

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (“ministry”) dated March 18, 2022, in which the ministry determined that the appellant was ineligible for the Child Care Subsidy and Affordable Child Care Benefit amounts (together referred to as “the subsidy”) she received between August 1, 2016 and August 31, 2020, which resulted in an overpayment of \$20,358.26 that the appellant was liable to repay.

The ministry determined that:

- when the appellant received the subsidy between August 1, 2016 and August 31, 2020, she represented to the ministry that she was a single parent, when in fact she was in a marriage-like relationship with H, the child’s father;
- the appellant did not notify the ministry of a change in circumstances affecting her eligibility;
- the ministry did not have sufficient information about H’s employment and income to determine an eligible reason for care or an accurate annual income to determine if the appellant met the income test under the Child Care Subsidy Act.

Part D – Relevant Legislation

Child Care Subsidy Act (“CCSA”), sections 4, 5 & 7
Child Care Subsidy Regulation (“CCSR”), sections 1(1), 3, 4, 4.1, 7(1), 8, 9 and 14 and Schedule A
Employment and Assistance Act, section 19.1
Administrative Tribunals Act, section 44

The full text of the legislation is available in the Schedule after the decision.

Part E – Summary of Facts

The appeal was first set to be heard by videoconference on June 1, 2022 and was adjourned at the appellant's request. It was re-scheduled for June 29, 2022, when the appellant appeared and asked that the hearing be adjourned to give her more time to find legal counsel. The panel granted the adjournment request and adjourned the hearing to July 21, 2022. The hearing was again adjourned, because the appellant had obtained legal counsel who was not available on that date. The hearing was rescheduled for August 8, 2022 and took place that day by videoconference. The appellant attended the hearing with her lawyer.

Evidence at Reconsideration:

The appellant and H are the parents of a child born in 2015. The appellant and H are not married.

The appeal record is 480 pages. The panel does not list every document that was submitted as evidence, but has reviewed every document, and provides a summary of the evidence.

Communications with Child Care Subsidy Service Centre/Child Care Service Centre:

The appellant applied for the subsidy on August 1, 2015, when she was living at address #1 in location #1. At that time, she advised the Child Care Subsidy Service Centre ("CCSSC") that she was a single parent with no shared custody arrangement and was receiving no child support. The CCSSC approved the subsidy on that basis.

The appellant continued to apply to renew the subsidy, advising the CCSSC each time that she continued to be a single parent with no shared custody arrangement, receiving no child support. Each time, the subsidy was renewed on that basis and the appellant continued to receive the subsidy for the period in issue on this appeal, between August 1, 2016, and August 31, 2020.

The CCSSC renewed the appellant's subsidy for the following periods:

- July 1, 2016 – February 28, 2017
- March 1, 2017 – August 31, 2017
- September 1, 2017 – August 31, 2018
- Change in benefit plan April 19, 2018 – August 31, 2018 due to change in care providers

On September 1, 2018, the Child Care Subsidy Program changed to the Affordable Child Care Benefit and the CCSSC became the Child Care Service Centre ("CCSC"). The CCSC renewed the appellant's subsidy for the following periods:

- September 1, 2018 – June 30, 2019
- July 1, 2019 – June 30, 2020
- Change in benefit plan April 15, 2020 due to change in care providers, for the period ending August 31, 2020

Between August 1, 2015 and August 31, 2020, the CCSSC records the following communications from the appellant, regarding her circumstances and the requests to renew the subsidy:

- Child Care Subsidy Application dated August 1, 2015: appellant stated she was a single parent with no shared custody arrangement and was receiving no child support.
- Child Care Subsidy Request to Renew Form dated July 27, 2016 (received by the CCSSC July 28, 2016): appellant stated that:
 - the people residing in her household were the same as previously declared on her file
 - she had a medical condition
 - she worked casual on call at a company, and was also self-employed
 - her total monthly income was \$1,874.50
- telephone conversation, February 21, 2017: appellant stated that there were no changes to her circumstances as reported on July 28, 2016, and asked for the subsidy as a single parent with no shared custody and no child support
- telephone conversation August 20, 2017: appellant stated:
 - the child would attend daycare at location #2, where the child's father lived
 - the appellant did not have an address at location #2, but would stay with the child's father or in a tent
 - the appellant was looking for work at location #2 and therefore the child needed to be in daycare
- telephone conversation October 26, 2017: appellant stated:
 - as of November 1, 2017, the appellant would be returning to location #1 as the child's father would not be working at location #2 any more
 - her income was \$0
- Child Care Subsidy Application dated October 26, 2017 (received by the CCSSC November 3, 2017): appellant requested subsidy as a single parent with no shared custody, and advised the child has special needs
- telephone conversation July 4, 2018: appellant stated:
 - she did not have shared custody and did not receive spousal support
 - she did not receive a salary from the employer, but they paid her expenses
- Affordable Child Care Benefit ("ACCB") application dated September 13, 2018: appellant stated she was a single parent
- ACCB renewal application dated June 27, 2019: appellant stated:
 - she was a single parent
 - she needed child care because she was looking for work, enrolled in an employment program, and had a medical condition
- subsidy application forms completed by the appellant since August 1, 2015: appellant lists address #1 as her "home address" until September 13, 2018. Beginning July 26, 2016, the appellant lists address #2 as her mailing address, and as her home address after September 13, 2018.

The Verification and Audit Unit began a review of the appellant's file, which included email communication with the appellant on August 21, 2020. On September 30, 2020, the Unit recommended that the appellant's Benefit Plan be cancelled until H was added to the Plan as spouse.

ICBC Address History:

Insurance Corporation of British Columbia (“ICBC”) records show the following addresses for the appellant:

- up to December 6, 2016, address #1 in location #1
- December 6, 2016 to present, address #2 in location #3

Insurance Corporation of British Columbia (“ICBC”) records show the following addresses recorded for H:

- Up to May 4, 2016, address #3 in location #4
- May 4, 2016 – August 28, 2019, address #2 in location #3
- August 28, 2019 – August 23, 2020, address #4 in location #5
- August 23, 2020 to present, address #5 in location #5

ICBC vehicle owner’s certificate shows a vehicle registered in H’s name, at address #5 in location #5, with a date stamp of August 4, 2020.

Appellant provided a copy of H’s driver’s licence issued May 10, 2018, with an address sticker added on the front showing address #4.

Ministry of Health Report

Ministry of Health records show the following addresses:

- for the appellant:
 - up to August 28, 2017, address #1 in location #1
 - August 28, 2017 to present, address #2 in location #3
- For H:
 - Until November 6, 2016, address #3 in location #4
 - November 7, 2016 to August 24, 2020, address #2 in location #3
 - August 25, 2020 to present, address #5 in location #5

Ministry of Health records list the appellant as “spouse” on H’s Medical Services Plan account from March 1, 2019 to October 1, 2020. H delivered an MSP account change form dated September 10, 2020, requesting removal of the appellant as spouse from the account, and registering a change of address to address #5.

In an email to the Verification and Audit Officer (“VAO”) dated September 10, 2020, the appellant stated that she and H were trying to contact MSP to ask “that they correct the merging of the accounts that they only recently initiated on their own volition.” In a further email to the VAO on the same date, the appellant stated that “MSP has received the documentations [sic] to unlink my MSP account from [H’s] and restore my original account with [the child] on the plan.” The appellant provided a copy of a letter to MSP dated August 25, 2020, signed by the appellant and H, asking that the MSP accounts of the appellant and H be ‘unlinked’ “as we do not live together and should not be defined as spousal.”

