

Appeal Number2025-0074

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision dated February 10, 2025, denying the Appellant's request for an increase to her Affordable Child Care Benefit for the period beginning January 1, 2025.

The Ministry found the Appellant was not eligible for an increase to her Affordable Child Care Benefit as she was already receiving the maximum benefit of 20 full-time days of childcare per month for each of her children under the Section 5 of the Early Learning and Child Care Regulation.

### **Part D – Relevant Legislation**

*Early Learning and Child Care Act ("Act") Section 4*

*Early Learning and Child Care Regulation ("Regulation") Sections 5, 8, 9,19 and 20*

Full text of the relevant legislation is attached at the end of the Reasons.

## Part E – Summary of Facts

The hearing of this appeal took place March 19, 2025, via video/teleconference with the Appellant, three Panel members, and the Ministry representative.

### Background and Summary of Relevant Information

The following is a summary of the key information related to this Appeal:

- On December 21, 2024, the Appellant submitted an Affordable Child Care Benefit application dated December 21, 2024, which listed two reasons for requiring childcare. First, the Appellant is working 5 weekdays per week, six hours per day, from 8:00am to 3:00pm. Secondly the Appellant is looking for work five weekdays per week, five hours per day, from 4:00 pm to 9:00pm, and two weekend days per week for six hours per day.
- On December 27, 2024, the Child Care Service Centre sent the Appellant a letter approving 20 full days per month of childcare for child 1 at a Licensed Group L2 childcare centre starting December 1, 2024. They also approved child 2, for 17 full days per month of childcare in the Appellant's home H2 from December 9 to 31, 2024, and starting January 1, 2025, childcare at a Licensed Group childcare centre L2 for 20 full days per month.
- On December 27, 2024, the Child Care Service Centre sent the Appellant a letter denying her request for more than 20 hours of childcare per child as she already has an Affordable Child Care benefit plan for 20 full days per month of childcare for each child and she is not eligible to receive more than this.
- On December 27, 2024, the Appellant phoned the Child Care Service Centre and asked if a combination of work search and attending school as reasons for requiring childcare would allow her to be eligible to receive more than 20 full-time days of childcare per month. The Child Care Service Centre advised the Appellant that she would be eligible to receive more than 20 full-time days of childcare if her reasons for care were attending school and performing a work search, as her childcare was in her child's home and a licensed Group childcare centre. The Appellant was advised to submit an updated CF2900, Affordable Child Care Benefit application form indicating her reason for childcare is work search and attending school, along with school documents showing her name, and the start and end date of the program she is studying and the start and end dates of the courses. In the Ministry's Reconsideration Decision dated February 10, 2025, the Ministry notes that the worker who told the Appellant she would be eligible was incorrect.

- On December 30, 2024, the Child Care Service Centre received from the Appellant an Affordable Child Care Benefit Application, CF2900 signed and dated on December 30, 2024. In Section 2, Reasons for Needing Child Care, the Appellant noted:
  - Attending School only on weekdays, Monday to Friday
  - Looking for work, both weekdays and weekends.
- On January 9, 2025, the Child Care Service Centre contacted the Appellant and told her that they received her school acceptance letter but also require an enrollment letter that shows the start and end dates of the courses the Appellant is taking.
- On January 21, 2025, the Child Care Service Centre received the Appellant's letter of acceptance from the college she plans on attending.
- On January 22, 2025, the Child Care Service Centre denied the Appellant's request for Affordable Child Care benefit for more than 20 full-time days of childcare per month for each of her two children, as she already receives 20 full-time days per month per child of childcare and this is the maximum she is eligible to receive.
- On January 24, 2025, the Appellant submitted a Request for Reconsideration to the Child Care Service Centre.
  - In Section 3, Reason for Request for Reconsideration, the Appellant noted:
    - She is starting full-time college January 27<sup>th</sup>.
    - As a single mom, she needs income to support her children so needs to look for a job after college and on the weekend.
    - As the children's day care closes at 5 PM, she wants to add a care provider who will not be at her home but at the LNR's (License-Not-Required) home.
    - She needs childcare to be able to look for employment together with full-time college.
  - In the Request for Reconsideration, the Appellant included an Affordable Child Care Benefit Child Care Arrangement form dated January 24, 2025, which notes:
    - Part 2, "What type of childcare do you provide?", the section "Licence-not-required (LNR) childcare."
    - Part 3, "Time of day" notes 5 pm to 10 pm and 9 am to 4 pm (weekend), Monday to Sunday for both children.

- On January 24, 2025, the Appellant's Request for Reconsideration was received at the Reconsideration, Appeals and Administrative Fairness Branch.
- On February 10, 2025, the Ministry completed its reconsideration which determined the Appellant was not eligible to receive more than 20 full days of childcare per month.

