APPEAL NUMBER
2020-00205

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Children and Family Development (the ministry) reconsideration decision dated August 14, 2020, which found that the appellant was not eligible for child care subsidy received over the period July 2015 to August 2019 because the care provided by the appellant was not in a child care setting that may be subsidized under Section 2 of the Child Care Subsidy Regulation (CCSR).

The ministry found that the appellant is liable to repay $21,606.50 for child care subsidy to which the appellant was not entitled, pursuant to Section 7(1) of the CSSA.

PART D – RELEVANT LEGISLATION

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

Child Care Subsidy Regulation (CCSR), Sections 1 and 2

PART E – SUMMARY OF FACTS

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

1) Undated letter from the grandmother for child "Q" in which she wrote that:
   - Her special needs grandson Q was placed in her care by the ministry in 2016.
   - A social worker referral was made to the child care subsidy program to assist as a support for Q.
   - Navigating the system and massive amounts of difficult-to-understand paperwork required, as well as accessing affordable quality care, has been an "extreme challenge." Social workers aided with completing the forms and provided guidance on care.
   - She was fortunate to find the appellant to assist her with the process and Q has been provided with the exceptional quality care he requires.
   - The appellant introduced her to another service provider ("the alternate service provider") and the appellant assisted them with the paperwork and accounting. The alternate service provider was hired and provided one-on-one care for Q.
   - The alternate service provider was paid in advance of receiving subsidy because it takes so long to receive. When the cheque was received, the alternate service provider signed them to her or to the appellant as the alternate service provider had already been paid.
   - When the appellant's foster child moved out, the appellant offered to take over one-on-one care of Q. The appellant provided care for Q after school, evenings and weekends, professional development days, and winter, spring and summer breaks.
   - The schedule changes and she was told by the client care specialists at subsidy that it was okay to fill out the form with total hours of care and then change the schedule with the care provided, as needed.
   - On school days, the appellant either picked up Q from school or had him catch the bus to the preschool and the appellant took Q home from there.
   - On weekends, she dropped Q off or the appellant picked him up.
   - All money ever received from child care subsidy was used for the care provided to Q by both the appellant and the alternate service provider. Having to reimburse them so they can pay it back to subsidy will create a financial hardship for her.
2) Copy of a brochure for the appellant's daycare indicating an operating time on weekdays from 8AM to 5:30PM;
3) Letter dated March 10, 2015 to the appellant in which a licensing officer with a provincial health authority wrote that:
   - On a visit on March 6, 2015, it was observed that the appellant and another worker and children were present.
   - It was observed that 2 children were staying in care for more than 4 hours, contrary to the preschool licensing requirements;
4) Group Child Care Inspection Report dated June 26, 2015 in which the licensing officer indicated that the file had been referred to a senior licensing officer for review due to areas of non-compliance at the appellant's preschool;
5) Group Child Care Inspection Report dated October 28, 2015 in which the licensing officer indicated the appellant's preschool would remain at a 'high risk' rating;
6) Child Care Subsidy Application form dated January 13, 2016 signed by the grandmother

of the child Q;

7) Child Care Subsidy Child Care Arrangement form dated January 13, 2016 and signed by the grandmother of the child Q indicating that the appellant's center/ the appellant are the child care providers for licensed preschool/ registered licence-not-required (LNR) child care 5 days per week from 2PM to 5PM and 9AM to 5 PM starting January 13, 2016;
8) Child Care Subsidy Child Care Arrangement form dated January 13, 2016 and signed by the grandmother of the child Q indicating that this is the first time applying for the child care subsidy and requesting the alternate service provider as the child care provider for LNR child care Monday to Friday from 2PM to 5PM and 9AM to 5 PM starting January 13, 2016;
9) Referral to Child Care Subsidy under CFSA stamped February 11, 2016 indicating the child is in the ministry's care but an application had been filed to place the child Q in the custody of the grandmother and care is being provided by the appellant's center for 2 hours per day, 5 days per week from January 1, 2016 to April 30, 2016;
10) Group Child Care Inspection Report dated February 24, 2016 in which the licensing officer indicated some areas of non-compliance at the appellant's preschool;
11) Child Care Subsidy Child Care Arrangement form dated March 24, 2016 and signed by the grandmother of the child Q indicating a third party is the child care provider for LNR child care 5 days per week from 2:45PM to 5:45PM and Sunday from 9AM to 5PM starting March 29, 2016;
12) Child Care Subsidy Special Needs form dated March 30, 2016;
13) Group Child Care Inspection Report dated June 9, 2016 in which the licensing officer indicated there were no issues of non-compliance at the appellant's preschool;
14) Child Care Subsidy Child Care Arrangement form dated June 10, 2016 and signed by the grandmother of the child Q indicating that the alternate service provider is the child care provider for LNR child care Monday to Friday from 9AM to 5PM and 2PM to 5 PM starting June 1, 2016;
15) Child Care Subsidy Child Care Arrangement form dated January 6, 2017 and signed by the grandmother of the child Q indicating a third party is the child care provider for LNR child care 5 days per week from 2:45 to 5:30PM and no start date indicated;
16) Group Child Care Inspection Report dated May 25, 2017 in which the licensing officer indicated there was an information exchange at the appellant's preschool;
17) Child Care Subsidy Special Needs form dated June 7, 2017;
18) Copy of two cheques dated October 30, 2017 payable to the alternate service provider and endorsed to the grandmother of the child Q;
19) Child Care Subsidy Review Referral dated December 7, 2017 indicating an estimated overpayment to the alternate service provider of $5,593.50. The ministry wrote that he stated that he is an employee of the appellant and that child care has never been provided in his home;
20) Child Care Subsidy Child Care Arrangement form dated February 6, 2018 and signed by the grandmother of the child Q indicating that the appellant is the child care provider for LNR child care 4 days during the work week from 2:45 to 7:00PM and 1 day on the weekend from 10:00AM to 7:00PM starting October 1, 2017;
21) Group Child Care Inspection Report dated May 17, 2018 in which the licensing officer indicated the appellant stated there is no longer a PM class at the preschool, it is closed on Fridays and does not operate in the summer;
22) Group Child Care Inspection Report dated August 15, 2018 in which the licensing officer