Equifax Credit Report

Equifax credit report shows the following addresses:

- for the appellant:
 - until January 2017, address #1 in location #1
 - January 2017 to present, address #2 in location #3
- for H:
 - until May 2016, address #6 in location #4
 - May 2016 to present, address #2 in location #3

Care Provider Registration Records

The appellant completed registration forms at each of the child's care providers, and gave the following information:

- Care Provider #1: July 17, 2017, "home address" for both appellant and H is address #2; in answer to "Person(s) with whom the child lives" the appellant answered "Both parents but primarily mother"
- Care Provider #2, in location #2: August 1, 2017, appellant at address #2, H's address "as above & varies on [location #2]"
- Care Provider #3: April 20, 2018, child's home address is address #2, child lives with both appellant and H
- Care Provider #4: July 6, 2019, child lives with appellant, does not state an address for H, and the home contact number is the same for both the appellant and H; the appellant writes "the [other language] exposure with other children being an only child, my partner [and] I are the only two people who speak [the other language] to him."
- Care Provider #5, in location #5: April 14, 2020, appellant lives at address #2, H lives at address #7 in location #5
 - attendance sign in forms for Child Care Provider #5 show the child being dropped off and picked up by either the appellant or H on weekdays between April 15, 2020, and May 7, 2020.

BC Assessment Report

The report for address #2, dated August 30, 2019, shows that H owns and lives at address #2.

Statement from Owner of address #1

In an email to the VAO dated September 9, 2019, the owner of address #1 stated that the appellant "ceased residency" at address #1 on December 30, 2016, and during her tenancy she was the only person listed on the tenancy agreement. The owner also stated, "Near the end of [the appellant's] time, there were multiple unknown people seen coming and going from the rental unit as [the appellant] was renting the unit out on a short term basis on Airbnb."

Statement from Social Worker, May 13, 2020

In a written statement to the VAO dated May 13, 2020, a social worker with the Child Protection Services Branch of the Ministry of Children and Family Development (“MCFD”) advised that the appellant had “open involvement” with MCFD on the following dates:

- March 31, 2016 – June 6, 2016
- November 8, 2016 – November 13, 2016
- July 6, 2017 – October 21, 2017
- August 2, 2019 – present

The social worker stated:

- Between March 31 – June 6, 2016, “it appeared that [the appellant and H were in a relationship]” and the appellant and H “reported they recently bought [a residence] in [location #3] “for the family to live in together.”
- It appeared that the appellant and H were in a relationship when MCFD was involved between July 6, 2017, and October 21, 2017.
- During that time, the appellant reported that:
 - “she and her family” had relocated to location #2 in June 2017 because H had started a full-time job there; and
 - the appellant was still working in location #3 periodically and used childcare in both location #2 and location #3.
- On November 15, 2019, H “confirmed he and the appellant are in a relationship. [H] reported he works on a 4 days on, 3 days off schedule. [H] stated that he spends his 4 days working in [location #5] and then he goes back to his home in [location #3] for his 3 days off. [H] reported he goes home for a visit with his family every week.”
- On May 1, 2020, it was reported that the appellant and her child had been living in location #5 with H for approximately one month.

During the time periods noted above, the appellant’s addresses were reported or identified to MCFD as follows:

- March 31, 2016 – June 6, 2016: address #1
- November 8, 2016 – November 13, 2016: address #2
- July 6, 2017 – October 21, 2017: address #2 and address #7 at location #2
- August 2, 2019 – present: address #2

In an email to the VAO on September 18, 2020, a second social worker stated that MCFD had no current involvement with the appellant since August 13, 2020, but that “as of June 30, 2020, [the appellant and H] were reportedly in a relationship with one another and the appellant was spending time in [location #5] and [location #3]. However, it is unclear from the documentation what was their living arrangement.”

Statement from Owner of address #8 in location #2

The owner of address #8 told the VAO that the appellant and H were living together at address #8 while it was rented.

Email from the Appellant, September 10, 2020

The appellant stated in an email to the VAO, on September 10, 2020, that she was a tenant at address #2, but she did not have a tenancy agreement with the owner because the Strata Bylaws prohibited the suite from being rented.

Strata Property Act, Form K, "Notice of Tenant's Responsibilities"

The appellant gave the VAO a 1 page form naming the child and the appellant as tenants at address #2, for a tenancy commencing January 1, 2018. H is named as landlord, with a "mailing address" of address #2. The appellant's signature appears on the form; it is unclear if H has signed it, or if that is a smudge on the page.

Housing Registry Application, April 4, 2020

The appellant provided a copy of her online application for BC Housing, in which she stated:

- Her current residential address was address #2.
- The child was the other household member at that address.
- She moved in to her current accommodation, which she described as "short term vacation rental" and "bachelor", on January 2, 2020.
- She moved out of her previous accommodation at address #1 on January 1, 2018.
- Her rent was \$800 per month.
- Her landlord was H.
- "The landlord has advised me the suite is needed for vacation rental season for June 1, 2020 at the latest."

Residential Tenancy Agreements for H

The appellant provided a number of residential tenancy agreements showing H as the tenant, at various additional addresses at location #2, between September 1, 2017 and December 2, 2017, and a residential tenancy agreement at address #5 at location #5, commencing May 14, 2020. The tenancy agreements for addresses at location #2 were for fixed terms, of approximately 2 to 4 weeks, with some weekends excluded, and a daily rate for occupancy on "occasional days as available" after the end of the fixed term at each address. The agreements were not complete with signatures from the landlord and H.

Screenshots of Airbnb properties in various locations

The appellant advised that H used these short term rental properties on various dates in 2016, 2017 and 2018.

Transaction History from address #9 at location #6

The appellant provided a transaction history showing transactions by H at that location, described as "maintenance", "finance charge" and "communication", on various dates between 2015 and 2021.

Income information

The appellant provided copies of various T4 slips for H for taxation years 2016, 2017 and 2019 showing the following income:

- 2016: \$41,331.83
- 2017: \$27,191.26
- 2019: \$2550.70

The appellant also provided copies of cheques dated in 2016, payable to H, which the appellant identified as “employment cheques”. The appellant stated that “H has worked on call casual relief for most of [the child’s] upbringing” (email to VAO, August 21, 2020).

The appellant provided CRA Notices of Assessment for herself for taxation years 2016 through 2019 showing the following net income:

- 2016: \$960
- 2017: \$800
- 2018: \$1066
- 2019: \$0

The VAO asked for CRA Notices of Assessment for H for 2016 through 2019 and all T4s, Records of Employment, or pay statements for H from August 1, 2016 to August 31, 2018. On September 10, 2021, the appellant’s legal counsel advised the VAO by email that the appellant would not be providing further information.

Screenshots of maps labelled address #2

The appellant provided a screenshot that appears to be a map of the housing complex where address #2 is situated, with a circle, an oval and a rectangle superimposed on rectangles with building numbers on them. The circle and rectangle are adjacent, touching one building, and the oval appears to be over a separate building. A legend at the bottom of the screenshot indicates that the oval is “suites”, and the rectangle is “[the child’s] occupied suite.”

A second screenshot of that map shows the same rectangle, with one blue oval adjacent to the rectangle and a second oval in a separate building. In an email to the VAO dated September 10, 2021, the appellant stated that the second map showed “the secondary suite for [address #2] used when alternate accommodation for a caregiver or parent. This address allows additional rooms and suites to be used.” In a second email on the same date, the appellant states that “the unit shares a wall but is completely separate allowing carers or any family to remain overnight.”

