

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Children and Family Development (ministry) reconsideration decision dated May 11, 2022 which held that the appellant was not eligible for amounts of child care subsidy funding they received for the period between August 2019 and February 2022 (except the period between April 2020 and January 2021). The ministry further determined that the appellant was liable to repay to the government the amount of the overpayment (\$13,315.09).

The ministry determination was based on the following conclusions:

1. The appellant was in an “undeclared marriage-like relationship”;
2. The *Child Care Subsidy Act* obligated the appellant to notify the minister of this change in circumstance;
3. The appellant failed to notify the minister;
4. Therefore, the minister was authorized to declare the appellant ineligible for a child care subsidy.

The decision under appeal does not relate to whether the appellant complied with the obligation to notify the minister as required under the Act. The decision under appeal is whether the appellant was in a marriage-like relationship which constituted a change in circumstance.

Directly stated: if the appellant was in a marriage-like relationship they failed to disclose a change in circumstances, but if the appellant was not in a marriage-like relationship there was no change in circumstance and therefore nothing for the appellant to notify the minister about.

Part D – Relevant Legislation

Child Care Subsidy Act (CCSA), s. 4, 5(2), 5(3)
Child Care Subsidy Regulation (CCSR), s.1, 3, 14

Part E – Summary of Facts

The information before the ministry at reconsideration included:

1. On March 1, 2015, a person (“XY”) entered into a tenancy agreement with a landlord (“EF”) at an address (“5”);
2. On October 12, 2015 the appellant’s first child was born and the appellant and XY are identified as parents on the birth certificate;
3. On July 27, 2016, the appellant provided an address on their driver’s license (“1”);
4. On May 16, 2017, the appellant’s second child was born and the appellant and XY are identified as parents on the birth certificate;
5. On September 15, 2018, the appellant changed the address on their drivers license to an address (“2”);
6. On March 25, 2019, the appellant changed the address on their drivers license to an address (“3”);
7. On May 15, 2019, XY entered into a tenancy agreement with a landlord at an address (“4”);
8. On June 21, 2019, the appellant changed the address on their driver’s license to 4.
9. On July 25, 2019, the appellant submitted a Child Care Subsidy Application indicating they were a single parent with full custody of two children;
10. On July 30, 2019, the appellant was issued a Benefit Plan;
11. On September 1, 2019, the appellant entered into a tenancy agreement with the landlord at the address 4, no one other than the appellant is identified as a tenant and there is no information regarding the status of the tenancy agreement for the same location signed by XY;
12. On November 15, 2019, the appellant advised the ministry of a change in the care arrangement for their children;
13. In November 2019, the ministry issued a new Benefit Plan that was in effect from November 1, 2019 to May 31, 2020;
14. On April 1, 2020 the Benefit Plan expired and the appellant stopped receiving a child care subsidy;
15. On July 9, 2020 the appellant’s third child was born and the appellant and XY are identified as parents on the birth certificate;

16. On September 8, 2020, XY changed the address on their driver's license to 4;
17. On March 4, 2021 the ministry received a new application for child care benefits from the appellant (dated February 25, 2021);
18. Between February 2021 and June 2021, the appellant received a child care subsidy;
19. In July and August 2021, the appellant did not receive a child care subsidy;
20. Between September 2021 and February 2022, the appellant received a child care subsidy;
21. On February 14, 2022, the ministry received an Equifax Consumer Report indicating that the appellants current address was 4, that their "spouse" was XY, and that XY's current address was 4;
22. On March 18, 2022, the ministry received a written statement from "EF" stating that "XY" had resided at "5" from March 1, 2015 until the date of the statement;
23. At an unknown date the ministry determined that the last name of the owners of 5 was "T" and that EF is not the owner;
24. At an unknown date the ministry determined that XY and their mother "share the same AKA surname of 'T'" and that there may be "conflict of interest in reporting" that XY resides at 5;
25. On March 21, 2022, the appellant provided the ministry with a letter that stated:
 - a. XY's name was put on the birth certificate for the third child because they wanted "all of my children to have the same last names, regardless of who the father was";
 - b. "There is no chance that [XY] is the father; and
 - c. The appellant does "not speak with [XY], and I do not live with [them]".
26. On March 23, 2022 the Verification and Audit Unit sent the appellant a Debt Notification Package.
27. On March 29, 2022, the ministry received an email from the landlord stating:
 - a. XY entered into a rental contract in 2019;
 - b. When the landlord "visited in 2020" the "family" included XY, the appellant and three children; and
 - c. XY's mother resides next door to the 4 residence;
28. On March 30, 2022, the appellant contacted the ministry and requested reconsideration;
29. On April 16, 2022, the appellant provided the following information as part of a request for reconsideration:

- a. XY used the 4 address for mail because “mail was being stolen at his current address”;
- b. The appellant and XY were not “together in any type of relationship”;
- c. The appellant and XY were not “living under the same roof”;
- d. XY was present when the appellant entered into the tenancy agreement with the landlord for the 4 address but they “were not living in the household together”;
- e. The landlord “speaks very little English” and he may be under a “misunderstanding”;
- f. The tenancy agreement between XY and the landlord for the 4 address was because of a “misunderstanding...as [the landlord] must have thought we were living together as a family”;
- g. The tenancy agreement between the appellant and the landlord was to “fix” the misunderstanding about the tenancy agreement between XY and the landlord;
- h. XY is not the father of the appellant’s third child;
- i. The appellant and XY “are not together” and “barely speak unless it is of importance.”

30. On May 11, 2022, the ministry completed the reconsideration and confirmed its determination that the appellant was ineligible for a Child Care Subsidy for the period between August 2019 and February 2022.

At the hearing, the appellant provided additional information which the panel admitted under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

That information included:

1. The appellant and XY both viewed the residence 4 at the same time because as a single parent it can be “difficult when trying to rent”;
2. The appellant moved into the 4 address in May 2019;
3. The appellant and XY do not share any bank accounts;
4. The appellant and XY do not share any credit cards;
5. The appellant does not receive any child support payments from XY;
6. The appellant does not receive “any help” from XY and XY “isn’t paying anything”;
7. When mail arrives for XY they either pick it up or has a friend pick it up;
8. XY “is a drinker”;
9. XY “doesn’t really see the kids”;
10. XY “comes and goes”; and
11. XY only contacts the appellant “when [they] needs a favour”.

At the hearing, the ministry confirmed that it did not attempt to get information from XY because the ministry was assessing the appellant's entitlement to a child care subsidy. The ministry also confirmed that the minister is satisfied that "social and familial interdependence, consistent with a marriage-like relationship" exists when a person "presents to the community" as a family.

Part F – Reasons for Panel Decision***Introduction***

The issue at appeal is whether the reconsideration decision that the appellant was not eligible for amounts of child care subsidy funding they received for the period between August 2019 and February 2022 (except the period between April 2020 and January 2021) because the appellant failed to notify the minister they were in a “marriage-like relationship” was reasonably supported by the evidence or a reasonable application of the enactment in the appellant’s circumstance.

Summary of The Relevant Legislation

The *Child Care Subsidy Regulation* permits the minister to pay a child care subsidy if the minister is satisfied that child care is needed for prescribed reasons (section 3). Even if the prescribed reasons are met, an applicant is not eligible for a child care subsidy if the family’s adjusted annual income equals or exceeds prescribed amounts (section 7(1)).

The *Child Care Subsidy Regulation* defines a family as “a parent and the parent’s dependents” (section 1). A dependent is defined to include “anyone who resides with the parent and who is the spouse of the parent” (section 1).

A spouse is defined as a person that resides with a parent and:

1. Is married to the parent; or
2. Has acknowledged to the minister that they are in a marriage-like relationship with the parent; or
3. Satisfies all of the following four requirements:
 - a. Has been residing with the parent for the previous 3 consecutive months or 9 of the previous 12 months; and
 - b. Has financial dependence or interdependence with the parent consistent with a marriage-like relationship; and
 - c. Has social interdependence consistent with a marriage-like relationship; and
 - d. Has familial interdependence consistent with a marriage-like relationship.

