

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Children and Family Development (“Ministry”) dated February 17, 2023, in which the Ministry determined that the Appellant had received an overpayment of the child care subsidy in the amount of \$7,527.30, which she was liable to repay. The Ministry decided that the Appellant was ineligible to receive the subsidy between September 1, 2018 and June 30, 2022 because, during that time, she was in a marriage-like relationship that she did not disclose to the Ministry.

Part D – Relevant Legislation

Child Care Subsidy Act (“Act”), sections 4, 5 and 7
Child Care Subsidy Regulation (“Regulation”), sections 1 (definition of “spouse”), 3, 4, 4.1, 7, 8, 9, 14 and Schedule A

Full text of the legislation is provided in the Schedule of Legislation after the Reasons.

Part E – Summary of Facts

The hearing took place by videoconference on April 27, 2023. The Appellant attended the hearing with her mother as support person and witness. The Ministry did not attend the hearing. The Panel confirmed that the Ministry had received notice of the hearing at least two business days before the hearing was to commence, as required under section 85(2) of the Employment and Assistance Regulation, and the hearing proceeded in the absence of the Ministry.

Evidence Before the Ministry at Reconsideration:

The Appellant is the mother of five children. “X” is the father of the four younger children, born July 2016, December 2018, May 2020 and September 2022.

Between August 25, 2018 and July 19, 2021, the Appellant submitted the following applications for the Affordable Child Care Benefit:

- August 25, 2018: Appellant stated that she lived at Address #1. She indicated that her marital status was “single, separated, divorced or widowed” and stated that she received child support of \$300/month.
- November 4, 2018: Appellant stated that she lived at Address #1. Under “Marriage or Marriage-like Relationship Status” she indicated that she was single. She indicated that she did not share custody of the children who required child care.
- July 4, 2019: Appellant stated that she lived at Address #1. Under “Marriage or Marriage-like Relationship Status” she indicated that she was single. She indicated that she did not share custody of the child who required child care.
- July 30, 2020: Appellant stated that she lived at Address #2. Under “Marriage or Marriage-like Relationship Status” she indicated that she was single. She indicated that she did not share custody of the child who required child care.
- July 19, 2021: Appellant stated that she lived at Address #2. Under “Marriage or Marriage-like Relationship Status” she indicated that she was single. She indicated that she did not share custody of the child who required child care.

The Ministry paid child care subsidies for three of the Appellant’s children, in various amounts, to three different child care providers, at different times between September 1, 2018 and June 30, 2022.

As a result of an anonymous report that the Appellant was “residing with an undeclared spouse”, the Verification and Audit Unit began an investigation. The information the Unit obtained included:

- Vital Statistics records indicating that X is the father of the Appellant’s four younger children
- ICBC:
 - Appellant’s address:
 - “Upper” at Address #1 from September 28, 2018 to November 8, 2019
 - Address #2 from January 21, 2021 to present
 - X’s address:
 - Address #1 from November 14, 2018 to September 13, 2021

- Address #2 from September 13, 2021 to present
- Ministry of Health:
 - Appellant's mailing address:
 - Address #1 from April 26, 2018 to October 12, 2019
 - Address #3 from December 30, 2019 to December 29, 2020
 - Address #2 from December 31, 2020 to present
 - Appellant's residential address:
 - Address #1 from September 28, 2019 to November 7, 2019
 - Address #3 from May 25, 2020 to January 20, 2021
 - Address #2 from January 21, 2021 to present
 - X's mailing address:
 - Address #1 from November 13, 2018 to April 16, 2021
 - Address #2 from April 17, 2021 to present
 - X's residential address:
 - Address #1 from November 13, 2018 to September 13, 2021
 - Address #2 from September 13, 2021 to present
- Equifax Consumer Report:
 - Appellant's residential address:
 - Address #3 since January 2020
 - Address #1 since May 2021
 - Current Address #2 since September 2020
 - X's residential address:
 - Address #1 since October 2021
 - Address #3 since May 2020
 - Current Address #2 since October 2021