indicated that the appellant plans to change service type from preschool to group child care 30 months to school age ("group child care") and the license was amended;

23) Group Child Care Inspection Report dated November 22, 2018 in which the licensing officer indicated no issues noted at the appellant's group child care;
24) Group Child Care Inspection Report dated May 9, 2019 in which the licensing officer indicated there were areas of non-compliance at the appellant's group child care, including the absence of an early childhood educator (ECE), required to be present with a group child care license;
25) Group Child Care Inspection Report dated July 26, 2019 in which the licensing officer indicated that the appellant was not on site and an ECE and an early childhood educator assistant (ECEA) were overseeing the children. The licensing officer wrote that the staff's qualifications were confirmed with the posted ECE certificate within the centre;
26) Group Child Care Inspection Report dated August 8, 2019 in which the licensing officer indicated no further issues were identified at the inspection and all contraventions were addressed at the appellant's group child care;
27) Group Child Care Inspection Report dated October 9, 2019 in which the licensing officer indicated a complaint about the appellant's group child care;
28) Group Child Care Inspection Report dated November 8, 2019 in which the licensing officer indicated no contraventions were found at the appellant's group child care;
29) Copy of emails dated January 7, 2020 in which the ministry requested information and the alternate service provider stated that:
    - The alternate service provider was an employee of the appellant's during the period June 2016 through September 2017.
    - Child care provided for Q never occurred in the alternate service provider's home. The care was provided within the appellant's daycare.
    - The alternate service provider never received any payment directly from the ministry as the alternate service provider signed over all cheques received to the appellant, as the employer.
    - The appellant was at the day care full time when the alternate service provider was an employee.
30) Ministry file notes for the period January 26, 2016 through February 28, 2020 including:
    - February 6, 2018 the appellant stated that the appellant's care of the child commenced October 1, 2017 and the appellant picks up the child at 2:45PM approximately 3 times per week and does an activity with the child and returns the child home by 7:30PM;
    - January 28, 2020 the appellant confirmed the preschool was operating during 8AM to 3PM and the appellant took the child to community activities. The appellant stated that it seemed unreasonable that care can only take place at the care provider's house. The appellant stated to the ministry that the appellant sometimes took the child back to the appellant's house. The appellant stated that after the appellant got the new license for group care the child would be dropped off by the school bus in front of the child care centre. The appellant paused and stated that "it all depends" as to what happened after the child was dropped off. The appellant stated that there was a qualified employee at the day care, which the ministry stated was in conflict with the information from the licensing officer that the appellant was the only qualified ECE, and the appellant would take the

child for activities in the community;
- January 29, 2020 the licensing officer confirmed with the ministry that the appellant was licenced for a preschool until August 2018 and the appellant was the only qualified ECE until the summer of 2019 and the appellant should not leave the facility unless there was an emergency situation;

31) Letter dated February 20, 2020 to the appellant in which the ministry wrote that a reassessment of child care subsidy payments issued for three children, "Q," "N" and "T," for the period July 2015 to August 2019 resulted in a reduction in the overpayment amount;
32) Statement of Child Care Subsidy Payments made over the period July 2015 through August 2019 for three children and two service providers, including the appellant;
33) Child Care Subsidy Overpayment Calculation ("Overpayment Calculation Chart") dated February 20, 2020 covering the period July to August 2015 and June 2016 to August 2019 and resulting in a total overpayment amount of $24,863.30; and,
34) Request for Reconsideration- Reasons dated March 31, 2020, including the undated letter from the grandmother of child "Q."

In the Request for Reconsideration, the appellant wrote that:

- In 2016, the appellant had a preschool that ran from 8AM to 3PM Monday to Friday and was closed for weekends, professional development days, and school closures as well as statutory holidays.
- Anytime the appellant gave service to Q was after school, weekends, and professional development days, when the appellant's preschool was closed.
- The child Q was never at the preschool when it was open.
- The child Q was dropped off at the appellant's centre after hours when the preschool was closed as a convenient place for an exchange.
- The alternate service provider worked for the appellant in the preschool from 8AM to 12PM noon, Monday to Friday and, during this time, the child Q was never there.
- In 2016 the appellant did not have a licensed daycare and did not run from 8:30AM to 5:30PM. In 2016 the appellant had a license for a preschool, which was open from 8AM to 3PM.
- The appellant had an after-school program (at the church) that ran from 3PM to 6PM. This part of the appellant's business operated separately from the preschool and the appellant was never there.
- The grandmother of child Q dropped Q off at the after-school program and picked the child up afterwards. The appellant did not work with the child during this time. The alternate service provider sometimes went to the after-school program with the child Q.
- The child Q attended an after-school program at a school and the appellant has nothing to do with this program other than picking up the child Q to take the child to the appellant's home.
- The alternate service provider was living with his parents and was in a dysfunctional relationship with his parents who were keeping his mail from him. The alternate service provider requested that he use the appellant's business address. The alternate service provider did not have a cell phone and used the appellant's phone number for calls and messages.
- In 2017, the alternate service provider was working with the child Q but at no time did he

work with the child Q at the appellant's preschool. He worked with the child Q in the community at playgrounds, the pool, skating and special events.

- Since the alternate service provider was working for the appellant at the preschool and needed money for the time he was working with the child Q, the appellant paid him extra in cash and it was agreed he would sign the cheques over to the appellant at a later date when the money came in.
- The appellant worked with the child Q after school, on weekends, and school closures.
- The alternate service provider never worked at the after-school program from 3PM to 5:30 PM.
- The appellant stopped work in the preschool at 3PM.
- From January to June 2018, the appellant had a preschool that operated from 8AM to 3PM and the alternate service provider did "drop by" but never worked past noon. The appellant did not have an after-school program at this time.
- The appellant got a licensed group daycare in August 2018 and this was the first time. The appellant had a licensed preschool from August 2014 until June 2018.
- The appellant had a licensed group daycare from 7AM to 6PM Monday to Friday and this was operated by a staff member. The appellant did not need to be there and the appellant was not there.
- From the time the appellant started working with the child Q, the appellant was not aware that the service could not be done in the community. At no time was this told to the appellant. Most of the time they were at the appellant's home but they did go to some special events.
- When the appellant had the child Q for a full day (24- hour period, overnight), the appellant's husband would drive the child to school. If needed, the appellant's husband would pick up the child from school.
- At no point was "license-not-required" explained, including the requirements and restrictions until the audit was being conducted. There were social workers involved and yet at no time were these restrictions made clear to the appellant.

Additional Information

In the Notice of Appeal dated August 31, 2020, the appellant expressed disagreement with the ministry's reconsideration decision and wrote that:

- They looked after this special-needs child that was arranged with social worker and the child's grandmother and care giver.
- Not until years after they started did they find out all the rules.

Prior to the hearing, the appellant submitted an additional email dated September 18, 2020 in which a CYSN (Child and Youth with Special Needs) social worker (SW) wrote:

- The SW has been providing support for the child Q since March 2016.
- The child was in the ministry's care previous to being placed in the care of the child's grandmother.
- The child was diagnosed with Autism Spectrum Disorder (ASD) in 2012 and has required a high level of support.
- The child's grandmother took the child into her care and has provided as much support as she was able. An important aspect of the child's care has been provided to the family through the appellant.

- The appellant's knowledge of the needs of children with ASD and other special needs was critical to both the child and the child's grandmother.
- The child's grandmother placed the child in the appellant's care with full confidence knowing that the child was going to be well cared for and provided the best opportunity for growth and development that was available in the community.
- The child's grandmother has said to the SW many times that the support that she received from the appellant has been invaluable and, without it, it would have been much more challenging for her to care for the child.
- During the time of working with this family, the appellant's support to the child and the child's grandmother has been of utmost importance and, with this support, the child's grandmother has been able to provide the child with the loving home and optimal care that the child deserved.

At the hearing the appellant's spouse stated that:

- The spouse has held a volunteer position within the community for close to 30 years. The spouse and the appellant have been foster parents for 20 years and they have had 25 children through their home. One child calls the appellant daily and considers the appellant a parent figure.
- They answered the auditor's questions truthfully and honestly and the auditor picked up on details that the auditor suggested that the appellant could not have been providing the service, but the child Q was brought to the centre when it was closing.
- The child Q is out of school at 2:45PM and the child gets on the bus that takes the child to the appellant's centre. Or, the spouse would pick the child up at 3:00 to 3:15PM and take the child to their home. They have a large property and the child would play around, climbing trees and playing games while the appellant's spouse worked outside.
- The appellant would typically arrive home at 4:00PM.
- When the spouse was called out for the volunteer position, the spouse would decline due to being responsible for a child before the appellant arrived home.
- The auditor said that the centre started at 7:30AM and the appellant could not have driven the child Q to school, but in that case the spouse would drive the child to school.
- The auditor did not believe them.
- They were sought out by the ministry and did what the ministry asked. They were approved and they did what was required.
- When they were first asked by the ministry, they could not care for the child Q because they had a foster child in their care. When the foster child moved out, then they were able to care for the child Q. The child has a bedroom in their home.
- At no point over the years was it brought up that they were doing anything wrong.
- The social worker helped them fill out the forms. At no point over the 4-year period was there any claim that they did not qualify. They should have been cut off funding by the ministry when this became an issue instead of continued and a claim made several years later.
- The spouse asked the panel to consider how it would feel if a demand was made for all monies paid for completing Tribunal work over the past 4 years to be paid back.
- They consider themselves a team, with the appellant being the main caregiver and the spouse being the background worker. The spouse is not good with paperwork and is content to be a support person to the appellant.