Photos of the interior of a residential unit

The appellant provided exterior photographs of address #2 and photographs of the interior of a dwelling unit.

Letter from the owner of address #9 at location #6, September 1, 2021

The owner stated that the child and H “his caregiver/parent” had used a suite at that address since June 1, 2015.

Child Care Subsidy Overpayment Calculation:

The Verification and Audit Unit (“VAU”) provided a detailed Child Care Subsidy Overpayment Calculation showing an overpayment of \$20,358.26.

Additional Evidence

On the morning of the day of the hearing, the Tribunal received a 129 page submission from the appellant, some of which appeared to be duplicates of documents contained in the appeal record, which the appellant said she had reorganized. The Tribunal also received a 3 page submission and a 1 page submission from the appellant.

The appellant indicated that the only new documents in all 3 submissions were receipts for fuel, meals, transportation, and accommodation. The receipts, not all of which are legible, show various dates and vendors at different locations in 2018, 2019 and 2020.

The submission also included printouts titled “Ledger” which the appellant said were for separate storage units she and H each rented. One ledger shows that the appellant made monthly payments for a unit from July 2016 to December 2018. The other shows that the H made monthly payments for a unit from August 2016 to June 2018.

At the hearing, the appellant’s legal advocate stated:

- When H lived at location #2, he spent no significant time with appellant or the child.
- The appellant had a lease agreement at address #1 between August 1, 2016 and December 31, 2017, and H was not named as a tenant in that agreement; the appellant then moved to address #2.
- H had his own residence at address #2 during that time.
- When the appellant moved to address #2, H travelled for work and visited the appellant and the child at address #2 but did not reside with them.
- Both H and the appellant had separate storage for their possessions and did not share access to the rented storage units.
- The appellant wanted a separate suite for a caregiver but in the end the cost and the child’s special needs meant that, although the appellant tried to work, she had to be the primary caregiver.
- Address #2 has a separate suite with a separate entrance, shown in the photos, for a caretaker for the child and so H could come and visit; they also rented it on Airbnb until the strata passed bylaws prohibiting short term rentals.
- Between January and December 2018 H’s T4s show that he was at location #2, and in September 2018 he was receiving Employment Insurance (“EI”) benefits; if there is any overpayment it should only be from January to December 2018.
- H used address #2 as a mailing address and stayed in the self-contained suite at address #2 (which has no separate unit number) when he visited the child.

- The appellant brought the child to location #2 for 3 months and 15 days, between July 6 and October 21, 2017 so that H could have access; when they were at address #8 at location #2, they were in a large single family home with different areas.
- The child was young, and they did not want to upset him, so they did not tell the child they were separated, but “to all intents and purposes” they were.
- The appellant and H do not have any joint bank accounts.
- The appellant does not have access to H’s information because they are not a couple.
- The appellant and H are co-parenting and raising a child together, but they have separate and independent lives.
- Picking up the child from daycare at childcare provider #5 at location #5 shows only that they were co-parenting; they were in contact to co-parent during Covid.

The appellant stated:

- H offered the appellant his sperm so she could have a child but otherwise he was not involved.
- H used address #2 as a mailing address, and the mail box is accessible from the street.
- Address #2 was a 3 bedroom unit, with a separate, segregated suite, and the appellant would sometimes rent out address #2 when she was away, so that H had some income to offset the expenses of the unit.
- When H visited at address #2, he would stay in the separate suite.
- She and H put their personal effects in storage to create a neutral environment for the child and create an off-site space for Early Childhood Education therapists to meet with the child.
- She disagreed with her legal advocate’s statement that H and the appellant were living together as a couple between January and October 2018; the appellant said that the father was not employed in September and October 2018, and he took leave to support the child with special needs; H received EI benefits during that time. The appellant and H kept the child in child care for those 2 months because H was either looking for work or on parental leave and they wanted to keep continuous care for the child. The appellant says that is the only time they might not have been eligible for the subsidy
- From 2015 to now, she and H have not had a spousal relationship; H fathered the child and agreed to provide housing at address #2 in exchange for the appellant not making a legal claim against him. The property has a separate suite, it was purchased with the intention that H and caregivers could live in the separate suite.
- Some ferry receipts show 2 adults and a child travelling because the appellant would travel with her parent, or she would hire an Early Childhood Education worker to come with her because she was busy, and it was hard to find occasional child care.
- MSP joined the 2 accounts on its own initiative and the appellant did not know they had done that; she was still paying premiums on a separate account and asked to be removed from H’s account as soon as she was aware that they had added her to H’s account.

Additional Evidence:

The ministry did not object to the additional evidence presented by the appellant in the additional submissions or in oral evidence at the hearing.

The receipts for fuel, meals, transportation and accommodation contained in the appellant's 3 written submissions received the day of the hearing show transactions in different locations on various dates in 2018, 2019 and 2020, and are submitted in support of the appellant's argument that she and H were living in different locations. Therefore, the panel finds that those receipts are admissible under section 22(4) of the Employment and Assistance Act.

At the end of the hearing, the legal advocate asked if the appellant could provide further written submissions later, if she thought of anything else she wanted to add. The panel confirmed that the appellant had no further submissions to make before the hearing ended, and advised the appellant and the legal advocate that, as the hearing date had been set for some time and the appellant had ample time to prepare, the hearing was concluded, and no further submissions would be accepted.

During the hearing, the legal advocate appeared to be reading submissions from a written document, and referred to documents by "Exhibit Number", rather than by the page number in the appeal record. The panel asked the legal advocate to provide a written copy of the submissions they read from at the hearing, because documents are not marked by exhibit number, and the panel needed to be able to cross-reference the documents with the appeal record. After the hearing, the legal advocate sent the Tribunal a copy of a document that purported to be those submissions. On review, the document appears to be written by the appellant, or at least it appears in letter format over her name. However, it does include an Exhibit List.

The panel having said explicitly that no further written submissions would be accepted, and only requesting a copy of the document from which the lawyer was reading to have the list of "Exhibits" to which the lawyer referred, the panel has only referred to the Exhibit List in the document provided and has not referred to the rest of the document.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision that determined the appellant was ineligible to receive the subsidy from August 1, 2016 to August 31, 2020, resulting in an overpayment of \$20,358.26, was reasonably supported by the evidence, or was a reasonable application of the legislation in the appellant's circumstances.

The issues raised in the parties' submissions are:

1. Was the ministry reasonable in its determination that the appellant and H resided together in a marriage-like relationship, as defined by the CCSR, between August 1, 2016 and August 31, 2020?
2. Was the ministry reasonable in its determination that, having found that H was the appellant's spouse, it could not determine eligibility based on the information it had about the family's need for care and income?
3. If the appellant was otherwise ineligible for the subsidy, can the ministry waive repayment because the appellant had financial need for the subsidy to benefit a child with special needs?

Legislation:

Child Care Subsidies are paid under the CCSA, for eligible applicants. Eligibility requirements are set out in the CCSA and the CCSR.

Under the CCSA section 5(2) and the CCSR section 14, a person who is receiving the subsidy must notify the minister of any change in circumstances affecting their eligibility and must do so as soon as possible after the change occurs.

To determine eligibility, the minister must determine the "family's adjusted annual income" as calculated under the CCSA section 9.

