

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Education and Child Care (“ministry”) dated February 15, 2024 where the ministry decided that the appellant was ineligible for amounts of the Child Care Subsidy (“CCS”) that she received for the period July 1, 2019 to December 31, 2021, resulting in an overpayment of \$6539.87. The ministry also found the appellant liable to repay the amount of the overpayment.

Part D – Relevant Legislation

Child Care Subsidy Act, sections 1(1), 5 and 7.

Child Care Subsidy Regulation, sections 1(1), 3, 8, 14, 15, and 16.

The full text of these sections of legislation is set out in the schedule of legislation after this decision.

Part E – Summary of Facts

The hearing took place by videoconference on March 8, 2024.

Evidence Before the Ministry at Reconsideration:

- The appellant is a sole recipient with three dependent children, the first, born [REDACTED] 2017, the second born [REDACTED] 2019, and the third born [REDACTED] 2021.
- On September 7, 2018, the appellant applied for the childcare subsidy for the oldest and was issued a benefit plan for the period of September 1, 2018, to August 31, 2019.
- On August 28, 2019, she applied for renewal of her benefit, and in an application declaring:
 - she started maternity leave July 24, 2019, until December 2, 2020.
 - she required care for the oldest because she was enrolled in full time studies at a local university (the “University”), five days per week from 9:00am to 5:30pm.
 - with the appellant’s application she provided a letter from the University confirming she was enrolled in nine term units for the Fall term with an expectation of completing the program by December 31, 2019.
 - additionally, she requested an income review because her income had decreased when she started maternity leave and she declared she did not share custody of the oldest.
- The appellant was found eligible and issued a benefit plan for 20 full days per month at the licensed group G-2 rate for the oldest, for the period of September 1, 2019, to December 31, 2019, based on the appellant’s declared income of \$20,337.
- On November 27, 2019, she applied for renewal of her benefit declaring:
 - she was on maternity leave.
 - she required care for the oldest.
 - her application provided confirmation of enrollment in nine term credits for the spring term at the University.
 - the ministry notes that with this renewal the appellant declared the second born as a dependent and stated she did not require care.
 - additionally, she requested an income review because her income had decreased when she started maternity leave and she declared she did not share custody of the oldest.

- The appellant was found eligible and issued a benefit plan for the oldest, for the period of January 1, 2020, to April 30, 2020, 20 full days per month at the licensed group G-2 rate, based on her declared income of \$17,524.
- On April 22, 2020, she applied for renewal of her benefit declaring:
 - she was on maternity leave.
 - the appellant required care for the oldest because she was enrolled in full time studies at the University.
 - her application provided confirmation of enrollment in nine term credits for the summer term. However, she did not indicate how many days per week she was attending school.
 - additionally, the appellant requested an income review because her income had decreased, and she declared she did not share custody of the oldest.
- The appellant was found eligible and issued a benefit plan for the oldest for the period of May 1, 2020, to August 31, 2020, 20 full days per month at the licensed group G-3 rate, based on a declared income of \$17,888.
- On August 4, 2020, the appellant applied for renewal of her benefit declaring:
 - she was on maternity leave.
 - she required care for the oldest because she was enrolled in full time studies at the University, five days per week, six hours per day.
 - her application provided confirmation of enrollment in 12 term credits for the fall term.
 - additionally, she requested an income review because her income had decreased, and she declared she did not share custody of the first born.
- The appellant was found eligible and issued a benefit plan for the oldest, for the period of September 1, 2020, to December 31, 2020, 20 full days per month at the licensed group G-3 rate, based on a declared income of \$17,888.
- On October 1, 2020, the appellant applied for renewal of her benefit declaring:
 - she was on maternity leave.
 - she required care for the oldest because she was enrolled in full time studies, five days per week, six hours per day at the University.
 - her application provided confirmation of enrollment at the University in 12 term credits for the fall term.
 - additionally, she requested an income review because her income had decreased, and she declared she did not share custody of the oldest.