- The bottom line is that they provided care for the child and did not know that anything was wrong with the way they were providing care.

At the hearing, the grandmother of the child Q stated:

- She cannot understand why this claim is being brought. They thought they were doing everything right. The appellant and the appellant's spouse have been such a big support to her.
- When the child Q first came to her, the child was not even potty trained and had not developed language skills.
- The child was so well cared for with the appellant that it helped her care for the child when the child was in her care.
- She does not remember dates as this was so long ago. She wrote on the form that the days and times "varied" because they kept changing from week to week. The ministry said that was okay.
- She is dealing with a child with special needs, which can be challenging.
- The appellant or the appellant's spouse would pick the child up at school on the days that the bus could not.
- The appellant and the appellant's spouse provided a place of sanctuary for the child.
- If she had known that the funds were not available for their arrangement, she would have found another way.
- The child was cared for by the appellant and the appellant's spouse and she does not know how she will come up with the money to compensate them for the work they did.
- It does not seem right for the ministry to say that the child is not to be cared for in the community because this is part of what the child needed to do. The child needed one-on-one care even when in a group of other children. She could not put him in a regular daycare program.
- Everything was done to support the child in learning and growing. They were surprised when the ministry said they were not eligible for the funding.
- She has been overwhelmed at times dealing with caring for the child with special needs and also supporting a dying husband.
- She basically took the money that was provided by the ministry for the child care subsidy and she arranged the days that she could pay for. These would be days during the week for after-school care and either one or two days on the weekend. There were also times when the school was closed and the appellant's preschool was closed on Pro-D days and any school closures.
- The child's foster parent became ill after her care for the child had already been worked out. The foster parent died within 6 months of the child coming to live with her and this was very stressful.
- The social worker who wrote the email knew exactly how the care for the child was working out because the SW knew of the appellant's training and that the appellant cared for 25 foster children.

At the hearing, the appellant stated that:

- The appellant and the social worker who wrote the email and the child's grandmother all talked regularly about care for the child and they knew where the needs were. Especially in the beginning of the care by the child's grandmother, there was a need for lots of

support. The child's foster parent was ill and the child was in trauma and stress and needed help.

- There was nothing "shady" going on. They have been honest and respectful with the ministry and they feel that there has been a huge misunderstanding.
- Just looking at the paperwork does not cut it and they appreciate that the panel is listening to their explanation. The money was used for the care of the child and the child is still in their care.
- Somehow there has been a breakdown in the understanding of what happened and this has added so much stress to all of their lives.
- The child has come a long way over the years and is doing well. The local ministry says they want to support them in caring for the child as much as possible.
- The arrangement for care was set up with the ministry and the appellant cannot understand how they can come back after 4 years and want over $20,000 returned.
- The alternate service provider was a staff member of the appellant's preschool.
- The alternate service provider cared for the child one-on-one in the community, at birthday parties, and special events.
- The alternate service provider is young and the child loved hanging out together. There were times when the child would be dropped off at the alternate service provider's house and they would do an activity and then the child's grandmother would pick the child up.
- The alternate service provider only worked in the mornings, from 8AM to 12PM noon, at the appellant's preschool and the child was at school. The alternate service provider would go out into the community with the child at other times.
- When a new care arrangement is made, it can take some time for the funds to be received from the ministry. The alternate service provider wanted to get paid under the care arrangement so either the child's grandmother or the appellant would pay the alternate service provider in cash and then he would sign over the cheque from the ministry when received. The payment to the alternate service provider was never included in the alternate service provider's paycheque from the appellant's preschool.
- When the centre was licensed for group child care of school aged children, there did not have to be an ECE at the centre and the appellant could leave because the appellant had other adults that could work at the centre.
- The appellant agrees that the care for the children "N" and "T" for July and August 2015 was provided in the community and never in the appellant's home. The appellant has agreed with the ministry that these amounts should be paid back and the appellant will reimburse these amounts to the ministry.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that:

- The LNR child care setting requires that the care occurs in the home of the primary caregiver. The care cannot be provided in the appellant's home when the appellant is working in the appellant's child care centre.
- The alternate service provider provided care for the child in a licensed facility and not in his home, as required.
- The ministry relies on the ministry file notes of conversations with the parties as to the type of child care setting that occurred at various times.
- The ministry relies on the information about the times that care occurred and where the

care occurred. There were times when the appellant was required to be at the appellant's child care centre and could not be caring for the child in the appellant's home.

- There was no previous mention by the parties about the care for the child by the appellant's spouse, and these comments are contrary to previous statements by the parties. The ministry does not object to the admissibility of these comments.
- The ministry responsible for overseeing the child care in a community is separate from the ministry that administers the child care subsidy program. The SW involved with the child Q may have a more limited understanding of the legislative requirements for child care subsidy eligibility. The SW's plans for the child would not go to the same level of detail about the child care setting.
- Children in many settings are eligible for the special needs top-up as it is not tied to the type of care.
- The parent(s) and the child care provider(s) complete the forms for the child care arrangement and the ministry relies on this information to be accurate.
- The ministry considers the alternate service provider to be an intermediary for payment to the appellant as the ministry cheques to the alternate service provider were signed over to the appellant. As payment was passed through the alternate service provider to the appellant, the appellant is liable to repay the amounts to the ministry.
- The ministry applies a holistic interpretation of the definition for "LNR child care setting" to mean that the care for the child is based in the home of the primary caregiver but it is reasonable to expect that there would be trips to activities in the community as well. There is nothing that says there has be a certain percentage of the time that is spent in the home of the primary caregiver vs. the percentage of time spent in the community.
- The ministry relied on information from the licensing officer that the appellant was the only Early Childhood Educator (ECE) in the preschool and in the group daycare.
- The ministry accepts that an indication on the Child Care Arrangement form that the days and hours of care "varied" means that these may change week to week; however, the child's grandmother was asked to contact the ministry monthly to confirm the days and times that care was provided in the month.