Appellant's Position:

The appellant maintains that she was a single parent during the whole period in question, between August 1, 2016 and August 31, 2020. She denies that she and H resided together in a marriage-like relationship during that time. She points to the documents and government records that show H's addresses in different locations during those years. The appellant says that, in contrast, her address is recorded as address #1 until December 2017 and address #2 thereafter. She says that H's other residences were short term tenancies and Airbnb rentals because his employment positions were short term and on-call. She also points out that ICBC and MSP records show that H had long term residences other than address #2.

She also points to the documents that have only her name as a sole resident, such as the BC Housing application and the lease for address #1, and the tenancy agreements in various

locations that only show H's name as tenant on the lease, as evidence that they did not live together. The appellant argues that the various meal, fuel, transportation, and accommodation receipts show that she and H were in different locations in the years shown on the receipts, which also shows that they were not living together. The appellant says that she and H are co-parenting the child, and if H visited the child at address #2, he would stay in the separate suite on the lower floor. The appellant and her lawyer argue that the ministry did not consider all the documents in making its decision.

In the alternative, the appellant says that there may have been a time when the appellant and H lived together, but it was only for 2 months in September and October 2018 when H was receiving Employment Insurance ("EI") benefits as he helped to care for the child. The appellant points out that this time is less than 3 months, and therefore argues that it is not long enough to meet the definition of "spouse" under the CSSR.

The appellant's legal advocate said at the hearing that the appellant and H may have lived together from January to December 2018, when the T4s show his address as address #2, and if the appellant must repay the subsidy, it should only be for the amount she received during that time.

The appellant also argues that the ministry has failed to consider that H's annual income was so low that the appellant would have qualified to receive the subsidy even his income was included in the calculation of the annual family income. The legal advocate submits that, while there is no evidence of H's income from EI benefits that H received in 2018, the panel can take notice that the amounts paid for EI benefits are not sufficient to meet the costs of living.

In the further alternative, the legal advocate submits that, if the appellant was not eligible to receive the subsidy during the period in question, nevertheless the appellant needed the subsidy to provide child care for a child with special needs and therefore the ministry should not require repayment of the subsidy.

The appellant also argues that the ministry violated her "Charter and constitutional rights" to access to child care, and the appellant also stated that she has filed a formal complaint with the Human Rights Tribunal. The legal advocate specified that the complaint related to section 7 of the Charter of Rights and Freedoms, and a lack of procedural fairness in the ministry decision.

Ministry's Position:

The ministry says that the appellant was not eligible to receive \$20,358.26 in Child Care Subsidy which she received for the period August 1, 2016 to August 31, 2020, because she was in a marriage-like relationship with H during that time, while receiving the subsidy as a single parent. The ministry maintains that information about H's income, and the two parent family's need for child care, was not disclosed to the ministry and were not taken into account when determining eligibility for the subsidy. Therefore, the ministry says that the appellant was ineligible for the subsidy she received during that time and is liable to repay that amount.

The ministry says that the appellant and H resided together for 3 consecutive months or 9 out of the previous 12 months for the subsidy periods between August 1, 2016 and August 31, 2020. The ministry says that “resides with” means sharing the same living space and includes a person who ordinarily resides there but is away from home for periods of time for employment. The ministry notes that, although H worked away from home, the appellant also accompanied him frequently, and they shared a common primary address.

The ministry refers to the CCSR and says that the appellant and H showed financial dependence or interdependence consistent with a marriage-like relationship because they shared benefits, including Medical Services Plan (“MSP”) benefits, until September 2020. The ministry says that the appellant and H showed social and familial interdependence in their child care arrangement and their school contact information, as well as presenting themselves as a couple when communicating with social workers.

The ministry says that, to qualify for the subsidy, a two parent family must need child care for one of the reasons listed in the CCSR section 3(2)(b). The ministry says it could not determine an eligible reason for care for the appellant and H because it did not have any information about H’s employment schedule, such as days and hours worked. The ministry also says that the appellant did not provide income verification documents for H, as requested by the VAO, and without an accurate representation of income, the ministry could not consider H’s income in determining the overpayment.

Panel Reasons:

The panel reviewed and considered all of the documentary evidence contained in the appeal record and all further documentary evidence submitted to the Tribunal prior to the hearing of this appeal and admitted as additional evidence. Given the volume of documentary evidence before the Tribunal, these reasons for decision summarize that evidence broadly and do not individually refer to every document submitted. Although the panel refers to some documents directly to explain why the panel reached the decision it has, every document has been looked at and considered in the making of this decision, regardless of whether it has been specifically referenced.

Under the CCSA and the CCSR, an applicant is eligible for the subsidy if they meet the requirements in the legislation, which include:

- the child care is needed for one of the reasons set out in section 3 of the CCSR;
- the family’s adjusted annual income is less than the amounts set out in section 7 of the CCSR.

Determination of both the need for child care and the adjusted family income must take into account the activities and the income of both parents in a two parent family.

Marriage-Like Relationship:

Legislation:

A family includes both an applicant and their spouse. Before September 1, 2018, CCSR section 1(1) defined “spouse” as “anyone who (a) is married to the parent, or (b) is living with the parent in a marriage like relationship”.

The definition of “spouse” in section 1(1) was amended on September 1, 2018, to read as follows:

"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....

Ministry Decision:

In the reconsideration decision, the ministry determined that H was a “spouse” within the meaning of the legislation. The ministry determined that the appellant and H “were residing together and had a financial, social and familial interdependence, consistent with a marriage-like relationship.” The ministry said that “resides with” means sharing the same living space and includes a person who ordinarily resides with someone but is away from home for periods of time for employment, as H was. The ministry noted that the appellant frequently accompanied H when he worked away from their shared primary residence at address #2.

In determining financial dependence or interdependence, the ministry determined that the appellant and H “shared benefits, such as your MSP until September 2020.” The ministry found that the appellant and H demonstrated a “social and familial interdependence consistent with a marriage-like relationship” because of their child care arrangement and

recording of daycare contact information. The ministry also noted that the appellant and H presented themselves as a couple when communicating with social workers.

Panel Decision:

Applying the definition for “spouse” as it changed on September 1, 2018, for the period from August 1, 2016 to August 31, 2018, the ministry had to determine whether the H lived with the appellant in a marriage-like relationship. From September 1, 2018 onwards, the ministry had to determine whether H:

- resided with the appellant for at least the 3 previous consecutive months or 9 out of 12 months, and
- had a relationship that the minister was satisfied demonstrated
 - financial dependence or interdependence, and
 - social and familial interdependenceconsistent with a marriage-like relationship.

Living Together/Resided With

The appellant and H recorded their addresses in various places at various times, and H entered into several short term tenancy agreements, as set out in the Summary of Facts. The panel finds that the ministry was reasonable, however, in determining that the appellant and H resided together between August 1, 2016 and August 31, 2020.

The information about addresses in the documentary evidence is inconsistent and contradictory in many respects. The panel will not list every instance, but notes, for example, that the appellant has indicated on different records that she moved out of address #1 and began living at address #2 on December 31, 2016, August 28, 2017, January 1, 2018 or September 13, 2018. She and H also told the social worker sometime between March 31, 2016 and June 6, 2016 that they had recently bought the residence at address #2 for the family to live in, and the appellant apparently began using address #2 as her mailing address as of July 26, 2016. In light of the statement to the social worker, the appellant’s change in mailing address, the statement from the landlord at address #1 that the appellant’s tenancy ended on December 31, 2016 and that address #1 was being used as an Airbnb rental towards the end of the appellant’s tenancy, and the appellant’s evidence that she placed her personal possessions in storage in July 2016, the panel finds that the ministry was reasonable to conclude that the appellant was residing at address #2 by August 1, 2016.