- The appellant was found eligible and issued a benefit plan for the oldest, for the period of November 1, 2020, to December 31, 2020, based on a declared income of \$17,888.
- On November 25, 2020, she applied for renewal of her benefit declaring:
 - she would be returning to full-time employment, Monday to Friday, 7.2 hours per day.
 - she did not share custody of Child 1 or Child 2.
- She was found eligible and issued a benefit plan for the first and second born for the period of January 1, 2021, to April 30, 2021, using her 2019 Canada Revenue Agency (CRA) assessed income of \$71,872.
- Additionally, she was issued a benefit plan for Child 1 and Child 2 for the period of May 1, 2021, to August 31, 2021, based on her 2020 CRA assessed income of \$72,392.
- On August 31, 2021, she applied for renewal of her benefit declaring:
 - she was on maternity leave.
 - she was attending full-time studies at the University, five days per week, seven hours per day.
 - she provided confirmation she was enrolled in nine term credits at the University for the fall term.
 - she had a new dependent, the third born [REDACTED] 2021, who did not require care.
 - within this application she indicated she shared custody of the first and second born.
 - she requested an income review because her income had decreased while on maternity leave.
- She was found eligible and issued a benefit plan for the first and second born for the period between September 1, 2021, and December 31, 2021, for 12 full days per month. This assessment was based on her shared custody arrangement; the children being with the appellant on Wednesday, Thursday, and Friday each week and her declared income of \$30,940.

Based on the above information, it was determined the appellant received the CCS for the period of July 1, 2019, to December 31, 2021, as follows:

- July 1, 2019, to August 31, 2019, because she was employed full time.
- September 1, 2019, to December 31, 2020, because she was a full-time student.
- January 1, 2021, to August 31, 2021, because she was employed full-time.
- September 1, 2021, to December 31, 2021, because she was a full-time student.

On September 20, 2022, as part of a review of the appellant's file, the Verification and Audit Unit (VAU) requested information from her employer regarding the status of her employment, including information regarding absences for special leave.

On November 15, 2022, the VAU received confirmation that:

- the appellant was employed by the University from March 2, 2015, until February 20, 2021. While employed there you worked Monday to Friday from 8:30am to 5:00pm.
- the appellant is no longer employed there.
- she was on maternity leave from April 4, 2017, to March 31, 2018, and from July 21, 2019, until December 5, 2020.
- she received no employment income for the periods she was on leave. However, she did receive three sick leave payments as well as a grandfathered vacation payout for the period between July 2019 and March 28, 2020.

As part of the review process, the VAU requested enrolment records from the University and confirmed the appellant was enrolled in two to five courses per semester between September 2019 and December 2021 as well as one course in the 2021 summer semester. Further review of enrolment information shows she completed three courses in the 2019 fall semester confirming she was a fulltime student from September to December 2019. However, school records show she completed only one course per semester in 2020 Spring, summer and fall semesters confirming she was a part time student. Additionally, it is noted that although she enrolled in other courses during this period, she dropped them soon after enrolment.

The appellant contacted the VAU via email on March 2, 2023, stating she was self employed as a real estate agent in 2019, 2020, 2021, and 2022 and she was unsuccessful in her self-employment in 2019-2020.

In emails to the VAU on May 31, 2023, and July 10, 2023, the appellant explained that while on maternity leave, she was actively working as a real estate agent; she did not pause her real estate board license which would have been permitted while she was on maternity leave. Additionally, she stated that although she was on leave, she continued working for the University, explaining she had subsequently filed a complaint against them for not compensating her for work performed while on leave. To support her assertion that she was self-employed, she provided:

- 2019 T4A showing \$0.00 income from self-employment commissions.
- Proof of dues paid by her to the Real estate Board of Greater Vancouver for July to December 2019 as well as January, February, July, September October, and November 2020.
- Proof of dues paid by her to the Real Estate Council of BC dated July 30, 2020.
- A letter from her real estate employer dated June 26, 2023, confirming she was an independent sales associate, earning commission only and she has been licensed with her real estate employer since August 15, 2018.
- Earnings history report from her real estate employer confirming commission earnings of \$45,510.18 in 2021 and \$29,505.53 in 2022.

