(2) Subject to the regulations, the minister may enter into an agreement, or may accept any right assigned, for the repayment of a child care subsidy.
(3) A repayment agreement may be entered into before or after a child care subsidy is paid.
(4) An amount that a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is a debt due to the government and may
(a) be recovered by it in a court of competent jurisdiction, or
(b) be deducted by it from any subsequent child care subsidy or from an amount payable to that person by the government under a prescribed enactment.
(5) The minister's decision about the amount a person is liable to repay under subsection (1) or under an agreement entered into under subsection (2) is not open to appeal under section 6 (3).

Section 7 of the Child Care Subsidy Regulation (CCSR), provides:

Income test

7 (1) An applicant is not eligible for a child care subsidy for a child receiving a type of child care if
(a) the family's monthly net income exceeds the child's threshold, and
(b) the result of the calculation under section 8 (2) for the child is not more than zero.
(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 custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c) or 49 (7) (b) 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), or
(e) who is receiving assistance under section 6 of the Employment and Assistance Regulation and the applicant is the relative, within the meaning of that section, with whom the child resides.

Section 1 of the CCSR provides the following definitions:

"**family**" means a parent and the parent's dependants;

"**dependant**" , in relation to a parent, means anyone who resides with the parent and who
(a) is the spouse of the parent,
(b) is a dependent child of the parent,
(c) shares with the parent income or assets or any necessities of life obtained with the income or assets, or
(d) indicates a parental responsibility for the parent's child;

"**spouse**" , in relation to a parent, means anyone who
(a) is married to the parent, or
(b) is living with the parent in a marriage-like relationship;

Section 14 of the CCSR provides:

Notifying the minister of change in circumstances
14 The notification required by section 5 (2) of the Act must be given in writing or by telephone,
(a) as soon as possible after any change in circumstances affecting the eligibility of the parent, and
(b) to an employee in the Child Care Subsidy Service Centre.

Section 5 of the CCSA provides:

Information and verification
5 (1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:
(a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;
(b) seek verification of any information supplied by a person referred to in paragraph (a);
(c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
(d) collect from a person information about another person if
(i) the information relates to the application for or payment of a child care subsidy, and
(ii) the minister has not solicited the information from the person who provides it.
(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.
(3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may
(a) declare the person ineligible for a child care subsidy until the person complies, or
(b) reduce the person's child care subsidy.
(4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

The ministry's position is that the appellant was not eligible for child care subsidy from August 2011 to February 2012 due to income from child support payments received from August 1, 2011 through November 30, 2011 and income from her spouse considered part of the family's monthly net income from December 2011 to February 2012. The ministry argues that the appellant received child care subsidy from August 2011 through February 2012 for which she was not entitled and that she is liable to repay $2,403.91. The ministry argues that there is insufficient information to establish that the ministry made an administrative error. The ministry argues that if the appellant had advised of a change in marital status on December 8, 2011, the ministry would have asked her to submit a new Child Care Subsidy application and other documents as it did on January 31, 2012. The ministry argues that its record of January 31, 2012 indicates that the appellant understood that a new eligibility term for up to a year would be issued based on her eligibility and the record does not indicate that the appellant advised then that she had already contacted the ministry in December about her change in marital status.

The appellant's position is that she does not dispute the part of the overpayment relating to the amount she received from her ex-husband as she did not know this was considered a form of child support payment. The appellant argues, however, that she should not be liable for the amount of the overpayment relating to the income of her common law spouse as she disputes the claim that the ministry was never informed of her common law relationship, which began on December 1, 2011. The appellant argues that on December 8,

2011 she made two phone calls to the government, the first to the Canada Revenue Agency which advised that the rules for the child care subsidy are very different and she needed to call the ministry right away, that there was no reason for her to ignore this advice, and that she proceeded to call the ministry to give her new address and advise she was living with someone effective December 1, 2011. The appellant argues that her letter dated February 2, 2012 indicated the date she started living with her common law spouse as she thought this was information that the ministry already had. The appellant argues that if the ministry did not properly log the information from her phone call on December 8, 2011, she should not be held liable for the overpayment when there was an administrative error or omission by the ministry while she followed the rules.

Section 7 of the CCSA states that if a child care subsidy is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled. The panel finds that the appellant does not dispute that child care subsidy was paid, during the period August 2011 through November 2011, for which she was not entitled as she received contributions to the mortgage on the family home, which she did not realize constitutes child support. The appellant also acknowledges that her marital status is living in a marriage-like relationship and her spouse resides with her, as set out in the Child Care Subsidy- Application dated February 2, 2012, and she admits that this arrangement which she termed "common law" commenced December 1, 2011. Section 7 of the CCSR stipulates that an applicant is not eligible for a child care subsidy if the family's monthly net income exceeds the child's threshold and the definition of "family", as set out in Section 1 of the CCSR, means a parent and the parent's dependants. Section 1 of the CCSR defines "dependant" to mean anyone who resides with the parent and who is the spouse of the parent. "Spouse", in relation to a parent, is defined to mean anyone who is married to the parent or living with the parent in a marriage-like relationship. The panel finds that the ministry reasonably determined that the appellant's monthly net income as of December 2011 included the income of her common law spouse, that this total amount exceeded the threshold amount and, therefore, the appellant was not eligible for child care subsidy for the period December 2011 to February 2012, as set out in the Overpayment Calculation dated November 13, 2012.

While there is a separate provision, in Section 5(3) of the CSSA for the ministry to declare a person ineligible for child care subsidy where the person fails to notify the ministry, in writing or by telephone, of any change in circumstances affecting their eligibility as soon as possible after the change, the panel finds there was no evidence of a declaration having been made in the appellant's case. Rather, the appellant was found ineligible for child care subsidy for the period August 2011 through February 2012 as a result of the family's monthly net income exceeding the threshold amount, and the panel finds that the appellant is liable to repay the amount to which she was not entitled irrespective of when the ministry became aware that she was ineligible for these amounts.

The panel finds that the ministry's decision, which found that the appellant was not eligible for a child care subsidy from August 1, 2011 to February 29, 2012 due to the total income of the appellant's family unit being in excess of the threshold and that there was an overpayment, was reasonably supported by the evidence and the panel confirms the decision.