Admissibility of Additional Information

The ministry did not object to the admissibility of the email from the SW nor to the oral testimony on behalf of the appellant. The panel considered the SW's email and the testimony on behalf of the appellant, including the reference to the spouse's care of the child, as relating to the ministry's denial of child care subsidy amounts and a finding of an overpayment. Therefore, the panel admitted the additional information as being reasonably required for a full and fair disclosure of all matters related to the decision under appeal pursuant to Section 22(4) of the *Employment and Assistance Act.*

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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 child care subsidy received over the period July 2015 to August 2019 because the care provided by the appellant was not provided in a child care setting that may be subsidized under Section 2 of the CCSR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The *Child Care Subsidy Act* (CCSA) in force during the relevant time period provides:

Section 5 of the CCSA requires applicants or recipients to provide specific information and to authorize the ministry to obtain information to verify eligibility:

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.

Section 7 of the CCSA provides for repayment to the ministry where an overpayment of a child care subsidy occurs:

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).

The CCSR in force during the relevant time period provides:

Section 1 of the CCSR provides applicable definitions, including:

Definitions
1 (1) In this regulation: . . .

"licence-not-required child care setting" means a child care setting that
(a) is in the home of the primary caregiver,
(b) need not be licensed under the Community Care and Assisted Living Act, and
(c) is not registered under the Child Care Resource and Referral Program in accordance with the standards specified in the Child Care Resource and Referral Program Standards Manual that is on file with the office of the Deputy Minister,
but does not include the family home of a child being cared for in the setting;

Section 2 of the CCSR describes the types of child care that may be subsidized:

What types of child care may be subsidized?
2 The minister may pay a child care subsidy if a type of child care set out in Column 2 of a table in the Schedule is provided
(a) in a licensed child care setting,
(b) in a licence-not-required child care setting,
(b.1) in a registered licence-not-required child care setting, or
(c) in the child's own home, but only if the child care is provided by someone other than a person who
(i) is a relative of the child or a dependant of the parent, and
(ii) resides in the child's home.

Panel decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is liable to repay $21,606.50 for child care subsidy the appellant received over the period July 2015 to August 2019 and for which the appellant was not entitled, pursuant to Section 7(1) of the CSSA.

Time period #1: July and August 2015

The ministry found that the appellant was not eligible for child care subsidy for July and August 2015 for the children N and T as the appellant provided care for the children that was not in a child care setting that may be subsidized under Section 2 of the CSSR. Section 1 of the CCSR requires that the LNR child care setting occur in the home of the primary caregiver. The ministry wrote that the appellant was unable to provide LNR in the appellant's own home while simultaneously running a licensed preschool at another location. The ministry wrote that child care subsidy was issued to the appellant as the child care provider in the LNR child care setting for the hours 9AM to 5PM Monday to Friday for the child N for the months of July and August 2015 and for the child T for the month of August 2015 and the appellant was running a licensed

preschool during this same time period. The ministry wrote that the licensing officer for the provincial health authority reported that the appellant was the only ECE in the licensed preschool and was required to be present during the entire duration that the preschool was in operation.

At the hearing, the appellant stated that there is agreement that the care for the children N and T for July and August 2015 was provided in the community and not in the appellant's home. The appellant previously agreed with the ministry that these amounts should be paid back and the appellant will reimburse these amounts.

Analysis

Based on the appellant's acknowledgement that care for the children N and T was not provided in the appellant's home and, therefore, does not fall within the definition of the LNR child care setting, the panel finds that the ministry reasonably determined that the appellant was not eligible for child care subsidy for July and August 2015 for the children N and T as the appellant provided care for the children that was not in a child care setting that may be subsidized under Section 2 of the CSSR. Based on the Overpayment Calculation Chart dated February 20, 2020, the panel finds that the ministry reasonably concluded that the appellant is liable to repay $1,062 for child care subsidy to which the appellant was not entitled for the months of July and August 2015, pursuant to Section 7(1) of the CSSA.

Time period #2: June 1, 2016 through November 30, 2016 and March 1, 2017 through September 30, 2017

The ministry found that the appellant was not eligible for child care subsidy for the period June 1, 2016 through November 30, 2016 and March 1, 2017 through September 30, 2017 for care provided by the alternate service provider, who was an employee of the appellant's preschool and who signed his cheques over to the appellant. The ministry considered that the appellant provided care for the child Q that was not in a child care setting that may be subsidized under Section 2 of the CSSR. In the reconsideration decision, the ministry wrote that the alternate service provider advised the ministry that all of his care of the child Q occurred in the preschool where he was an employee and not at his personal residence. The ministry wrote that the alternate service provider advised the ministry that the appellant was present at the preschool while he provided care for the child Q. The ministry also wrote that the alternate service provider advised the ministry that all payments issued from the ministry to him were signed over to the appellant and the ministry found that all financial compensation for the care he provided to the child was managed through his employee paycheck. The ministry wrote that the amounts of child care subsidy issued to the alternate service provider were for a LNR child care setting while the care was provided at the preschool and out in the community and while the alternate service provider worked as an employee of the preschool.