Additionally, the appellant provided copies of work emails dated August 6, September 17 and 27, 2019, January 13-15, February 21, and March 9, 2020. She also indicated she could provide a letter from her professional association to confirm she continued to work for the University while on maternity leave. After a review of the documents submitted, it was determined there was not enough information to conclude she was employed while on maternity leave.

Based on this determination, the VAU determined the appellant was eligible for the CCS as follows:

- July 2019 – From 20 full days to 15 full days, determined based on the number of workdays she had in July prior to commencement of her maternity leave.
- August 2019 – Zero days. She did not have an eligible reason for care during this month because she was on maternity leave.
- September to December 2019 – 20 full days per month because she was a full-time student.
- January 2020 – From 20 full days per month to eight half days based on being a part time student as determined by course schedule.
- February 2020 – From 20 full days per month to nine half days (eight half days plus one-half day for exam) based on being a part time student as determined by course schedule.

- March 2020 - From 20 full days per month to eight half days based on being a part time student as determined by course schedule.
- July 2020 - From 20 full days per month to 12 half days (three half days per week) based on being a part time student as determined by course schedule.
- August 2020 - From 20 full days per month to 13 half days (three half days per week plus one-half day for exam) based on being a part time student as determined by course schedule.
- September 2020 - From 20 full days to 16 half days based on being a part time student as determined by course schedule.
- October 2020 - From 20 full days to 16 half days based on being a part time student as determined by course schedule.
- November 2020 - From 20 full days per month to 16 half days for Child 1 and 12 half days for Child 2 based on being a part time student as determined by course schedule.

As a result of the reassessment of the appellant's reason for care, the VAU determined she had received a total of \$5298.75 for which she was not eligible for the period between July 1, 2019, and November 30, 2020.

As part of the review, the VAU noted the appellant's maternity leave ended in December 2020 and she had returned to employment. Therefore, her eligibility for December 2020 was reassessed using her CRA assessed income of \$71,872 and it was determined she received a total of \$267.85 of CCS she was not eligible to receive due to undeclared income in December 2020.

As part of the review, the VAU reviewed the appellant's eligibility for the CCS based on the custody arrangement for her children and determined that she received a total of \$946.07 for which she was not eligible for the 2021 calendar year. Previously she was approved for the CCS based on self reported shared custody and the children being with the appellant Wednesday, Thursday and Friday, plus alternate weekends.

During the review, the appellant submitted a signed document confirming she shared custody of the first and second born with their father. The document specifies the children were in the appellant's care Thursday and Fridays as well as alternate Wednesdays and weekends.

Based on the information provided by the appellant in her custody agreement, her eligibility was reassessed, based on the actual number of Thursdays, Fridays, and alternate Wednesdays in each month of 2021. Upon review, it was determined the appellant

received a total of \$946.07 of CCS for which she was not eligible based on her custody arrangement.

Additionally, upon review of the appellant's file, the VAU detected an administrative overpayment of \$27 for [REDACTED] for the month of September 2021 noting the amount issued was above the maximum benefit rate for a child under 36 months of age. Based on this, the VAU concluded the appellant had a combined overpayment of \$6539.87 as follows:

- \$5298.75 for the period between July 1, 2019, and December 31, 2021, based on the appellant's eligible reason for care (working or studying).
- \$267.85 for a change in her income for the period between December 1, 2020, and December 31, 2020.
- \$946.07 for changes to eligibility due to shared custody of the children for the period between January 1, 2021, and December 31, 2021.
- \$27 for an administrative overpayment for child [REDACTED] in September 2021.