The *Child Care Subsidy Regulation* does not define a “marriage-like relationship.” It is well established by court authorities (most recently,) “that the characterization of a relationship as marriage-like is contextual. It involves the subjective intentions of the parties and objective evidence” and that classifying a relationship as marriage-like can involve “a wide assortment of characteristics or indicia for which there is no definitive classification system” (these quotes are from the British Columbia Court of Appeal decision of January 31, 2022 in the case *Jones v. Davidson*).

The *Child Care Subsidy Act* requires a person to notify the minister of any change in circumstance affecting their eligibility. The change from a single parent to a two parent family is a change in circumstance that could affect eligibility under section 3(2) or 7(1) of the *Child Care Subsidy Regulation*.

The Appellant's Position

The appellant's position was that they were never in a marriage-like relationship with XY. The appellant stated that they did not reside with XY, that they did not have any financial interdependence with XY, that they did not have social interdependence with XY consistent with a marriage-like relationship, and that they did not have familial interdependence with XY consistent with a marriage-like relationship.

Does Not Reside With XY

The appellant explained that the belief by the landlord that XY was living with the appellant at 4 was likely the result of XY "being there" when the appellant viewed the location. The appellant also explained that the reason XY was there was because they thought it might be "helpful" because their prior experience that it was difficult to be selected as a tenant as a single parent. The appellant recognized that the May 15, 2019 tenancy agreement identified XY as a tenant and did not identify the appellant as a tenant. The appellant stated that they might have agreed to "put XY's name down because it is helpful".

The appellant relied on the subsequent tenancy agreement, dated September 1, 2019, in which XY is not identified as a tenant but the appellant is, as information supporting that they lived there without XY. The panel notes that this statement accords with a reasonable expectation: that the tenancy agreement with XY was terminated after 3 and half months when the landlord was clearly informed that only the appellant resided there. However, there is an inconsistency with the statement from the landlord (made in 2022) that they believed the appellant and XY were living at 4 as a family in 2020 (which is after September 2019).

The appellant also explained that XY used the address at 4 as a mailing address because of concerns with the security of mail at the 5 address. The appellant did not know why Equifax considered XY to reside at 4 nor why XY had used the 4 address on his driver's license. In response to a question about why XY used the 4 address instead of their mother's address the appellant speculated it was because XY's mother was "very precise" regarding paperwork but that the appellant was "not sure why [XY] didn't ask [their] mom."

Does Not Have Financial Interdependence With XY

The appellant stated that they have no financial interdependence with XY and that they do not share any bank accounts or credit cards. The appellant also stated that rent for 4 was paid by e-transfer.

Does Not Have Social Interdependence With XY

The appellant stated they had no social interdependence with XY and that XY "comes and goes" and that XY only contacts the appellant "when [XY] needs a favour."

Does Not Have Familial Interdependence With XY

The appellant stated XY does not "really see the kids".

The Ministry's Position

The ministry's position is that the appellant and XY were spouses because they resided together, had more than one child together, and presented as a couple to the landlord.

Appellant Resides with XY

The ministry relied on the statement from the landlord that "when I visited in 2020, their family status was like this [XY, the appellant and three children]" as information to satisfy the minister that the appellant and XB resided together. The panel notes that when the landlord made that statement (in 2022) they wrote about the appellant's family status: "Now I don't know". The ministry did not address the relevance the ministry placed on the fact that the landlord did not know the family status in 2022 and the legislative requirement for the appellant and XY to reside together for "3 consecutive months" or "9 of the previous 12 months."

The ministry also relied on the information from Equifax that XY's address was the 4 address since August 2019 and that it was also the address XY supplied on his driver's license from September 2020. The ministry made no comment regarding why the dates recorded by Equifax and on XY's driver license were inconsistent with each other and the tenancy agreement.

Finally, the ministry stated that it was not satisfied that XY resided at 5. The panel notes that even if XY did not reside at 5 that would not directly support a determination that he resides at 4.