H has also recorded various residential addresses for different purposes between August 1, 2016 and August 31, 2020. As well, H entered into different short term tenancy agreements during that time. However, the panel notes that H changed his address to address #2 on ICBC records effective May 4, 2016. Taken in combination with the timing of the statement to the social worker about the purchase of a townhouse “for the family to live in”, the panel finds that the evidence establishes that H was also residing at address #2 by August 1, 2016.

The panel finds that, where H recorded addresses at locations #2, #5, #6 and #7, and stayed at Airbnb's for short periods of time, those were temporary secondary residences because he travelled for his employment. Where H has changed his address to address #4 at location #5 on his driver's licence (date of change unknown) and address #5 at location #5 on his vehicle registration (date of change unknown, ICBC stamp dated August 4, 2020), the panel finds that the address change does not establish primary residence at location #5 before August 31, 2020, as there can be other reasons for changing those addresses, such as different vehicle insurance premiums for vehicles depending on the territory where they are registered. The panel is not making a finding about the reason for the address change, only noting that the change of address with ICBC does not establish that H's primary residence was in location #5. The panel has considered that evidence in light of the whole of the evidence about the appellant and H's residences and living arrangements, and places greater weight on the appellant and H's statements to the social worker, and the addresses recorded when there was no apparent possibility of financial benefit resulting from the information.

The appellant sometimes travelled with the child and stayed with H wherever he was working, but they both continued to maintain their primary address at address #2. The owner of address #4 at location #2 stated that the appellant and H lived together at address #4. Whether the single family house was large enough that they could stay in separate rooms, as the appellant suggested, does not take away from the fact that they were living in the same house.

The appellant suggested at some points in the hearing that H did live at address #2 when he was not working elsewhere but stayed in what she describes as a "bachelor suite" on the lower floor of address #2. The photos that the appellant submitted in support of her argument show: a bathroom; a room with a sink and cupboards, a bar fridge and microwave on a stand, a chair, a stool and a couch; a staircase to an upper floor; and a room with a bed. No personal effects are evident in the photos. The photos and the map do not match the appellant's description of the bachelor suite. The panel cannot confirm from the photos that the area is self-contained or closed off from the rest of the residence, or even that the photos show part of address #2. There are no photos of the rest of the interior of address #2, and the map seems to identify a suite in a separate building. The appellant's evidence at the hearing did not indicate that H stayed in a suite in a separate building. The panel finds that the photos do not establish that the appellant and H lived independently in separate, self-contained accommodations at the same address.

The panel found the appellant's evidence about separate accommodation to be confusing and contradictory, as she also stated that the "bachelor suite" was maintained for occupancy by caregivers or other family members, and that it was rented on Airbnb when they were not in residence. She and her legal advocate also stated that, either in September and October 2018 (appellant's statement) or from January to December 2018 (lawyer's statement), the appellant and H did reside together and not in separate accommodation, at address #2, when H was unemployed, receiving EI benefits, and caring for his special needs child.

The panel also notes the addresses that the appellant listed for herself and H in the registration records of the child care providers. The appellant listed address #2 as the residential address for both H and herself in the registration records at child care providers

#1, #2, #3 and #5. For child care provider #2, which is in location #2, the appellant provides additional addresses for H at location #2. The registration record from child care provider #4 does not give an address for H, but the appellant listed the same home phone number for H and herself. Child care provider #5 is situated in location #5, and their registration records show an address for H in location #5, but their records also show that the appellant and H were both picking up and dropping off the child – usually one parent would drop off and the other would pick up, on the same day, which indicates that they both were living in location #5.

The appellant provided copies of many individual receipts for purchases of fuel, food, transportation, and accommodation. She argued that the receipts show that she and H were in different locations on the dates and years on the receipts. As noted above, many of the receipts were at least partly illegible, and except for some of the accommodation receipts, the receipts do not identify who made the purchases. The accommodation receipts do not establish who may have been staying at the accommodation with H or the appellant, or the reason for the stay, though the panel does note that some of H's hotel receipts indicate that accommodation is for 2 adults and 1 child. It is also not always possible to identify the location where the receipts were issued. The panel places no weight on the receipts submitted to establish that the appellant and H were not living together during the years in question.

Considering the whole of the evidence about the addresses occupied by the appellant and H, and the statements and information given to the social workers and child care providers about their residence, the panel finds that the ministry's determination that the appellant and H were living together between August 1, 2016 and August 31, 2020 was reasonably supported by the evidence.

Financial Dependence or Interdependence

The ministry determined that the appellant's relationship with H demonstrated financial dependence or interdependence because she and H shared benefits, such as MSP.

MSP coverage appears to be the only "benefit" that the appellant and H shared. However, the panel finds that there was financial dependence or interdependence because the appellant and the child lived in a residence owned by H and purchased for the purpose of providing a place for the appellant, H and the child to live together. While denying a marriage-like relationship, the appellant stated that H purchased address #2 for her and the child to live in, so that the appellant would not bring any legal claim against H (presumably for child support). The appellant claimed to be a tenant of the property but there is no corroborating or supporting evidence to show any payments from the appellant to H. Rather, the appellant stated that they rented address #2 to short term tenants on Airbnb when they were not living there, so that H would have some income to offset the costs of maintaining the property, which suggests a joint enterprise to generate income from the property (if a tenant rents out their residence on Airbnb, they would not normally remit the rent to the owner to offset his expenses).

The appellant has indicated in the BC Housing application that she was living at address #2 as a tenant, paying \$800/month rent. She names H as the landlord, and states that "the

landlord has advised me the suite is needed for vacation rental season for June 1, 2020 at the latest". (The panel notes that the appellant stated that the strata owners had passed a bylaw in 2019 prohibiting short term rentals at the development.) The appellant describes the accommodation as a bachelor suite that she moved into on January 2, 2020. She indicates that she moved out of address #1 on January 1, 2018. At the hearing, she explained the discrepancies on the BC Housing form by suggesting that she was actually living elsewhere, in an Airbnb, due to Covid, when she filled out the BC Housing form, and that was the residence that she was going to have to vacate by June 1, 2020. (If, as the appellant has maintained, address #2 contained a separate bachelor suite, it is unclear to the panel why the appellant would have to leave address #2 and live in a bachelor suite at a different address.) At the same time, the appellant advised that she continued to live at address #2 after June 1, 2020 because BC Housing had not found her alternate accommodation.

The panel finds that H provided accommodation for the appellant and the child because of their relationship, and the evidence does not establish that the appellant was a tenant paying rent to live at address #2. Later, the appellant and H shared MSP benefits. The panel finds that the ministry was reasonable in determining that the appellant and H met the requirement of financial dependence or interdependence.

Social and Familial Interdependence

The ministry determined that the appellant and H demonstrated social and familial interdependence because of their child care arrangement and child care centre contact information. The ministry also noted that they presented themselves as a couple when communicating with the social worker.

The appellant again gave contradictory evidence about her relationship with H. At the hearing she stated that H had donated sperm so that she could have a child, and that he was "not that involved" thereafter. At the same time, she said that she and H were co-parenting the child, and that she had travelled to location #2 for over 3 months in 2017 so that H could spend time with the child. Pick up and drop off records of the child care provider at location #2 show that she and H each took the child to and from the child care centre.