TOTAL: \$6539.87

Additional Evidence Not Before the Ministry at Reconsideration:

On March 5, 2024, the appellant submitted further written evidence in support of her appeal, where she stated that she is appealing for the following reasons:

1) Attending School

- The ministry writes: "reasonable study & travel time may be included in the reason for care (in addition to class time)" in the reconsideration decision.
- Yet, no time for study has been allocated in their decision.
- The ministry writes that this is because: "you have not provided any information that explains how much time you reasonably required for this.
- In the appellant's correspondence with the Audit Officer ("AO"), she explained that she needed daycare to study and the reply from the AO was: "I will prepare and mail a reconsideration package to your address as soon as possible."
- The appellant was not provided with an opportunity to discuss study time with the AO.
- She would like to request two study days per week, as she was attempting to study while taking care of a newborn baby (born July 2019).

- The appellant had to take frequent breaks to feed, change, and rock the baby, so she studied every day, with these two pauses as interruptions. She stated that she was also very tired, as the baby did not sleep through the night until she was one year old, and the appellant went through her days in a bit of a fog.
- The appellant also attended tutorials at least once/week, which would take an additional half day for her to attend. This amounts to a total request of an additional two and a half days/week for childcare due to studying.

2) Working

- In the reconsideration decision, the ministry writes: “The ministry acknowledges the information you provided about employment with the University and self employment as a realtor...is compelling and suggests you were engaged in employment activities.”
- However, the reconsideration officer says that “the ministry is unable to establish that you required child care because you were working.”
- The appellant clearly communicated to the AO that this is the reason that she required child care.
- While the appellant corresponded with the AO, the AO wrote to her, via email: “You are welcome to submit any documentation/information that you believe would support that you were actively working as a real estate agent in 2019 and 2020. I will review it to see if it makes any difference to your eligibility for the Affordable Child Care Benefit.”
- The AO also wrote: “In the absence of the details of your dispute/ settlement agreement with your former employer, we cannot determine whether you were working during that time.”
- The appellant argues that this response does not align with the response from the Reconsideration Officer. This is also even though she had sent the AO copies of emails between herself and her employer during the time frames that had been requested.
- Although the appellant is bound by a confidentiality agreement regarding the settlement details between herself and the University, below is her 2023 T4 from the University, which shows that she did come to a settlement. (Please note that the appellant stopped working at the University in early 2021.)
- Based on the evidence the appellant submitted in the form of work emails between herself and the University while she was on maternity leave, and the 2023 T4 from the University, the appellant thinks that it is apparent that she was working for her former employer while on maternity leave.

- The appellant also submitted evidence that she had continued to pay thousands of dollars in real estate dues (in the form of invoices) to work as a licensed real estate agent while on maternity leave.
- At the request of the AO, she also submitted a letter from her real estate brokerage that she had been continually licensed since 2018. If she had not continued to work in real estate, she would have been eligible to pause these dues.
- Based on this evidence, and the ministry's own statement that the information provided by the appellant "suggests I was engaged in employment activities", the appellant submits that she required full time childcare, as she was actively working two part-time jobs while attending school.
- The ministry states that it believes the appellant was engaged in employment activities. As such, this should be a circumstance in which subsidy may be provided.