Records from child care providers indicate:

- Child Care Provider #1:
 - Child Registration and Profile for the child born in 2016, completed by the Appellant and dated October 24, 2018:
 - Appellant's address is Address #1, and X's address is stated to be "same"
 - Under "Family and General Household Information – My child lives with" the Appellant circles the answer "both parents"
 - Under "I live with: (Name – Relationship) the Appellant writes "1. Mom – [Appellant's name] 2. Dad – [X] 3. [child born in 2014] – brother"
 - Emergency Consent Form dated January 2, 2019:
 - "Parent's Name" is the Appellant, X is the Emergency Contact
 - X signed the Consent Form as Parent/Guardian
- Child Care Provider #2:
 - Registration Information for the child born in 2014, registered from September 2018 to June 2019 indicates:
 - Address of the child, the Appellant and X is Address #1
- Child Care Provider #3:
 - Emergency form for the child born in 2018, dated August 23, 2021, lists only the Appellant as "Parents/Legal Guardians" and lists X under "Emergency Contacts"
 - The Appellant indicates that she is a single parent

- The address of the child and the Appellant is Address #2; no address is given for X

The Ministry prepared Child Care Subsidy Overpayment Calculations listing Affordable Child Care Benefit Payments to each of the Child Care Providers between September 1, 2018 to June 30, 2022.

- For subsidies paid to Child Care Provider #1 for the child born in 2016, the eligible amount is listed as zero, and the overpayment amount is the full amount of the subsidy paid, totalling \$7,527.50.
- For subsidies paid to Child Care Provider #2 for the child born in 2014, the subsidy amount is listed as an eligible amount, and the overpayment amount is zero.
- For subsidies paid to Child Care Provider #3 for the children born in 2016 and 2018, the subsidy amount is listed as an eligible amount, and the overpayment amount is zero.

For all calculations, whether the overpayment amount is zero, or the full subsidy, the overpayment reason is stated to be “Spousal Status.”

In response to the overpayment notice, the Appellant wrote a letter to the Ministry stating:

- She understood from the documents the Ministry provided that the overpayment was in relation to the subsidy paid to Child Care Provider #1 for the child born in 2016.
- She did not live in a spousal relationship with X.
- While she and X did reside at Address #1, she rented the upper suite and X and a roommate rented the lower ground level suite.
- The suites were separate, with an adjoining door that she could unlock from her unit
- She moved into the upper suite around the last two weeks of May 2018, and over the next few months cleaned up the lower suite, which was vacant.
- A friend of hers rented the lower suite, and a few months later X rented a room in the lower suite from the friend.
- As X was homeless, “it was a beneficial arrangement for [the friend] and my children” but “over time things fell apart” and the Appellant moved to Address #4.
- When filling out the registration forms, she left out the information about upper and lower suites, and says that was an oversight, although it was correct that they did live in the same house.
- She has no control over X using her address for his mail; although she asks him “constantly”, he has not stopped.

The Appellant also provided:

- A letter from Child Care Provider #1 dated January 23, 2020, stating that the Appellant was the sole guardian of the child born in 2016
- A letter from the property manager for Address #1 stating
 - the Appellant rented the upper suite (Unit A) at Address #1 from May 1, 2018 to September 30, 2019, where she lived “with her two children and a third that was born during the tenancy”
 - a separate suite (Unit B) was rented to “a different pair of tenants.”
- A copy of a Provincial Court Order dated November 9, 2021 in a proceeding between the Appellant and X, stating that

- the Appellant and X are the guardians of the children born in 2016, 2018 and 2020.
- the Appellant “will solely have all of the parental responsibilities for the children as set out in s. 41 of the Family Law Act.”
- X shall have supervised parenting time.
- X shall pay \$731 per month for child support.
- Family Maintenance Enforcement Program statement, undated, showing arrears from ongoing maintenance “From Aug 15, 2022 to today” in the amount of \$9,816.

