APPEAL

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated May 27, 2014 which determined that the appellant was not eligible for child care subsidy (CCS) for the period between June 2013 to January 2014 which resulted in an overpayment of $3,190.00 under sections 5 and 7 of the Child Care Subsidy Act (CCSA) and under sections 1, 7 and 14 of the Child Care Subsidy Regulation (CCSR).

## PART D – Relevant Legislation

Child Care Subsidy Act (CCSA) sections 5 and 7.
Child Care Subsidy Regulation (CCSR) sections 1, 7, and 14.

APPEAL

## PART E – Summary of Facts

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

- That the appellant was issued a CCS based on her status as a single parent during the period between June 2011 until January 2014;
- That on May 28, 2013 the appellant submitted a renewal application CF2900 to the CCS Centre dated May 5, 2013;
- That the appellant was eligible for a CCS based on a 1 parent, 2 unit family, received CCS at the G2, 20 full days per month and S2 rate during the months of June and July 2013, that as of August 2013 the appellant received a CCS at the G3, 20 full days per month and S2 rate, and that the appellant's eligibility was calculated using the base threshold income level for a 2 unit family at $1,082;
- That the appellant worked 8 hours per day and 5 days a week and had a total family income of $1,643,15;
- That on January 6, 2014 the appellant advised the CCS Centre by telephone that she had a change in family composition, she had a new spouse and a new baby, that her spouse was employed full time, that she was currently on maternity leave and confirmed her last day of work to be August 26, 2013;
- That the ministry sent a letter to the appellant on March 11, 2014 stating the receipt of statement from the Verification and Audit Branch of the ministry which determined that the appellant began living in a dependent marriage-like relationship with the spouse as of June 2013, that the appellant was ineligible for amounts of subsidy from June 2013 to January 2014, and that the appellant received $3,190.00 for which she was not eligible;
- Integrated Case Management notes dated January 6, 2014;
- Residential tenancy agreement for prior mutual address of the appellant and the spouse;
- ICBC information for the appellant showing tenancy as of November 2013;
- ICBC information for the spouse showing tenancy as of February 2014;
- Personal property printout showing joint property; and
- CCS overpayment calculation.

In the Request for Reconsideration dated April 8, 2014, the appellant outlined the following:

- A request that the ministry reconsider the amount owed from June 2013 – September 18, 2013 and the fact that her dependent did not attend daycare in January 2014;
- The reasons the appellant believes that she does not owe funds for June 2013 – September 18, 2013 are because once she had moved she did notify child care subsidy of all the changes, sent all the requested information and completed all documents truthfully and honestly to the best of her knowledge;
- That the appellant was single until September 18, 2013 when their child was born as they had only lived together 4 months, that their money was never combined and they lived in a roommate type relationship during the period of June 2013 to September 18, 2014;
- That the appellant understood to go by the B.C. rules regarding marital status unless it is stated in the rules that it is different, that she did not come across another definition, and that nowhere in the CCS application process does it state that there is a different definition or that a marriage-type relationship starts as soon as you move in together and that there is no way for the appellant to have known this; and
- That the appellant was late reporting the CCS due to recovering from surgery.

In her Notice of Appeal dated and signed on June 2, 2014, the appellant indicated that she disagrees with the ministry's reconsideration decision because she was not in a marriage like relationship with her spouse at that time and that they were living as roommates until the date their son was born. Also she indicates that the child did not attend day care in January 2014 so that she should not have to pay back anything for this period.
At the hearing, the appellant provided more detailed information about the appellant's living arrangements with

her now common law spouse and stated that her spouse was a roommate on a trial basis until September 18, 2013, that they had separate finances and split the expenses equitably, they had separate friends and lives and that the appellant was responsible for her own son. The appellant pointed out the lack of a definition for a marriage-like relationship in the legislation, that the concept is vague and open to interpretation and that where there is ambiguity in the legislation it should be resolved in favor of the appellant.

The appellant also read aloud the written statements from herself, her spouse, her mother and their friends. The appellant also provided information that her son did not attend day care in January 2014 and requests the ministry to collect the overpayment of funds from the day care rather than from the appellant. In summary, the appellant stated that she does not think that she owes CCS for the months of June, July and August 2013, that she does not think she owes CCS for January 2014 and believes the total that she owes to be $962.50.

At the hearing the appellant also provided the following additional documents as evidence:

- A written statement for the appellant which provides case examples related to marriage–like relationships and suggests that the concept is vague and open to interpretation and that where there is ambiguity in the legislation it should be resolved in favor of the appellant;
- A written statement from the appellant which outlines more details about the development of the relationship between the appellant and her spouse and that as of October 2013 they filed as a common law couple for tax purposes;
- A written statement from the appellant's spouse which outlines more details about the development of their relationship, that they filed as a common law couple for tax purposes, that they signed common-law housing papers with the military and that they have been very honest and declared everything;
- A written statement from the appellant's mother related to the short length of time that the appellant knew the spouse before she was pregnant and that they moved in together as roommates to see if they could and wanted to be a couple;
- A written statement from two friends of the appellant's spouse outlining the relationship history of the appellant and her spouse, why they moved in together, that they only occasionally spent time together, and that they moved in together to share their duties;
- The appellant's bank profile and statement for June, July and August 2013;
- The spouse's bank profile and statement for June, July and August 2013; and
- The utilities bills for the months of June, July and August 2013 with both the appellant and spouse named on the account.