3) Sharing Custody

- The children's father and the appellant have informal custody arrangement, where they attempt to share custody for the children 50/50 when he is in the Greater Vancouver area.
- The AO asked for a written custody arrangement, and the appellant attempted to provide a schedule due to the AO's request. The AO wrote to her: "As it was discussed in my email to you on March 3, 2023, I recognize that custody arrangements often fluctuate, and you and the father of your children try to split the custody so that each of you have children 50% of the time".
- To explain that the parents try to share 50/50, the appellant and the father of the children wrote that they alternate Wednesdays. This led to a claw back of 50% of the children's Wednesday day care subsidy. During this time, there is no dispute that the appellant did in fact require child care, as she was working.
- The father would have also been eligible for a subsidy, if the parents had been aware that this was going to be an issue. The appellant offered to provide this information and the AO said she did not want to see it.
- The CCS system does not allow two parents to claim the subsidy on the same day (the appellant checked this out, after the AO informed me of the claw back).
- The amount is not enormous, as the claw back is only for 50% of Wednesdays for a one-year period, but this is surely not the intent of the CCS, based on the Regulation, which states that it is intended to provide a subsidy if a parent requiring childcare is employed.
- The appellant states that she did require childcare on Wednesdays, Thursdays, and Fridays, so that she could work. Their father made alternate arrangements for their childcare on Mondays and Tuesdays, and no subsidy was provided for those days.

The ministry representative determined during the short recess that two parents cannot claim CCS for the same day, however, the two parents could split the CCS, 50% each.

Admissibility of Additional Evidence:

As stated above, the appellant submitted additional written evidence in her Notice of Appeal submitted on February 21, 2024, and a 15-page written submission on March 5, 2024.

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 Decision of February 15, 2024, that:

- the appellant was ineligible for the CCS received between July 1, 2019, and December 31, 2021, in the amount of \$6539.87, resulted in an overpayment of that amount, and
- which must be repaid,

was reasonably supported by the evidence or was a reasonable application of the legislation in the Appellant's circumstances.

At the hearing, the Appellant was unsure she had the correct appeal record, and the panel chair emailed a copy of the appeal record to her, so that the appeal could proceed.

The panel chair also called a 5-minute recess to afford the ministry representative an opportunity to confer with the AO to clarify ministry policy/legislation on the question of whether two parents can claim an allowance, 50% each, for the same day for the same child.

Appellant's Position:

The appellant presented her position at the hearing by relying on her written submission of March 5, 2024. She highlighted the following:

1) Attending School

- the ministry says, "reasonable study & travel time may be included in the reason for care (in addition to class time)", yet no time for study has been allocated in their decision, despite her requests.
- additionally, the appellant also attended tutorials at least once/week, which would take an additional half day; so additional coverage time is needed for tutorials and studying.

2) Working

- in the Reconsideration Decision, the ministry writes: "The ministry acknowledges the information you provided about employment with the University and self employment as a realtor...is compelling and suggests you were engaged in employment activities."

- however, the AO wrote: “In the absence of the details of your dispute/ settlement agreement with your former employer, we cannot determine whether you were working during that time.”
- these communications from the ministry do not align.
- based on this evidence, and the ministry’s own statement that the information the appellant provided “suggests I was engaged in employment activities”, the appellant submits that she required full time childcare, while actively working two part-time jobs and attending school.

3) Sharing Custody

- the children’s father and the appellant have an informal custody arrangement and try to share custody for the children 50/50 when he is in the Greater Vancouver area.
- the AO asked for a written custody arrangement, and the appellant attempted to provide a schedule, to explain the effort to share custody 50/50.
- the appellant complied by writing: the parents alternate Wednesdays; this led to a claw back of 50% of the children’s Wednesday day care subsidy.
- The father would have also been eligible for a subsidy, and the appellant offered to provide this information, but the AO said she did not want to see it.
- The appellant requires childcare on Wednesdays, Thursdays, and Fridays, so that she could work.

Ministry’s Position:

The ministry representative attended the hearing, reviewed the reconsideration decision, and added the following:

- the ministry representative stated it is very difficult to establish eligibility after the fact, especially where so much changed and the ministry was not kept informed of these changes by the appellant.
- she said the ministry lacked the information it required to decide eligibility. For example, the appellant needed to provide detailed work schedules, and without these work schedules, her amount of work was not proven, and it was very unclear when the appellant worked and did not work.
- likewise, an initial lack of awareness by the ministry of the custody arrangement, its very flexible nature, and the lack of specific information, made it very difficult for the ministry to determine who had custody and when.