#### Additional Evidence Submitted After Reconsideration

#### Notice of Appeal

- In the Notice of Appeal dated February 20, 2025, under "Reason for Appeal", the Appellant stated she does not agree with the Ministry's decision as she is a single mother, she needs to pay her bills, and study full time. She needs childcare to be able to find a job.

#### Evidence submitted at the hearing

- At the hearing, the Appellant stated:
  - She has two special needs children which require extra expenses to care for.
  - She does not have family to assist with childcare.
  - She requires the extra childcare to search for a job.
  - Her class time is from 8:30 am to 2:30 pm, Monday through Friday. Classes are in person, online, as well as some group project time.
  - The extra childcare would occur on weekday evenings and during the day on weekends at her older child's License-Not-Required childcare provider's home.
- At the hearing, the Ministry stated:
  - Full day coverage for childcare is 20 days per month. Two exceptions to the legislation are firstly through a directive from Family Services and secondly, a directive from the Indigenous Authority. Neither of which applies to the Appellant.
  - Under Ministry policy, exceptions to the legislated maximum 20 days for childcare may be given if certain conditions are met by the Appellant. Going to school full time and searching for employment is not one of these conditions but, going to school full time and working may be a condition the Ministry would consider. This information may have been miscommunicated by the Ministry worker on December 27, 2024, when the Appellant was informed, she would be eligible for an increase to childcare if she was attending school full time and searching for work.

Admissibility of New Evidence

The Panel admitted the additional evidence, the explanation of Ministry policy by the Ministry representative and the statements made by the Appellant and Ministry during the hearing as they are reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The Ministry and Appellant did not object to the admission of the new evidence given. Therefore, the Panel finds the evidence is admissible under Section 22(4) of the *Employment and Assistance Act*.

## Part F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision that the Appellant was not eligible to receive more than 20 full days of childcare per month was reasonably supported by the evidence and, a reasonable application of section 5 of the Regulation in the circumstances of the Appellant.

### Appellant's position

The Appellant is a single mother attending full time classes at a college. She requires extra childcare during the weekdays and weekends to find employment, so she is able to meet the needs of her family.

### Ministry's position

The Ministry found the Appellant did not meet the eligibility criteria to receive more than 20 full days per month of childcare. Section 8 of the Regulation states that in addition to the 20 full days of childcare, up to an additional 20 half days per month of childcare for children can be provided if the child has not reached school age or has reached school age but is not enrolled in school and is attending a licensed preschool program. As the Appellant's children are enrolled in school, and neither is attending a licensed preschool program, she is not eligible to receive up to an additional 20 half days per month of childcare.

Section 19 of the Regulation states that the Appellant may be eligible to receive more than the amount of childcare described in the Schedule of the Regulation, if the childcare is arranged or recommended under the *Act* by a director that has offered services, begun an assessment, or begun an investigation. The Appellant may also be eligible to receive more than the amount of childcare described in the Schedule of the Regulation if the childcare is arranged or recommended by an applicable Indigenous authority. As the Appellant's childcare is not arranged or recommended under the *Act* or by an Indigenous authority, this section of the legislation does not apply to the Appellant's childcare.

The Ministry found that the Appellant had received the maximum Affordable Child Care benefit that she is entitled to receive of 20 full days of care per month, as permitted in the Schedule of the Regulation. The Appellant is therefore not eligible to receive more than 20 full days of childcare per month.

### Panel Decision

The Panel must decide whether the Ministry's Reconsideration Decision was reasonably supported by the evidence or whether it was a reasonable application of the relevant sections of the Regulation in the circumstances of the Appellant.

Section 5 (1)(c) of the Regulation states that for the purposes of a childcare benefit under the regulation, childcare is full time if the childcare is provided for the equivalent of at least 20 full days in a month. Section 5 (1)(d) childcare is provided as part time if the childcare is provided for is less than the equivalent of 20 days in a month.

As the Appellant is receiving full time childcare of 20 full days in a month for her children, to receive additional childcare benefits, the Appellant would need to meet the criteria set out in Section 8 and 19 of the Regulation.

#### Section 8

The criteria of section 8 (1)(a) and (b) of the Regulation requires the child has not reached school age or the child has reached school age but is not enrolled in school. As the Appellant's children are enrolled in school, and neither is attending a licensed preschool program, the Panel finds the Ministry's decision that the Appellant is not eligible to receive additional childcare was a reasonable application of the legislation in the circumstances of this case.