In the Request for Reconsideration, the appellant wrote that the alternate service provider worked for the appellant in the preschool from 8AM to 12PM noon, Monday to Friday and,

during this time, the child Q was never there. The appellant wrote that in 2017 the alternate service provider was caring for the child Q but at no time did he work with the child Q at the appellant's preschool. The appellant wrote that the alternate service provider worked with the child in the community at playgrounds, the pool, skating and special events. At the hearing, the appellant stated that the alternate service provider only worked at the appellant's preschool in the mornings, from 8AM to 12PM noon, and the child was at school. The appellant stated that the alternate service provider would go out into the community with the child at other times.

The appellant wrote in the Request for Reconsideration that since the alternate service provider was working for the appellant at the preschool and needed money for the time he was working with the child Q, the appellant paid him extra in cash and it was agreed he would sign the cheques over to the appellant at a later date when the money came in. At the hearing, the appellant stated that when a new care arrangement is made, it can take some time for the funds to be received from the ministry. The appellant stated further that the alternate service provider wanted to get paid right away so either the child's grandmother or the appellant would pay him in cash and then he would sign over the cheque from the ministry when received. The appellant stated that the payment to the alternate service provider was never included in his paycheque.

Analysis

In the Child Care Subsidy Child Care Arrangement form dated June 10, 2016 signed by the grandmother of the child Q, the child care provider is identified as the alternate service provider to provide LNR child care starting June 1, 2016. While this Child Care Arrangement does not include the appellant as a child care provider, the ministry stated at the hearing that the ministry considers the alternate service provider to be an intermediary for payment to the appellant as the ministry cheques payable to him were signed over to the appellant as his employer and he received compensation through his paycheque. The ministry agued that as payment was passed through the alternate service provider to the appellant, the appellant is liable to repay the amounts to the ministry. The appellant denied that amounts for the cheque from the ministry were added to the paycheck for the alternate service provider. Copies of two cheques from the ministry dated October 30, 2017 indicate payment to the alternate service provider that has been endorsed to the grandmother for the child and confirm that the advance of funds and signing over of the ministry cheques by the alternate service provider did not always involve the appellant. Based on this documentary evidence that is consistent with the appellant's version of the facts, the panel places more weight on the evidence of the appellant as being more reliable and finds as fact that the appellant was not paid directly or indirectly by the ministry for care of the child under the June 10, 2016 arrangement.

Section 7 (1) of the CCSA stipulates 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. In this case, the ministry has paid the child care subsidy to the alternate service provider for care requested by the grandmother for the benefit of her and the child. The care was provided for the child by the alternate service provider and the appellant is not a party

to this arrangement with the ministry. The ministry acknowledged that the alternate service provider was the primary caregiver of the child Q and did not claim that the appellant directly or indirectly provided care for the child during this period. The appellant denied that the alternate service provider cared for the child in the appellant's preschool and stated at the hearing that the child was in school when the alternate service provider worked at the preschool, from 8AM to 12PM noon. The ministry confirmed in an email to the alternate service provider dated January 7, 2020 that he stated in a telephone conversation with the ministry that the child care he provided for the child never occurred in his home but took place within the appellant's preschool.

In the Child Care Subsidy Child Care Arrangement form dated June 10, 2016, the alternate service provider was to provide LNR child care Monday to Friday from 9AM to 5PM and 2PM to 5 PM, being both full days as well as after-school hours. The alternate service provider admits that the care he provided for the child Q was never within his home and, therefore, does not fall within the LNR child care setting as defined in Section 1 of the CCSR as being "in the home of the primary caregiver." In the Child Care Subsidy Review Referral dated December 7, 2017, the ministry indicated there was an estimated overpayment to the alternate service provider of $5,593.50 and that the alternate service provider stated at that time that he was an employee of the appellant. As there was a potential financial consideration to the information provided by the alternate service provider and he was not available to be questioned by the panel regarding his evidence, the panel places weight on the evidence of the appellant as being more reliable and finds as fact that care of the child by the alternate service provider did not occur at the appellant's preschool during the relevant period.

The panel finds that the ministry was not reasonable to conclude that the appellant was paid child care subsidy for the period June 1, 2016 through November 30, 2016 and March 1, 2017 through September 30, 2017 for which the appellant was not eligible as the appellant did not provide care for the child during this time and was not paid either directly or indirectly by the ministry. The panel finds further that the ministry unreasonably determined that the appellant is liable to repay amounts for child care subsidy for the months of June through November 2016 and March through September 2017, pursuant to Section 7(1) of the CSSA.