Appellant Has Financial Interdependence With XY

The ministry relied on its determination that XY resided with the appellant to determine that the appellant and XY were sharing rent and consequently were financially interdependent. As stated at reconsideration: "the tenancy agreements and Equifax Community Reports demonstrate you and [XY] had financial interdependence consistent with a marriage-like relationship". The ministry did not directly address how sharing rent would demonstrate financial interdependence "consistent with a marriage-like relationship" nor did it comment on the Equifax reports indicating there were no "inquiries" made by the appellant and XY as spouses.

The ministry also confirmed that it did not request the appellant provide any financial information that could have indicated financial interdependence with XY.

Appellant Has Social Interdependence with XY

The ministry relied on the statement from the landlord regarding their understanding of the family status in 2020 and that the appellant and XY were "presenting as a couple" to satisfy the minister that the appellant and XY had social interdependence consistent with a marriage-like relationship.

Appellant Has Familial Interdependence with XY

The ministry relied on the fact that the appellant and XY had “more than one child” and “kids in common” to satisfy the minister that the appellant and XY had familial interdependence consistent with a marriage-like relationship.

The Panel’s Decision

The panel notes that there was no dispute that the appellant and XY were not married.

The panel notes that there was no dispute that the appellant and XY had not acknowledged to the minister that XY was residing with the appellant in a marriage-like relationship.

Consequently, for the minister to be satisfied that XY was the appellant’s spouse the evidence before the ministry must support the four requirements described above.

Does The Appellant Reside with XY

The panel notes that there were two separate tenancy agreements for the location 4. The first one identified XY as the tenant and the second one identified the appellant as the tenant. Neither of them identified both the appellant and XY as tenants. This is not consistent with the appellant and XY both residing at 4.

The panel finds the appellant’s explanation, that XY was identified as the tenant because it was “helpful” to the appellant being approved as the tenant for them to imply they were not a single parent, is reasonable. This explanation is also consistent with the appellant’s explanation that the second tenancy agreement was in their name to resolve this “misunderstanding.” That the second tenancy agreement was a ‘correction’ of the initial tenancy agreement is further supported by the statement from the landlord (made in 2022) that they were not aware whether the appellant and XY were residing together at 4 because this statement implies that it was not important to the landlord that both the appellant and XY resided at 4.

The panel also notes that the appellant was consistent in informing the ministry that the appellant and XY did not reside together.

In contrast to the appellant’s assertion that they did not reside with XY, the panel considered that the landlord stated that they understood that the appellant and XY resided together at 4 in 2020. However, that statement does not include any information about the length of time that the landlord believed the appellant and XY resided together.

The panel also acknowledges that XY provided the 4 address as his residence to Equifax and on his driver’s license. However, the panel does not consider that conclusive information that XY resided at that address, in part because the date XY began residing at 4 according to those sources are different and not consistent with the date of the tenancy agreement.

In the result, the panel finds that the minister’s determination that the appellant and XY resided together at 4 was not reasonably supported by the evidence. The evidence that a rental agreement that identified XY as a tenant was substituted for a rental agreement that identified

only the appellant as a tenant, the explanation for this change provided by the appellant, and the appellant's consistent statements that they did not reside with XY means it is not reasonable for the ministry to rely on address information from an Equifax report and XY's driver license to support a determination that the appellant and XY resided together for "at least the previous 3 consecutive months, or 9 of the previous 12 months."

Does The Appellant Have Financial Interdependence With XY

The panel did not identify any evidence that the appellant and XY had financial interdependence consistent with a marriage-like relationship. There was no evidence that they shared bank accounts. There was no evidence that they had ever applied for credit as spouses. There was no evidence that they both contributed to the payment of rent.

The panel finds that the ministry's determination that the appellant and XY had financial interdependence based on the identification of XY as a spouse of the appellant in the Equifax Community Report, despite no record of the appellant and XY applying jointly for credit, is not reasonably supported by the evidence.

Does The Appellant Have Social Interdependence with XY

The panel considers that social interdependence consistent with a marriage-like relationship requires more than implying to a potential landlord that the appellant and XY were a family.

The panel finds that the ministry's determination that the appellant and XY demonstrated social interdependence consistent with a marriage-like relationship is not reasonably supported by the evidence.