- The ministry representative re-iterated several times that it is imperative for the appellant to inform the ministry of any changes in her circumstances that may impact her eligibility for the benefit.
- In summary, the ministry's position is that eligibility was determined based on the information made available to them by the appellant. It was very unclear due to the lack of current accurate information to determine eligibility, based on the reason for care, namely, when she was working, and when she was attending an educational institution.
- It was also very unclear due to the lack of current accurate information to determine eligibility, based on the shared custody arrangement.

Panel Decision:

The ministry's Reconsideration Decision is comprised of two parts:

- 1) there was an overpayment of \$6539.87; and
- 2) the appellant must repay the amount of the overpayment pursuant to section 7(1) of the Act.

Each of these parts is dealt with in turn below.

1. Overpayments:

The ministry found four separate overpayments arose as follows:

1. **\$267.85 Overpayment** - ineligibility due to circumstances in December 2020.
2. **\$27.00 Overpayment** - overpayment due to administrative error.
3. **\$5298.75 Overpayment** - ineligibility due to reason for care.
4. **\$946.27 Overpayment** - ineligibility due to shared custody.

Total: \$6539.87

\$267.85 Overpayment - ineligibility due to changed circumstances in December 2020:

The issue of the alleged \$267.85 overpayment, due to ineligibility from changed circumstances (the appellant's income in December 2020) was not contested by the appellant. She presented no evidence on this issue in her written or verbal submissions. Without further evidence, the panel finds that the appellant has received an overpayment

of \$267.85 of CCS which she was not eligible to receive due to the changed circumstances of her income in December 2020.

\$27.00 Overpayment - overpayment due to administrative error:

The issue of the alleged \$27.00 overpayment, due to ineligibility from an administrative error was not contested by the appellant. She presented no evidence on this issue in her written or verbal submissions. Without further evidence, the panel finds that the appellant has received an overpayment of \$27.00 of CCS which she was not eligible to receive due to an administrative error.

\$5298.75 Alleged Overpayment - ineligibility due to reason for care:

Under the Regulation, a person may be eligible for CCS if they meet the requirements set out in section 3. This section includes that child care must be needed 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 his or her child.

This issue arose from the differing views of the parties in relation to when the appellant was working and/or attending an educational institution. In the written and verbal evidence, the ministry stressed that eligibility was determined from the available information and that it was very unclear due to the lack of current and accurate information to determine the appellant's eligibility. Specifically, they were challenged to know whether and how much she was working, and when she was attending an educational institution.

The appellant on the other hand produced evidence at the hearing and in her written submission that in the Reconsideration Decision, the ministry stated that "The ministry acknowledges the information provided about employment with the University and self-employment as a realtor...is compelling and suggests you were engaged in employment activities." The panel was confused why the AO stated that "we cannot determine whether you were working during that time." The appellant reiterated several times that there is a puzzling misalignment within these ministry positions.

The panel finds that the appellant has provided extensive evidence both before and after the Reconsideration Decision was rendered, that would significantly facilitate the ministry's ability to make a reasonable determination of the appellant's eligibility for CCS. The appellant's written submission for this appeal went a long way to filling in the gaps of information. Specifically, the time when she was working at the University became clear, with letters from the University, and pay statements provided. Her commitment and intent to continue working in real estate was demonstrated by her choice not to pause payment of costly professional fees.

Further it is not clear why the appellant's requests and concerns about receiving no CCS coverage for the considerable time she needed to spend as a student for study, travel, and tutorials. These requests were not addressed by the ministry. Another unanswered concern of the appellant was how the ministry did not count a course with three one-hour classes per week, the same as the identical course, with two one and a half hour classes per week - the same three hours per week for the student, just differently configured class schedules. The latter class receives one hour less per week for ministry CCS calculations. The panel finds this calculation to be unreasonable. The panel finds that the same number of hours in school should equate to the same number of hours of child care needed.