Additional Evidence:

Appellant’s Parent:

At the hearing, the Appellant’s mother stated that her daughter’s situation is “unorthodox” and there has been confusion because X was living in a suite in the same house. X ended up living in the lower suite with the friend and the Appellant did not object because it is very hard to find places to rent where they live. However, the arrangement did not work out, and the Appellant ended up leaving Address #1.

Appellant:

In the Notice of Appeal, the Appellant stated that X lived in the basement suite of the house she was living in “which was against what I wanted.” She said that both the Ministry of Children and Family Development and the police have asked X not to use her address.

At the hearing, the Appellant stated:

- She realized last year that X was using her address without her consent.
- She asked him to stop because it makes it look as if they live together.
- She got the Court Order in 2021 because X was not giving her any money for the children, and she wanted to make it clear that she had full parental responsibilities and he had parenting time and that he had to pay child support.
- She was not able to get a copy of her lease agreement for Address #1 because the property management company no longer exists.
- The property manager would not identify the tenants in the lower suite when he wrote the letter because their lease agreement was private.
- She no longer has the lease agreement for Address #1, and she could not get a copy because the property management company has closed.
- When X moved to British Columbia from another province in 2018 he asked if he could use her address for his identification because the place he was staying was not a permanent address, and she agreed.
- X has travelled back and forth between British Columbia and another province so he continued to use her address on his important documents, although she told him he should say it is his mailing address rather than his residential address.

In answer to questions from the Panel, the Appellant stated:

- The dates the Appellant lived at the different addresses are:

- Address #1: May 1, 2018 to September 30, 2019
- Address #4: October 1 to December 15, 2019 (with a roommate)
- Address #3: December 15, 2019 to July 31, 2020
- Address #2: August 1, 2020 to present
- X has never lived with her in the same dwelling unit between September 1, 2018 and June 30, 2022.
- The lower unit at Address #1 had a separate entrance, kitchen, and bathroom; only the laundry was shared with the upper suite.
- She cleaned the lower unit at Address #1 in exchange for a rent reduction of \$150, as the suite was going to be renovated.
- The living arrangements at Address #1 worked for a while, but eventually the Appellant had to move because “boundaries became a problem.”
- She does not get along with X because they fight about money for rent and child support.
- X is the father of the children born in May 2020 and September 2022. X returned to another province for family reasons after the child was born in May 2020, which is when the Appellant moved from Address #3 to Address #2.
- Since she has lived at Address #2, X was “in and out to see the kids” and “it was ok for a few months” but then she had to go to court.
- X is also the father of the child born in 2022, as the result of “one time intimacy.”
- Through this time the Ministry of Children and Family Development has been helping her to get financial support from X.
- She had asked the police to tell X to stop using her address in the past year, when she became aware that X was still giving her address as the place he was living.
- X “does not grasp” that he should not use her address as his own, because it does not affect him.

The Appellant produced a Safety Plan in effect from January 13, 2022 to February 13, 2022, which stated that she had agreed not to allow X in or around the family home until X had talked to the Ministry of Children and Family Development and had agreed to a Safety Plan. She said that she had signed additional similar Safety Plans to cover all of 2022.

Admissibility of Additional Evidence:

The Panel finds that the additional evidence is reasonably necessary for the full and fair disclosure of all matters relating to the decision under appeal, and therefore is admissible under section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision, that the Appellant was not eligible to receive the child care subsidy between September 1, 2018 and June 30, 2022, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances. The Ministry determined that the Appellant had not disclosed that she was living with X in a marriage-like relationship between those dates.

Appellant's Position:

The Appellant maintains that she was eligible for the subsidy as a single parent, and that X was not her spouse as defined by the Act, between September 1, 2018 and June 30, 2022. She says that X has used her address as his residential and mailing address because he did not have a permanent address for most of that time, but he has not lived with her at those addresses. She says that when she was living in an upper unit at Address #1, X was a tenant in the lower unit, but they did not live together. She says the lower unit was self-contained, with an adjoining door to the upper unit that locked on her side. She argues that she has no control over what address X gives to outside agencies, and although she and others have asked him not to use her address, he persists.