The panel places significant weight on the statements the appellant and H made to others about their relationship. For example:

- At some point between March 31 and June 6, 2016, the appellant and H reported to a social worker that they had bought a townhome in location #3 for the family to live together;
- Between July 6 and October 21, 2017, it appeared to the social worker that the appellant and H were in a relationship, and the appellant stated that she and her family had relocated to location #2 in June 2017;
- On November 15, 2019, H stated to the social worker that he and the appellant were in a relationship, that he worked 4 days in location #5 and then returned to his home in location #3 to visit his family for his 3 days off;

- At child care provider #4, the appellant referred to H as her partner, stating on the form that “my partner and I are the only two people who speak [the other language] to [the child]”.
- To the social worker, the appellant stated that she and the child had relocated to location #2 because H had started a full-time job there;
- The appellant is listed as “spouse” on H’s MSP account as of March 1, 2019.

With respect to the MSP account, the panel rejects as unlikely the appellant’s explanation, that MSP, of its own initiative, added her to H’s account as spouse because they shared the same address, while continuing to list her and the child on her separate MSP account, for which she continued to pay separate premiums. The panel finds it unlikely that H would not have noticed that the appellant was added to his account, or that he would not have corrected the records before the VAU investigation began if he did not regard the appellant as his spouse.

Marriage-like Relationship

“Marriage-like relationship” is not defined in the legislation, although the statute as amended on September 1, 2018 adds the requirements of residency and financial, social and familial dependence or interdependence that must be consistent with such a relationship. Having found that the appellant and H resided together, that their relationship demonstrated financial dependence or interdependence as well as social and familial interdependence, the panel also finds that those conditions were consistent with a marriage-like relationship.

In *Jones v Davidson, 2022 BCCA 31*, the Court of Appeal noted that “there can be no checklist for determining the existence of such a relationship,” and “spousal relationships are many and varied.” The Court concluded:

“...the characterization of a relationship as marriage like is contextual. It involves the subjective intentions of the parties and objective evidence, and the subjective intentions, where there is evidence of such, may be tested by reference to the objective evidence. In turn, that objective evidence may address a wide assortment of characteristics or indicia for which there is no definitive classification system to determine the ultimate characterization of the relationship. That answer must be given by the judge, understanding the concept and fully considering the evidence.”

Having found that the appellant and H resided together, though H lived in other locations temporarily for employment, and that they demonstrated financial dependence or interdependence, as well as social and familial interdependence, the panel also finds that those conditions were consistent with a marriage-like relationship. The appellant and H were raising a child together, sharing a home and representing to social workers and child care providers that they were a family.

The panel also notes that the appellant did not call H to give evidence on the appeal, about the nature of his relationship with the appellant. H would be the obvious person to corroborate the appellant’s evidence that they were not living together in a marriage-like relationship

between August 1, 2016 and August 31, 2020. It appears that H provided personal documents to the appellant for the VAU investigation, the reconsideration and this appeal, so it is reasonable to conclude that he was aware of the proceedings and apparently was willing to cooperate with the appellant.

The panel does have evidence of statements made by H in the time before the VAU investigation. In 2016, H advised the social worker that he and the appellant had recently bought a home for the family to live in. In November, 2019, H told the social worker that he worked 4 days in location #5 and then returned to his home in location #3 every week for his 3 days off, to see his family. The panel also notes that the appellant appears as 'spouse' on H's MSP account in 2019, although H joined with the appellant in a letter dated August 25, 2020, asking that the appellant be removed from the account on August 25, 2020, stating that they did not live together, and the appellant was not H's spouse. H submitted the MSP form requesting the change on September 10, 2020. The panel gives less weight to the statement in the letter, because the VAU investigation into the appellant's entitlement to the subsidy had already begun.

Considering the whole of the evidence, the panel finds that the ministry's determination that the relationship between the appellant and H was "marriage-like" between August 1, 2016 and August 31, 2020 was reasonably supported by the evidence.

Notification of Change in Circumstances

The appellant first applied for the subsidy in 2015, on the basis that she was a single parent with no shared custody arrangement, receiving no child support. She continued to apply to renew the subsidy, advising the CCSSC each time that she continued to be a single parent with no shared custody arrangement, receiving no child support. Each time, the subsidy was renewed on that basis and the appellant continued to receive the subsidy for the period in issue on this appeal, between August 1, 2016, and August 31, 2020.

Under the CCSA section 5(2) and the CCSR section 14, a person to or for whom a subsidy is paid must notify the minister of any change in circumstances affecting their eligibility under the CCSA. Notification must be in writing or by telephone, to an employee at the CCSSC, as soon as possible after the change in circumstances occurs. The panel finds that the ministry was reasonable in its determination that the appellant failed to notify the ministry of a change from a single parent to a two parent family, which had occurred by August 1, 2016.

Eligibility as Two Parent Family

The panel has found that H met the definition of "spouse" in the CCSR, and therefore, under the CCSR, the minister could only pay the subsidy if child care was needed for one of the reasons set out in section 3(2)(b) for a two parent family. Further, section 7(1) sets out the income test for eligibility, based on the family's adjusted annual income, which would include both parents in a two parent family. Under the CCSR, an applicant must provide information and authorizations for themselves and their spouse, so that the minister can determine eligibility.

The appellant argues that, even if H was a spouse under the CCSA, she would still have been eligible for the subsidy. The ministry determined that, although the various T4s and cheques showed that H worked several different jobs, it did not have any information about H's schedule, such as hours and days worked, to determine whether child care was needed for one of the reasons set out in CCSR section 3(2)(b). The panel finds that the ministry's finding, that it could not determine if the appellant demonstrated a need for child care under the legislation, was reasonably supported by the evidence and was a reasonable application of the legislation in the appellant's circumstances.

With respect to the income test, the ministry determined that the various T4 slips for H that the appellant provided were not sufficient to confirm H's total income during the years in question. The VAO had requested Notices of Assessment for 2016 through 2020, but none were provided. Therefore, the ministry found that it could not consider H's income in determining whether there had been an overpayment. Notices of Assessment would confirm not only total employment income, but also total income from all sources, and thus allow the ministry to confirm the family's total annual income, which is not limited to income from employment. The panel finds that it was reasonable for the ministry to conclude that it could not determine H's total income without the documents requested, and therefore reasonable for the ministry not to consider H's income in determination of the overpayment.

Violation of Charter Rights

The appellant and the legal advocate alleged that the ministry process had violated the appellant's "Charter and constitutional rights". The lawyer specified that they referred to the Charter of Rights and Freedoms, section 7, Life, liberty and security of the person.

The Employment and Assistance Act, section 19.1, provides that section 44 of the Administrative Tribunals Act applies to the Employment and Assistance Appeal Tribunal. Section 44 of the Administrative Tribunals Act provides that the tribunal is without jurisdiction over constitutional questions. The panel confirms that it has no jurisdiction to consider the appellant's argument about violation of her constitutional and Charter rights.

Discretion to Forgive Overpayment

The legal advocate argued that, even if the appellant was not eligible for the subsidy, the ministry should consider that there was a financial need, and that the subsidy benefited a child with special needs. On that basis, the lawyer argued that the ministry should excuse any overpayment.

CSSA section 7(5) states that, if the subsidy is paid to or for a person who is not entitled to it, the minister's decision about the amount the person is liable to repay is not open to appeal. Therefore, the panel does not have jurisdiction to re-consider the amount of the overpayment.