In view of this evidence, the panel finds that the appellant did provide the requisite information to determine her eligibility on account of the required reason for care, albeit on a less than timely basis. The panel therefore finds that the ministry was not reasonable in its decision that the appellant was ineligible for a CCS due to the reason for care. It was evident whether and when she was employed or self-employed and/or attending an educational institution. Thus, the ministry's Reconsideration Decision, finding an overpayment of \$5298.75 for ineligibility due to the reason for care was not reasonably determined.

\$946.27 Alleged Overpayment - ineligibility due to shared custody:

As per section 1 of the *Act*, the definition of "parent" includes a person with whom a child resides. During the period the appellant's children resided with her ex-spouse, she did not meet the eligibility criteria in section 3(1) of the Regulation and the ministry found that the appellant was not eligible to receive the CCS for that time.

The appellant's eligibility was affected by her shared custody arrangement with her ex-spouse during the period between January 1, 2021, and December 31, 2021. Her eligibility was assessed based on the custody agreement she submitted indicating the children were in her care Thursday and Fridays and alternating Wednesdays. She did not have a custody

arrangement prior to being asked to submit one by the AO, and the information submitted was a “rough” attempt to explain how the appellant shared custody.

The ministry determined that the requested CCS for three days was a reasonable part time schedule. It acknowledged the flexible nature of the appellant’s arrangement, but it determined without additional evidence of the actual number of days the children resided with her, three days was a reasonable part time schedule. The ministry believed it was reasonable to conclude the appellant required care for the days specified in the agreement. The panel agrees with the ministry’s finding that without further evidence, three days was a reasonable part time schedule, given the shared custody arrangement. Therefore, the panel finds that the appellant has received an overpayment of \$946.27 of CCS which she was not eligible to receive due to shared custody.

2. Repayment of the Overpayment:

The Act Section 7(1) sets out that if a CCS is paid to or for a person who is not entitled to it, that person is liable to repay to the government the amount to which the person was not entitled. Therefore, in accordance with the sections 7(1), and section 5(2) of the Act and section 3 of the Regulation, the panel finds the appellant was not eligible to receive the amount of CCS received for the period between January 1, 2021, and December 31, 2021, due to the shared custody arrangement. Accordingly, the panel also finds that the ministry reasonably determined that the appellant is liable to repay the amount of this overpayment of \$946.27.

The panel also finds the appellant was not eligible to receive the amount of CCS received for the period between December 1, 2020, and December 31, 2020, due to an increase of her adjusted family income. Therefore, the panel also finds that the ministry reasonably determined that the appellant is liable to repay the amount of this overpayment of \$267.85.

The panel also finds the appellant was not eligible to receive the amount of CCS received for the period of September 2021, due to an administrative error. Therefore, the panel also finds that the ministry reasonably determined that the appellant is liable to repay the amount of this overpayment of \$27.00.

The panel also finds that since the ministry was not reasonable in its decision that the appellant was ineligible for CCS due to the appellant’s reason for care, the ministry was also unreasonable in its decision that the appellant shall be liable to repay \$5298.75.

Conclusion:

The panel finds that the ministry's decisions that there were overpayments of CCS for \$946.27 (shared custody arrangement), \$267.85 (changed circumstances [income]) and \$27.00 (administrative error) for a total of \$1241.12 and that these overpayments must be repaid were reasonably supported by the evidence.

However, the panel finds that the ministry's decision that there was an overpayment between July 1, 2019, and December 31, 2021, in the amount of \$5298.75 and that this amount must be repaid was not reasonably supported by the evidence.

The ministry's Reconsideration Decision is rescinded, and the appellant is successful, in part, on appeal.