Further, the Appellant says that, as the Ministry's Overpayment Calculation only lists overpayments to Child Care Provider #1 in 2019, she believes that only her circumstances in 2019 are at issue. She says that, when she received the Overpayment Notice in December 2022, she wrote to the Ministry, stating that she understood that the period in question was January 1 to December 31, 2019, for payments to Child Care Provider #1, and the Ministry did not reply to state otherwise.

The Appellant also maintains that the Ministry should not have been able to access X's Equifax Consumer Report because it contains X's private information, and X had not given consent for the Ministry to get the report. The Appellant disagrees with the Ministry's statement in the reconsideration decision that the Equifax Consumer Report is able to be publicly accessed.

Ministry's Position:

The Ministry did not attend the hearing. In its reconsideration decision, the Ministry maintains that the Appellant was in an undisclosed marriage-like relationship with X while she was receiving the child care subsidy as a single parent.

The Ministry says that the records from ICBC, Ministry of Health and Equifax Consumer Reports show that the Appellant and X shared the same address. While the Ministry acknowledges that the Appellant says that Address #1 was divided into two units, the Ministry argues that there is no information, such as a tenancy agreement, to verify that the residence was divided into two units, with the Appellant responsible for the upper unit.

The Ministry notes that the Appellant and X had two children together between September 1, 2018 and June 30, 2022. The Ministry says that information from the child care providers

confirm that X shared the same civic address as the Appellant and the children and assumed a parental role with them. The Ministry maintains that the Equifax Consumer Report demonstrates that the Appellant and X had financial interdependence consistent with a marriage-like relationship. Therefore, the Ministry says that X was the Appellant's spouse as defined in section 1 of the Regulation.

The Ministry says that, under the Regulation, for a two parent family, the Ministry must determine eligibility based on the total family income. The Ministry must also determine that child care is needed for one of the reasons listed for a two parent family in section 3(2)(b) of the Regulation. The Ministry maintains that, because the Appellant did not provide the information the Ministry needed to determine eligibility, she was not eligible for the subsidy and therefore there was an overpayment that the Appellant is liable to repay.

Panel Decision:

Under the Act and Regulation, a person may be eligible for the child care 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 Regulation;
- the family's adjusted annual income is less than the amounts set out in section 7 of the Regulation.

The Ministry must determine eligibility for the child care subsidy based on the activities and the income of both parents in a two parent family. If an applicant does not provide the information the Ministry requires under the legislation, the Ministry may determine they are not eligible for the subsidy.

After an investigation by the Verification and Audit Unit, the Ministry determined that the Appellant was not eligible to receive the subsidy between September 1, 2018 and June 30, 2022, because she was in a marriage-like relationship with X that she did not disclose to the Ministry. Therefore, the Ministry did not have income information for X, nor did it have confirmation that child care was needed for one of the reasons set out in the legislation for a two parent family.

Time Period in Question:

The Ministry says that the Appellant was ineligible to receive the subsidy between September 1, 2018 and June 30, 2022. The Appellant maintains that, because the Ministry's Child Care Subsidy Overpayment Calculation only shows overpayment amounts in 2019 at Child Care Provider #1, only her circumstances in 2019 are in issue.

The Panel agrees that the Ministry's Overpayment Calculation is confusing. The Ministry has determined that the Appellant was ineligible for the subsidy from 2018 to 2022, but in its calculations, it shows the subsidy amounts paid to Child Care Providers #2 and #3 between those dates, including in 2019, in the "eligible amount" column, with the overpayment amount listed as zero.

It is unfortunate that the Ministry did not attend the hearing to explain why it has not listed all subsidy amounts as overpayments during the period it determined the Appellant was ineligible. It may be that the Ministry decided not to require repayment of the full amount for policy reasons. In any event, the Ministry determined the amount of the overpayment to be \$7,527.50 for the period from September 1, 2018 to June 30, 2022. Under section 7 of the Act, if a subsidy is paid for a person who is not entitled to it, the amount that a person is liable to repay is not subject to appeal.