Conclusion:

The panel finds that the ministry's reconsideration decision that found the appellant ineligible for the subsidy that she received for the period August 1, 2016 to August 31, 2020, resulting

in an overpayment of \$20,358.26, was reasonably supported by the evidence, and was a reasonable application of the legislation in the appellant's circumstances.

The panel confirms the reconsideration decision. The appellant is not successful in the appeal.

Schedule of Legislation

Child Care Subsidy Act

Child care subsidies

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

Information and verification

s. 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.

Overpayments, repayments and assignments

s. 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).

Child Care Subsidy Regulation

Definitions

s. 1(1) In this regulation:

Before September 1, 2018

"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;

As amended September 1, 2018

"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;

Circumstances in which subsidy may be provided

s. 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.
- (3) Repealed. [B.C. Reg. 57/2002, s. 2 (b).]
- (4) The restriction in subsection (1) (a) does not apply in respect of child care provided in a licensed preschool unless the child care is provided to a child enrolled in school.

How to apply for a subsidy

s. 4(1) To be eligible for a child care subsidy, a parent must

- (a) complete an application in the form required by the minister,

Before September 1, 2018:

- (b) supply the minister with the social insurance number of the parent and each adult dependant, and

As amended September 1, 2018:

- (b) supply the minister with the social insurance number of the parent and the parent's spouse, if any, and

- (c) supply the minister with proof of the identity of each member of the family and proof of eligibility for a child care subsidy.

(2) Only one parent in the family may apply for a child care subsidy.

Authorizations required (enacted September 1, 2018)

s. 4.1 (1) To be eligible for a child care subsidy for a child other than a child described in section 7 (2), an applicant and the applicant's spouse, if any, must supply the minister with authorizations for

- (a) the disclosure to the Canada Revenue Agency of the full name, birth date and social insurance number of the person,

(b) the disclosure by the Canada Revenue Agency of the personal information of the person that is relevant to the person's income, and that the minister needs for the purposes of sections 9 [*calculation of family's adjusted annual income*] and 9.1 [*income review*], for the 2 years previous to the current calendar year, in accordance with the MOU For Income Verification between the Canada Revenue Agency and the minister, regardless of whether the person completed an income tax return for those years, and

(c) the indirect collection by the minister of the information described in paragraph (b).

(2) To be eligible for a child care subsidy for a child other than a child described in section 7 (2),

(a) an applicant must supply the minister with authorizations for the disclosure to the applicant's spouse, if any, of personal information of the applicant used in determining the family's adjusted annual income, and

(b) an applicant's spouse, if any, must supply the minister with authorizations for the disclosure to the applicant of personal information of the applicant's spouse, if any, used in determining the family's adjusted annual income.

(3) To be eligible for a child care subsidy for a child, an applicant and the applicant's spouse, if any, must supply the minister with authorizations for

(a) the disclosure by a third party of the personal information of the person that the minister needs for the purpose of determining or auditing the applicant's eligibility for a child care subsidy, and

(b) the indirect collection by the minister of the information described in paragraph (a).

Income test

s. 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).

Amount of subsidy

s. 8 (1) In this section:

"full time child care" means child care for which the minister may pay a child care subsidy that is provided for the equivalent of at least 20 full days per month;

"full time subsidy amount", in relation to a child receiving part time child care, means the monthly child care subsidy determined in accordance with subsection (3), (4) or (5), as applicable, that would apply if the child were receiving full time child care;

"number of full days" means the number of full days per month for which the minister may pay a child care subsidy;

"number of half days" means the number of half days per month for which the minister may pay a child care subsidy;

"parent fee" in relation to a parent, means the fee the parent is charged by the applicable child care provider for child care for which the minister may pay a child care subsidy;

"part time child care" means child care for which the minister may pay a child care subsidy that is provided for less than the equivalent of 20 full days per month.

(2) For the purposes of applying the definitions of "full time child care" and "part time child care" in subsection (1), 2 half days are the equivalent of one full day.

(3) If a family's adjusted annual income is less than or equal to the following, the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving:

(a) \$45 000 for a child receiving child care in a licensed child care setting;

(b) \$39 000 for a child receiving child care in a registered licence-not-required child care setting;

(c) \$24 000 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).

(4) If a family's adjusted annual income exceeds the applicable amount under subsection (3) (a), (b) or (c), the monthly child care subsidy for a child receiving full time child care is the parent fee or the amount determined in accordance with the applicable formula in Schedule A, whichever is less, for the type of child care the child is receiving.

(5) Despite subsections (3) and (4), the monthly child care subsidy for a child described in section 7 (2) who is receiving full time child care is the parent fee or the amount set out in Column 3 of the applicable table in Schedule A, whichever is less, for the type of child care the child is receiving.

(6) If child care is provided through a Young Parent Program and the child care provider operating the Young Parent Program confirms, in the form specified by the minister, that the parent is participating in the Young Parent Program,

(a) despite subsections (3) and (4), the monthly child care subsidy for a child who is receiving full time child care provided through the Young Parent Program is \$1 500, and

(b) despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided through the Young Parent Program is the amount determined in accordance with the following formula:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times 1\,500$$

(7) The monthly child care subsidy for a child receiving part time child care is the parent fee or the amount determined in accordance with the following formula, whichever is less, for the type of child care the child is receiving:

$$\left[\frac{(\text{number of half days} \times 0.5) + \text{number of full days}}{20} \right] \times \text{full time subsidy amount}$$

(8) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care provided in a licensed preschool is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$\left[\frac{\text{number of half days}}{20} \right] \times \text{full time subsidy amount}$$

(9) Despite subsection (7), the monthly child care subsidy for a child receiving part time child care that is care surrounding school day is the parent fee or the amount determined in accordance with the following formula, whichever is less, for that type of child care:

$$(\text{number of half days} \times 0.83333) + \text{number of full days} \quad \times \text{full time subsidy amount}$$

(10) If the child care is arranged or recommended by staff delegated under the *Child, Family and Community Service Act*, after staff have

- (a) offered support services or agreements to the child and family under section 16 (2) (a) of that Act,
- (b) begun an assessment under section 16 (2) (b.1) of that Act, or
- (c) begun an investigation under section 16 (2) (c) of that Act,

the minister may pay any increase in the amount of the child care subsidy that the minister considers necessary to ensure that the child care is provided.

[en. B.C. Reg. 148/2018, App. 1, s. 6.]

Calculation of family's adjusted annual income

s. 9 (1) In this section, "previous year" means the year previous to the current calendar year.

(2) In relation to a child care subsidy that is to be determined based on a family's adjusted annual income, the minister must calculate the family's adjusted annual income as follows:

(a) by adding, for the applicant and the applicant's spouse, if any, the annual income for the person determined under subsection (3) or (4), as applicable;

(b) by deducting from the amount calculated under paragraph (a) any applicable amounts under subsection (5).

(3) For the purposes of subsection (2), the minister must calculate the annual income of the applicant and the applicant's spouse, if any, by

(a) determining the person's income for the previous year, or for the year before the previous year if a notice of assessment is not available for the person for the previous year, as

(i) the amount reported on line 150 of the person's notice of assessment if there has been no notice of reassessment for the applicable year, or

(ii) if there was a notice of reassessment for the person, the amount reported on line 150 of the notice of reassessment, and

(b) deducting from the income determined under paragraph (a) all amounts, if any, reported on line 145 of the applicable notice of assessment or notice of reassessment under paragraph (a).