At the hearing, the ministry stated that each situation is unique related to what constitutes a marriage-like relationship and there could be so many scenarios and as a result the ministry assesses each case as it comes up. The ministry also stated that in this case there seemed to be strong social-familial ties between the appellant and her now common law spouse given that she became pregnant and acknowledges him as the father, that they moved in together and that they now have filed as common law status on their tax return. The ministry stated that these actions are consistent with a marriage-like relationship.

The panel determined the additional oral and written evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for child care subsidy (CCS) for the period between June 2013 to January 2014 which resulted in an overpayment of $3,190.00 under sections 5(2) and 7(1) of the CCSA and under sections 1, 7(1) and 14 of the CCSR, was a reasonable application of the legislation or reasonably supported by the evidence.

**Legislation**

**CCSA Section 5 -** Information and verification

**5** (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.

**CCSA Section 7 -** 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.

**CCSR Section 1 - Definitions**

"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 role 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;

**CCSR Section 7 -** 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.

**CCSR Section 14 -** 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.

**Ministry Argument**

The ministry argues that the appellant is liable for the repayment of $3,190.00 in CCS that she received from June 2013 to January 2014 and was not entitled to. The ministry outlines that the appellant's CCS eligibility was affected in June 2013 when the appellant began living with her current spouse in a dependent relationship, on September 18, 2013 when her family composition changed with the birth of a second son, and in August 2013 when the appellant began her maternity leave which altered her net family income. The CCSR section 7 outlines how the CCS is calculated. In the case of the appellant, the amount of subsidy that she received from June 2013 to January 2104 was based on a 2 unit, single parent family and only the appellant's net income. These calculations do not take into account the income of the spouse because the appellant's marriage-like relationship with her spouse was not reported in June 2013. The ministry also argues that the appellant did not notify the ministry until January 6, 2014 which is not as soon as possible as outlined in the CCCR section 14. The ministry interpretation of what constitutes a marriage-like relationship is assessed on case by case basis. The ministry also argues that in the case of the appellant there seemed to be strong social-familial ties between the appellant and her now common law spouse given that she became pregnant and acknowledges him as the father, that they moved in together and that they now have filed as common law status on their tax return. The ministry concludes that these actions are consistent with a marriage-like

relationship and that the appellant received an overpayment because the CCS calculations did not take into account the income of the spouse because the appellant's marriage-like relationship with her spouse was not reported in June 2013.

**Appellant Argument**

The appellant argues that she does not think that she owes CCS for the months of June, July and August 2013, that she does not think she owes CCS for January 2014 and believes the total that she owes to be $962.50 because she was not living in a marriage like relationship with her current spouse until September 18, 2103 and her son was not in day care for January 2014. The appellant argues that there is no definition for a marriage-like relationship in the legislation, that the concept is vague and open to interpretation, and that where there is ambiguity in the legislation it should be resolved in favor of the appellant. The appellant stated that she and the spouse at the time had separate friends, separate finances, split the expenses equitably and that the appellant was responsible for her own son. The appellant explained that once she was pregnant that they moved in together as roommates to see if they could and wanted to be a couple and to share duties. She also stated that it was not until October 2013 that the appellant and her spouse filed as a common law couple for tax purposes. The appellant also stated that her son did not attend day care in January 2014 and requests the ministry to collect the overpayment of funds from the daycare rather than from the appellant.

**Panel Decision**

The CCSR section 1 definition of spouse provides that a spouse in relation to a parent means anyone who is married to the parent or who is living with the parent in a marriage-like relationship. There is no clear definition of "marriage-like" relationship in the legislation and the ministry assesses this on a case by case approach. Even though the appellant states that she and her spouse had separate friends, separate finances, split the expenses equitably and the appellant was responsible for her own son, the panel finds that the appellant was in a marriage-like relationship because the history of the relationship is consistent with other marriage-like relationships and specifically that the appellant conceived in late 2012, they moved in together in June 2013, they had their child in September 2013 and then in October declared themselves as common law for tax purposes. In addition, even though the appellant stated that when their child was born as they had only lived together 4 months and that they were living as roommates until the date their son was born a written statement from the appellant's mother outlined that they decided to become roommates to see if they could and wanted to become a permanent couple. The panel finds that the fact that they did not know their relationship would work as a couple does not negate that they were a couple not simply roommates.

The panel finds that the appellant did not advise the ministry of her change in circumstances affecting her eligibility as is required under the legislation. The CCSA section 5(2) provides that a person who is paid a CCS must notify the minister of any change in circumstances affecting their eligibility under this Act within the time and in the manner specified by regulation. The CCSR section 14 provides that notification must be given in writing or by telephone as soon as possible after any change in circumstances affecting the eligibility of the parent and to an employee in the Child Care Subsidy Service Centre. The panel determines that the appellant did not provide her change in circumstances affecting her eligibility as soon as possible. More specifically the appellant did not report as soon as possible her new living arrangements as of June 2013, her maternity leave on August 26, 2013, and the birth of son on September 18, 2013 because she did not notify the ministry of these changes until January 6, 2014.

The panel finds that the ministry reasonably determined that the appellant is liable to repay any overpayment of funds from June 2013 including for January 2014 despite the evidence that the appellant's son did not attend day care in January 2014, because the CCSR section 7 (1) provides that if a CCS 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, and the ministry is not required to collect the overpayment of funds from the day care rather than from the appelant. Therefore, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.