Time period #3: October 1, 2017 through August 31, 2019
The ministry found that the appellant was not eligible for child care subsidy for the period October 1, 2017 through August 31, 2019 as the appellant provided care for the child Q that was not in a child care setting that may be subsidized under Section 2 of the CSSR. In the reconsideration decision, the ministry wrote that the appellant was the primary care provider for the child Q during this period, which care was to be provided in a LNR child care setting. The ministry wrote that the appellant could not provide LNR care in the appellant's home and operate the appellant's daycare business between the hours of 8:30AM and 5:30PM. The ministry wrote that information from the licensing officer for the provincial health authority indicated that the appellant was the only ECE in the preschool and group daycare until August

2019 and, therefore, the appellant was only able to leave the facility in an emergency situation.

The ministry wrote that the appellant advised the ministry that the child would be dropped off at the appellant's child care centre after school and the appellant would take the child into the community to do activities before dropping the child off at home, and found that this was not care in the home of the primary caregiver.

In the Request for Reconsideration, the appellant wrote that the appellant had a preschool that ran from 8AM to 3PM Monday to Friday and was closed for weekends, professional development days, and school closures as well as statutory holidays. The appellant wrote that the appellant stopped work in the preschool at 3PM. The appellant wrote that the appellant cared for the child Q after school, weekends, and professional development days, when the appellant's preschool was closed. The appellant wrote that the child was dropped off at the appellant's centre after hours when the preschool was closed as a convenient place for an exchange. The appellant wrote that when the appellant had the child for a full day (24- hour period, overnight), the appellant's spouse would drive the child to school and, if needed, the appellant's spouse would pick the child up from school. The appellant wrote that most of the time the appellant and the child were at the appellant's home but they did go to some special events.

At the hearing, the child's grandmother stated that she basically took the money that was provided by the ministry for the child care subsidy and she arranged the days that she could pay for, including days during the week for after-school care and either one or two days on the weekend. The grandmother stated that there were also times when the school was closed and the appellant's preschool was also closed on Pro-D days and any school closures, making the appellant available to care for the child for full days. The appellant's spouse stated that the child is out of school at 2:45PM and the child would either get on the bus to the appellant's centre to be cared for by the appellant at home or in the community, or the spouse would pick the child up at 3:00 to 3:15PM and take the child to their home. The appellant's spouse stated that the spouse and the appellant consider themselves a team, with the appellant being the main caregiver and the spouse being the "background worker." The appellant's spouse stated that they have a large property and the child would play around while the appellant's spouse worked outside and the appellant would typically arrive home at 4:00PM. The child's grandmother stated at the hearing that the appellant or the appellant's spouse would pick the child up at school on the days that the bus could not.

In the Request for Reconsideration, the appellant wrote that the appellant had a licensed preschool from August 2014 until June 2018 and the appellant got a licensed group daycare in August 2018 for the first time. The appellant wrote that the licensed group daycare was operated by a staff member from 7AM to 6PM Monday to Friday and the appellant did not need to be there and was not there. The appellant wrote that from the time the appellant started working with the child Q, the appellant was not aware that the service could not be done in the

community and at no time was this told to the appellant.

Analysis- October 2017 to August 2018

In the Child Care Subsidy Child Care Arrangement form dated February 6, 2018 signed by the grandmother of the child Q, the appellant is identified as the child care provider for LNR child care 4 days during the work week from 2:45 to 7:00PM and 1 day on the weekend from 10:00AM to 7:00PM starting October 1, 2017. In the Group Child Care Inspection Report dated May 17, 2018, the licensing officer indicated the appellant stated there is no longer a PM class at the preschool, the centre is closed on Fridays and does not operate in the summer. During the period October 1, 2017 to August 15, 2018 the panel finds as fact that the appellant operated a preschool with hours from 8AM to 3:00PM during the work week days only. In the reconsideration decision, the ministry found that it was unreasonable for the ministry to have determined in the original decision that the care provided to the child was conducted at the child care centre on the weekend, which was outside the centre's regular operating hours, and that the care did not occur at the home of the primary caregiver.

The ministry file notes for February 6, 2018 indicate that the appellant stated to the ministry that the appellant picked up the child at 2:45PM an average of 3 times per week and did an activity with the child and returned the child home by 7:30PM. The appellant, the appellant's spouse, and the child's grandmother all stated that the appellant commenced care of the child around the time that the preschool closed at 3:00PM, with the child sometimes taking the bus to the preschool or the appellant picking the child up from school and the appellant providing care in the community or the appellant's spouse picking the child up and taking the child to their home until the appellant arrived around 4PM. The ministry stated at the hearing that there was no previous mention by the parties about the care for the child by the appellant's spouse and these comments are contrary to previous statements by the parties. However, the appellant wrote in the Request for Reconsideration that the appellant's spouse picked the child up from school "if needed," and the panel finds as fact that the appellant's spouse occasionally cared for the child for approximately an hour until the appellant arrived home from the preschool around 4PM.

At the hearing, the ministry stated that the ministry applies a holistic interpretation of the definition for "LNR child care setting" to mean that the care for the child is based in the home of the primary caregiver but it is reasonable to expect that there would be trips to activities in the community and there is nothing that says there has be a certain percentage of the time that is spent in the home of the primary caregiver vs. the percentage of time spent in the community. Applying this interpretation, the panel finds that the appellant's care of the child over the period from October 1, 2017 until August 15, 2018 was based in the home of the primary caregiver and included a short period of care by the appellant's spouse and a liberal amount of time spent by the appellant with the child engaging in various activities in the community.