As to the period of ineligibility, the Panel finds that the Ministry was clear in its decision that it found the Appellant ineligible from September 1, 2018 to June 30, 2022. The reason listed for ineligibility in all cases was “spousal status”.

Marriage-like Relationship:

Section 1 of the Regulation defines “spouse” 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.

The legislation does not define “marriage-like relationship”, although it does include requirements of shared residence, financial dependence or interdependence and social and familial interdependence.

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.

The Appellant and her mother described the Appellant's relationship with X as "unorthodox". An unorthodox relationship may still be "marriage-like", depending on the subjective intentions of the parties and the objective evidence. However, under sub-paragraph (c) of the definition, a person is a spouse only if the relationship meets the requirements for co-residence, financial dependence or interdependence, and social interdependence.

The Panel has considered each requirement, to determine if the evidence reasonably supports the Ministry's determination that X was a spouse as defined in the legislation, between September 1, 2018 and June 30, 2022.

1. *Residing with the Parent:*

At the hearing, the Appellant explained when she lived at each address from 2018 to the present. Those dates do not correspond exactly with the dates and addresses of the Appellant that appear in the records of ICBC, MSP and Equifax. The Panel understands that people do not always record changes of address with the various government agencies and departments immediately as they occur, and the Panel finds that the Appellant lived at the various addresses on the dates she stated at the hearing:

- Address #1: May 1, 2018 to September 30, 2019
- Address #4: October 1 to December 15, 2019
- Address #3: December 15, 2019 to July 31, 2020
- Address #2: August 1, 2020 to present

X first reported his address to be the same as the Appellant's in the Ministry of Health records in September 2018. He went on to report Addresses # 1, #2 and #3 at various times to ICBC, the Ministry of Health and creditors as set out in the Equifax report. Similarly, the Appellant has reported her address to ICBC, the Ministry of Health and creditors, as Addresses #1, #2 and #3.

In addition, in September and October 2018, the Appellant completed child care registration forms for Child Care Providers #1 and #2, showing the same address, Address #1, for both the Appellant and X. She also stated on the form that the child born in 2016 lived with both parents.

At the hearing, and in her written submission to the Ministry at reconsideration, the Appellant insisted that X did not live with her and the children in the upper unit at Address #1. However, for the most part the Appellant has not distinguished between the upper and lower units at Address #1, when she reported her address in various places. In the documents available at the hearing, the only time the Appellant reported that she lived at "Upper – Address #1", rather than just "Address #1", was to ICBC, between September 2018 and November 2019.

In the reconsideration decision, the Ministry stated that "no information, such as a tenancy agreement, was provided to verify that the single family home was divided into two units and you were responsible for the upper unit." However, the Appellant provided evidence, in the form of the letter from the property manager of Address #1, confirming that Address #1 contains two dwelling units, and the Appellant lived in the upper unit with her children. The property manager confirmed that two other tenants (unnamed) rented the lower unit. The Appellant tried, but was not able to obtain a copy of her 2018 lease agreement. The Ministry does not explain why the letter from the property manager is not considered to be information that verified that Address

#1 was divided into two units, with the Appellant responsible for the upper unit. The Panel finds that it would not be reasonable to disregard or discount that evidence, without an explanation.

The Panel also notes that in November 2021, the Appellant obtained an order granting her sole parenting responsibilities, with supervised parenting time for X. Starting in February 2022, the Appellant entered into a series of Safety Plans with the Ministry of Child and Family Development, in which she agreed not to permit X in or near her home until he had also signed a Safety Plan. She said those plans were in effect for most of 2022. The evidence of court proceedings and Safety Plans also indicate that, at least when those steps were taken, and likely for some time before the court order, the Appellant was not residing with X.

After she moved from Address #1, the Appellant did not report to child care providers that she and X lived at the same address. The only other evidence of shared residence is in the Ministry of Health, ICBC and Equifax records, where X continues to report his address as Address #3. As the Appellant maintains, she cannot control which address X reports to outside agencies, and X has ignored directions from the Ministry of Child and Family Development and the police to stop doing so.