(4) If a notice of assessment is not available for either of the 2 calendar years before the current year with respect to the applicant or the applicant's spouse, if any,

(a) the applicant may give to the minister a statement, in the form required by the minister, attesting to the applicant's or the applicant's spouse's, as applicable, total income from all sources except social assistance payments, stated in Canadian dollars, for the previous year, and

(b) on receiving income information satisfactory to the minister under paragraph (a), the minister may determine the annual income of the person based on that information.

(5) For the purposes of this section, the following deductions may be made, if applicable:

(a) \$0 for the first dependant in the family who is not a child with special needs;

(b) \$2 000 for each additional dependant in the family;

(c) \$3 000 for each child with special needs in the family.

Notifying the minister of change in circumstances

s. 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 Service Centre.

Schedule A

[en. B.C. Reg. 148/2018, App. 1, s. 12; am. B.C. Regs. 148/2019, ss. 4 to 7; 228/2021, ss. 6 and 7.]

Definition and interpretation

s. 1 (1) In this Schedule, "maximum benefit" means the amount set out in Column 3 of the applicable table for the type of child care for which a monthly child care subsidy is being determined.

(2) For the purposes of determining a monthly child care subsidy under this Schedule,

(a) the maximum benefit for a type of child care set out in Column 2 of a table in this Schedule applies on the first day of the month in which a child reaches the age of 19 months, 29 months and 37 months, as applicable, and

(b) if a child of school age is receiving a type of child care that is both within the meaning of care surrounding school day and the description of another type of child care, the maximum benefit for care surrounding school day applies.

Subsidy rates for licensed child care setting

s. 2 The monthly child care subsidy for a child receiving a type of child care provided in a licensed child care setting is to be determined in accordance with the formula in paragraph (a), (b) or (c), as applicable, and the table in this section:

(a) if a family's adjusted annual income is more than \$45 000 but less than or equal to \$60 000, the amount of child care subsidy is to be determined in accordance with the following formula:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 45\,000) \times 0.272}{15\,000} \right]$$

(b) if a family's adjusted annual income is more than \$60 000 but less than or equal to \$80 000, the amount of child care subsidy is to be determined in accordance with the following formula:

$$0.728 \times \text{maximum benefit}$$

(c) if a family's adjusted annual income is more than \$80 000 but less than \$111 000, the amount of child care subsidy is to be determined in accordance with the following formula:

$$(0.728 \times \text{maximum benefit}) \times \left[1 - \frac{(\text{family's adjusted annual income} - 80\,000)}{31\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in a Licensed Child Care Setting	Column 3 Maximum Benefit per Month
Group Child Care / Multi-Age Child Care / School Age Care on School Grounds			

1	G1	children under 19 months	\$1 250
2	G2	children 19 months and over but under 37 months	\$1 060
3	G3	children 37 months and over but who have not reached school age	\$550
4	G4	children of school age	\$415
Family Child Care / In-Home Multi-Age Child Care			
5	J1 – L	children under 19 months	\$1 000
6	J2 – L	children 19 months and over but under 37 months	\$1 000
7	J3 – L	children 37 months and over but who have not reached school age	\$550
8	J4 – L	children of school age	\$415
Item	Column 1 Care Code	Column 2 Type of Child Care Provided in a Licensed Child Care Setting	Column 3 Maximum Benefit per Month
Licensed Preschool			
9	N1	children 29 months and over but who have not reached school age or who have reached school age but who are not enrolled in school	\$225
Other			
10	L2	care surrounding school day	\$210

Subsidy rates for registered licence-not-required child care setting

s. 3 If a family's adjusted annual income is more than \$39 000 but less than \$85 000, the monthly child care subsidy for a child receiving a type of child care provided in a registered licence-not-required child care setting is to be determined in accordance with the following formula and the table in this section:

$$\text{maximum benefit x } \left[1 - \frac{(\text{family's adjusted annual income} - 39\,000)}{\text{}} \right]$$

46 000

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in a Registered Licence-Not-Required Child Care Setting	Column 3 Maximum Benefit per Month
1	R1	children under 19 months	\$600
2	R2	children 19 months and over but under 37 months	\$600
3	R3	children 37 months and over but who have not reached school age	\$550
4	R4	children of school age	\$415
5	L2	care surrounding school day	\$210

Subsidy rates for licence-not-required child care setting

s. 4 If a family's adjusted annual income is more than \$24 000 but less than \$70 000, the monthly child care subsidy for a child receiving a type of child care provided in a licence-not-required child care setting is to be determined in accordance with the following formula and the table in this section:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 24\,000)}{46\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in Licence-Not -Required Child Care Setting	Column 3 Maximum Benefit per Month
1	F1	children under 19 months	\$438
2	F2	children 19 months and over but under 37 months	\$404

3	F3	children 37 months and over	\$354
4	L2	care surrounding school day	\$210

Subsidy rates for child care provided in child's own home

s. 5 If a family's adjusted annual income is more than \$24 000 but less than \$70 000, the monthly child care subsidy for a child receiving a type of child care provided in the child's own home as described in section 2 (c) of the regulation is to be determined in accordance with the following formula and the table in this section:

$$\text{maximum benefit} \times \left[1 - \frac{(\text{family's adjusted annual income} - 24\,000)}{46\,000} \right]$$

Table of Maximum Benefits

Item	Column 1 Care Code	Column 2 Type of Child Care Provided in Child's Own Home	Column 3 Maximum Benefit per Month
1	H1	1st child under 19 months	\$394
2	H2	1st child 19 months and over	\$318
3	H3	2nd child under 19 months	\$198
4	H4	(a) 1st child of school age receiving care surrounding school day if another child in the family, who has not reached school age, is in care code H1 or H2 (b) 2nd child, unless the child is under 19 months, whether or not receiving care surrounding school day (c) each child in addition to the 1st or 2nd child, as applicable, whether or not receiving care surrounding school day	\$147
5	L2	care surrounding school day — 1st child of school age unless another child in the family, who has not reached school age, is in care code H1 or H2	\$210

Employment and Assistance Act

Application of Administrative Tribunals Act

s. 19.1 The following provisions of the Administrative Tribunals Act apply to the tribunal:

- (a) Part 1 [*Interpretation and Application*];
- (b) Part 2 [*Appointments*], except sections 7 (3) [*remuneration and benefits after expiry of term*] and 10 [*remuneration and benefits for members*];
- (c) Part 3 [*Clustering*];
- (d) section 30 [*tribunal duties*];
- (d.1) section 40 [*information admissible in tribunal proceedings*];
- (e) section 44 [*tribunal without jurisdiction over constitutional questions*];
- (f) section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];
- (g) Part 8 [*Immunities*];
- (h) section 58 [*standard of review with privative clause*];
- (i) section 59.1 [*surveys*];
- (j) section 59.2 [*reporting*];
- (k) section 60 (1) (g) to (i) and (2) [*power to make regulations*];
- (l) section 61 [*application of Freedom of Information and Protection of Privacy Act*].

Administrative Tribunals Act

Tribunal without jurisdiction over constitutional questions

s. 44 (1) The tribunal does not have jurisdiction over constitutional questions.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

APPEAL NUMBER 2022-0081

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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2022/08/19

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)
2022/08/19

Print Name
Carmen Pickering

Signature of Member

Date (Year/Month/Day)
2022/08/24