The panel finds that the ministry was unreasonable to determine that the appellant's care during this period was not within the definition of a LNR child care setting pursuant to Section 1 of the

CCSR. Therefore, the panel finds that the ministry unreasonably concluded that the appellant was not eligible for child care subsidy for October 2017 through August 2018 as the appellant provided care for the child Q that fell within the definition of a LNR child care setting that may be subsidized under Section 2 of the CSSR. The panel finds further that the ministry unreasonably concluded that the appellant is liable to repay amounts for child care subsidy for the months October 2017 through August 2018, pursuant to Section 7(1) of the CSSA.

Analysis- September 2018 to June 2019

In the Group Child Care Inspection Report dated August 15, 2018, the licensing officer indicated that the appellant's license was amended in service type from preschool to group child care 30 months to school age ("group child care"). In the Request for Reconsideration, the appellant wrote that the appellant got a licensed group care daycare in August 2018 and this was the first time the appellant had a licensed group care daycare that operated from 7AM to 6PM Monday to Friday. In the Group Child Care Inspection Report dated May 9, 2019, the licensing officer indicated that there were several areas of non-compliance at the appellant's group child care, including the lack of presence of an ECE on site, which the licensing officer wrote is required with a group child care license. In the ministry file notes for January 29, 2020, the licensing officer confirmed with the ministry that the appellant was licenced for a preschool until August 2018 and the appellant was the only qualified ECE until the summer of 2019 and, therefore, the appellant should not leave the facility unless there was an emergency situation.

In the Group Child Care Inspection Report dated July 26, 2019, the licensing officer indicated that the appellant was not on site; however, both an ECE and an ECEA were overseeing the children. The licensing officer wrote that the staff's qualifications were confirmed with posting of ECE certificated within the centre. While the appellant wrote in the Request for Reconsideration that the group child care was operated by a staff member and the appellant did not need to be there and the appellant was not there, the panel finds as fact that the appellant was the only ECE at the group child care until July of 2019 and the licensing requirements meant that the appellant was to be supervising the children during the centre's hours of operation.

The Child Care Subsidy Child Care Arrangement dated February 6, 2018 specified LNR care for the child by the appellant for 4 days during the work week from 2:45 to 7:00PM. While the appellant's spouse stated at the hearing that the spouse would pick the child up from school and take the child to their home until the appellant arrived home around 4PM, the appellant's absence from the group child care at 4PM would put the centre in contravention of the group care daycare licensing requirements for 2 hours every day during the work week. The panel finds as fact that the appellant's presence at the group child care was required until 6PM every work day in order for the centre to be compliant with the licensing requirements, making it implausible that the appellant provided care for the child that was based within the appellant's home on a consistent basis each week.

The panel finds that the ministry reasonably determined that the appellant was not eligible for

child care subsidy for the period September 2018 until June 2019 as the appellant provided care for the children that was not in a child care setting that may be subsidized under Section 2 of the CSSR. In the reconsideration decision, the ministry found that the appellant was eligible for amounts of child care subsidy for 4 weekend days per month at the rate of $141.60 per month for the months of October 2017 to August 2019 and reduced the amount in the Overpayment Calculation Chart dated February 20, 2020 by these amounts. Based on these amendments to the Overpayment Calculation Chart, the panel finds that the ministry reasonably concluded that the appellant is liable to repay $4,860 for child care subsidy to which the appellant was not entitled for the months of September 2018 through June 2019, pursuant to Section 7(1) of the CSSA.

Analysis- July 2019 to August 2019

The licensing report dated July 26, 2019 indicated that there were other ECE's on the staff at the appellant's group child care and the panel finds as fact that the appellant was again available to provide care to the child that was based out of the appellant's home, including occasional support by the appellant's spouse and liberal amounts of time spent with the child in the community. The panel finds that the ministry's conclusion that the appellant was not eligible for child care subsidy for the months of July and August 2019 as the appellant provided care for the children that was not in a child care setting that may be subsidized under Section 2 of the CSSR, was not reasonable. The panel finds that the ministry unreasonably concluded that the appellant is liable to repay amounts for child care subsidy for the months of July and August 2019, pursuant to Section 7(1) of the CSSA.

Conclusion

The panel finds that the ministry's decision, which found that the appellant was not eligible for child care subsidy received over the period July 2015 to August 2019 because the care provided by the appellant was not in a child care setting that may be subsidized under Section 2 of the CCSR, was reasonably supported by the evidence during the periods July and August 2015 and September 2018 through June 2019 and was not reasonably supported by the evidence during the periods June through November 2016, March through September 2017, October 2017 through August 2018, as well as July and August 2019. The panel confirms the ministry's decision that the appellant is liable to repay child care subsidy to which the appellant was not entitled for the periods July and August 2015 and September 2018 through June 2019 in the total amount of $5,922, pursuant to Section 7(1) of the CSSA. The appellant is successful in part in the appeal.

APPEAL NUMBER 2020-00205

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) ☐
and
Section 24(2)(a) ☒ or Section 24(2)(b) ☐

PART H – SIGNATURES

PRINT NAME	
S. Walters	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2020-09-23

PRINT NAME	
Kulwant Bal	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-09-23
PRINT NAME	
Susan Mackey	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2020-09-23