The Panel finds that, while the reported addresses gave a reasonable basis for the investigation, considered as a whole, the evidence is not sufficient to establish that X resided with the Appellant between September 1, 2018 and June 30, 2022. The Panel finds that the Ministry's determination that the Appellant and X resided together between those dates is not reasonably supported by the evidence.

2. Financial Dependence or Interdependence

In the reconsideration decision, the Ministry stated: "Additionally, the ministry finds in accordance with Section 1(1)(c)(ii)(a), Equifax Consumer Reports demonstrate you and [X] had financial interdependence consistent with a marriage-like relationship." The Ministry does not give any further explanation of that finding or point to any other evidence of financial dependence or interdependence.

The Panel is unclear why the Ministry says the Equifax reports show "financial interdependence consistent with a marriage-like relationship." The Panel has reviewed the Equifax reports and can find no information, such as a joint debt or bank account, that might indicate financial interdependence. The Equifax reports only show that the Appellant and X reported their addresses as Address #1, #2 and #3, with the times sometimes overlapping, but not coinciding consistently – information that is also found in the government records, although the dates are not always the same.

The Panel recognizes the difficulty for the Ministry in gathering evidence of a marriage-like relationship when the Ministry is relying on the applicant for information to determine eligibility. It may be reasonable to assume that, when two people are living together and co-parenting their children, they will be financially dependent or interdependent to some extent. However, in the Appellant's case, the Panel finds that it cannot conclude that the Appellant and X were living together as a family unit at any of the addresses listed.

The Panel finds that the Ministry's determination that X has a relationship with the Appellant that demonstrates financial dependence or interdependence consistent with a marriage-like relationship is not reasonably supported by the evidence.

3. *Social and Familial Interdependence*

The Appellant and X have four children together, two of whom were born during the period the Ministry found her to be ineligible, and one born soon after. On registration forms from Child Care Provider #1, which the Appellant completed on October 24, 2018, she identified X as filling a parental role with the child who attended there. X picked up the child at the end of the day and signed a consent form relating to medical treatment on January 2, 2019. The Panel finds that there is some evidence of social and familial interdependence, at least until the Appellant obtained the court order for sole parental responsibility in November 2021. However, as the Panel has found that the evidence is not sufficient to establish shared residence or financial dependence or interdependence, it is not necessary to determine if there was social and familial interdependence between September 1, 2018 and June 30, 2022.

Equifax Consumer Report:

At reconsideration, the Appellant objected to the Ministry sending her the Equifax reports about X, saying that it was a breach of X's privacy. In response, the Ministry stated in the reconsideration decision that the reports are publicly accessible. At the hearing, the Appellant argued that the Ministry should not have had access to the information in X's Equifax Consumer Reports, because X had not given his consent for the Ministry to obtain the reports. While the Appellant did not say so explicitly, the Panel understands the Appellant to mean that the Ministry should not have been able to consider the information in the Equifax reports.

Under section 5(1) of the Act, the Ministry is authorized to collect information to determine or audit eligibility for child cares subsidies. The Panel finds that it is reasonable for the Ministry to collect that information in circumstances where the Ministry needs to verify if that person is a spouse, and it is otherwise lawful to collect it.

Conclusion:

The Panel finds that the Ministry's determination that the Appellant was ineligible for the child care subsidy between September 1, 2018 and June 30, 2022 is not reasonably supported by the evidence. The Panel rescinds the Ministry's reconsideration decision. The Appellant is 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:

"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,

(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.

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).

....

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:

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

...

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:

$$\text{maximum benefit x } \left[1 - \frac{(\text{family's adjusted annual income} - 39\,000)}{46\,000} \right]$$

...

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:

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

...

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:

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

...

APPEAL NUMBER 2023-0062

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)
2023/5/6

Print Name
Kent Ashby

Signature of Member

Date (Year/Month/Day)
2023/5/6

Print Name
Richard Franklin

Signature of Member

Date (Year/Month/Day)
2023/5/6