Does The Appellant Have Familial Interdependence with XY

The panel considers that having multiple children with a person is not sufficient to establish familial interdependence consistent with a marriage-like relationship. The panel notes that it is not uncommon for parents to not be in a marriage-like relationship.

The panel finds that the ministry's determination that the appellant and XY demonstrated familial interdependence consistent with a marriage-like relationship is not reasonably supported by the evidence.

Conclusion

The panel rescinds the ministry decision.

Extracts of the Relevant Legislation

Child Care Subsidy Act

Child care subsidies

4 Subject to the regulations, the minister may pay child care subsidies.

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.

(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.

Child Care Subsidy Regulation

Circumstances in which subsidy may be provided

3 (1) The minister may pay a child care subsidy only if

- (a) the minister is satisfied that the child care is needed for one of the reasons set out in subsection (2),
- (b) the child care is arranged or recommended under the *Child, Family and Community Service Act*, or
- (c) the child care is recommended under the *Community Living Authority Act* in respect of a child who has a parent approved for or receiving community living support under the *Community Living Authority Act* and the minister is satisfied that the child care is needed.

(2) For the purpose of subsection (1) (a), the child care must be needed for one of the following reasons:

- (a) in a single parent family, because the parent
 - (i) is employed or self-employed,

- (ii) attends an educational institution,
- (iii) is seeking employment or participating in an employment-related program, or
- (iv) has a medical condition that interferes with the parent's ability to care for the parent's child;

(b) in a two parent family, because

- (i) each parent is employed or self-employed, attends an educational institution or participates in an employment-related program,
- (ii) one parent is engaged in an activity listed in subparagraph (i) and the other is seeking employment,
- (iii) one parent is engaged in an activity listed in subparagraph (i) and the other parent has a medical condition that interferes with that parent's ability to care for that parent's child, or
- (iv) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]
- (v) each parent has a medical condition that interferes with their ability to care for their child.

Income test

7 (1) An applicant is not eligible for a child care subsidy if the family's adjusted annual income equals or exceeds the following:

- (a) \$111 000 for a child receiving child care in a licensed child care setting;
- (b) \$85 000 for a child receiving child care in a registered licence-not-required child care setting;
- (c) \$70 000 for a child receiving child care
 - (i) in a licence-not-required child care setting, or
 - (ii) in the child's own home as described in section 2 (c).

(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 interim or temporary custody under an order of the court under section 35 (2) (d), 41 (1) (b), 42.2 (4) (c), 49 (7) (b) or 54.01 (9) (b) of the *Child, Family and Community Service Act*,

(c.1)of whom the applicant has been permanently transferred custody under an order of the court under section 54.01 (5) or 54.1 (3) 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),

(e)who is receiving assistance under the authority of the Child in the Home of a Relative Program Transition Regulation, B.C. Reg. 48/2010, and the applicant is the relative with whom that child resides, or

(f)who is receiving assistance under a program, similar in nature to the program referred to in paragraph (e), provided

(i)on a reserve, within the meaning of the *Indian Act* (Canada), by the government of Canada, or

(ii)by the Nisga'a Nation or a treaty first nation.

Definitions

1 (1)In this regulation:

"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, or

(b)is a dependent child of the parent;

"spouse", in relation to a parent, means a person, including a person of the same gender, who resides with the parent and

(a)who is married to the parent,

(b)who, together with the parent, acknowledges to the minister that the person is residing with the parent in a marriage-like relationship, or

(c)who

(i)has been residing with the parent for at least

(A)the previous 3 consecutive months, or

(B)9 of the previous 12 months, and

(ii)has a relationship with the parent that the minister is satisfied demonstrates
(A)financial dependence or interdependence, and
(B)social and familial interdependence,
consistent with a marriage-like relationship;

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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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Trevor Morley

Signature of Chair

Date (Year/Month/Day)

2022/Jun/22

Print Name

Cherri Fitzsimmons

Signature of Member

Date (Year/Month/Day)

2022/Jun/22

Print Name

Sarah Bill

Signature of Member

Date (Year/Month/Day)

2022/Jun/22