Schedule of Legislation

Child Care Subsidy Act

Section 1 - Definitions

In this Act:

"parent" includes a person with whom a child resides and who stands in place of a parent of the child.

Section 5 - Information and verification

(1) For the purpose of determining or auditing eligibility for child care subsidies, the minister may do one or more of the following:

- (a) direct a person who has applied for a child care subsidy, or to or for whom a child care subsidy is paid, to supply the minister with information within the time and in the manner specified by the minister;
- (b) seek verification of any information supplied by a person referred to in paragraph (a);
- (c) direct a person referred to in paragraph (a) to supply verification of any information supplied by that person or another person;
- (d) collect from a person information about another person if
 - (i) the information relates to the application for or payment of a child care subsidy, and
 - (ii) the minister has not solicited the information from the person who provides it.

(2) A person to or for whom a child care subsidy is paid must notify the minister, within the time and in the manner specified by regulation, of any change in circumstances affecting their eligibility under this Act.

(3) If a person fails to comply with a direction under subsection (1) (a) or (c) or with subsection (2), the minister may

- (a) declare the person ineligible for a child care subsidy until the person complies, or
- (b) reduce the person's child care subsidy.

(4) For the purpose of auditing child care subsidies, the minister may direct child care providers to supply the minister with information about any child care they provide that is subsidized under this Act.

Section 7 - Overpayments, repayments and assignments

- (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

Section 1(1) - Definitions

In this regulation:

"dependent child" means a child who resides in the parent's place of residence and relies on the parent for the necessities of life, but does not include a child who is 18 years of age and is a person with disabilities;

"family" means a parent and the parent's dependants;

"full day", in relation to child care, means

- a) more than 4 hours of child care provided in a day, or
- b) child care provided before and after school in a day;

"half day", in relation to child care, means 4 hours or less of child care provided in a day, unless the child care is provided before and after school in a day;

Section 3 - Circumstances in which subsidy may be provided

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

Section 8 - Amount of subsidy

(1) In this section:

"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;

Section 14 - Notifying the minister of change in circumstances

The notification required by section 5 (2) of the Act must be given in writing or by telephone,

- (a) as soon as possible after any change in circumstances affecting the eligibility of the parent, and
- (b) to an employee in the Child Care Subsidy Service Centre.

Section 15 - Accounts and payment

- (1) Child care providers must submit billing for child care subsidies to the minister in the manner and form specified by the minister.
- (2) The minister must pay
 - (a) child care subsidies for child care described in section 2 (c) directly to the parent, and
 - (b) child care subsidies for child care described in section 2 (a), (b) or (b.1) directly to the child care provider.
- (3) Despite subsections (1) and (2), a non-profit agency providing child care support services may pay the caregiver and submit accounts to the ministry for reimbursement.
- (4) If a licence issued for a child care setting under the Community Care and Assisted Living Act is cancelled, the minister may accept, for up to 30 days after the date the licence is cancelled, billing for subsidized child care provided in that setting.
- (5) No child care subsidy will be paid to a child care provider under subsection (2) (b) for a day on which the child care setting is closed, unless the day is a statutory holiday.
- (6) In subsection (5), "statutory holiday" means any day, except Sunday, that is listed as a holiday in the Interpretation Act.

APPEAL NUMBER 2024-0070

Part G – Order	
The panel decision is: (Check one) <input checked="" type="checkbox"/> Unanimous <input type="checkbox"/> By Majority	
The Panel <input type="checkbox"/> Confirms the Ministry Decision <input checked="" type="checkbox"/> 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 <input checked="" type="checkbox"/>	
Legislative Authority for the Decision:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

Part H – Signatures	
Print Name Bill Farr	
Signature of Chair	Date (Year/Month/Day) 2024/03/15

Print Name Jennifer Armstrong	
Signature of Member	Date (Year/Month/Day) 2024/03/15
Print Name Joe Rodgers	
Signature of Member	Date (Year/Month/Day) 2024/03/15