#### Section 19

Section 19 of the Regulation states that the Appellant may be eligible to receive more than the amount of childcare described in the Schedule of the Regulation if the childcare is arranged or recommended under the *Act* or the childcare is arranged or recommended by an applicable Indigenous authority. As the Appellant's childcare has not been arranged or recommended under the *Act* or by an Indigenous authority, the Panel finds the Ministry's decision that the Appellant is not eligible to receive additional childcare under this section was a reasonable application of the legislation in the circumstances of this case.

The Panel notes that the Appellant is not eligible for an increase in childcare under the Regulations, however, the Ministry did refer to Ministry policy which would consider an increase to childcare if the Appellant was attending school full time and working. The Panel has no jurisdiction to address a Ministry policy that is broader than what the legislation permits, the Panel must determine the reasonableness of the Ministry's decision only according to the applicable legislation, not Ministry policies. In any event, the Appellant is not presently working.

## Concluding Decision

The Panel confirms the Ministry's Reconsideration Decision, the Appellant is not successful on appeal. The Panel is sympathetic to the Appellant's request and notes she may be able to reapply for additional childcare as her circumstances change.

## Applicable Legislation

### *Early Learning and Child Care Act*

#### **Child care benefits**

4 On application by a parent and subject to the regulations, the minister may pay a benefit to or for the parent if the parent is eligible for the benefit, for the purpose of reducing or eliminating the cost of child care to the parent.

### **Early Learning and Child Care Regulation**

#### **Determining duration of child care**

5 (1)For the purposes of a child care benefit under this regulation, child care is considered to be provided as follows:

- (a)for a full day, if the child care is provided
  - (i)for more than 4 hours in the day, or
  - (ii)for 4 hours or less in the day but both before and after school that day;
- (b)for a half day, if the child care is provided for 4 hours or less in the day, unless the child care is provided both before and after school that day;
- (c)full time, if the child care is provided for the equivalent of at least 20 full days in a month;
- (d)part time, if the child care is provided for less than the equivalent of 20 days in a month.

(2)For the purposes of determining, under subsection (1) (c) or (d), whether child care is provided full time or part time, 2 half days are the equivalent of one full day.

#### **Child care benefits in relation to licensed preschool programs**

8 (1)This section applies in relation to a child who has reached 29 months of age if

- (a)the child has not reached school age, or
- (b)the child has reached school age, but is not enrolled in school.

(2)If the minister pays a child care benefit for a child to receive 20 full days of child care in a month in a child care facility, other than through a child care program set out in section 2 (a), (b), (c), (d), (f) or (h), the minister may pay an additional child care benefit for that child to receive child care for up to 20 half days in a month for child care received by the child through a licensed preschool program.

(3)The additional child care benefit may be paid under subsection (2) beginning on the first day of the month in which a child reaches 29 months of age.

### **Applications and eligibility for child care benefits**

**9** (1)Subject to subsection (2), a parent may apply for a child care benefit by completing and submitting to the minister an application in the form required by the minister.

(2)Only one parent in each family unit is eligible to apply for a child care benefit.

(3)An applicant is eligible for a child care benefit only if all of the following apply:

- (a)the applicant is a resident of British Columbia;
- (b)the child care for which the child care benefit is sought by the applicant is received for one or more qualifying reasons set out in section 10;
- (c)the applicant satisfies the citizenship or other requirements set out in section 11;
- (d)unless an exception under section 13 (2) applies in relation to the applicant's child, the applicant's family unit satisfies the income requirements set out in section 12;
- (e)the applicant and the applicant's spouse, if any, supply the minister with the information and records required under section 14;
- (f)the applicant has completed and submitted an application form in accordance with subsection (1).

### **Payment of increased child care benefits**

**19** (1)The minister may pay a child care benefit in an amount that is greater than an amount determined under section 18 if

- (a)the minister considers the greater amount necessary to ensure that child care is provided to a child, and
- (b)the child care is arranged or recommended by a director after a director has
  - (i)offered support services or agreements to the child and family under section 16 (2) (a) of the *Child, Family and Community Service Act*,

- (ii)begun an assessment of the family under section 16 (2) (b.1) of the *Child, Family and Community Service Act*, or
- (iii)begun an investigation, under section 16 (2) (c) of the *Child, Family and Community Service Act*, of the child's need for protection.

(2)The minister may pay a child care benefit in an amount that is greater than an amount determined under section 18 if

- (a)the minister considers the greater amount necessary to ensure that child care is provided to a child, and
- (b)the child care is arranged or recommended by an applicable Indigenous authority after
  - (i)the Indigenous authority has received information giving rise to a concern for the child's safety, and
  - (ii)one or more of the following steps have been taken under an Indigenous law to address the concern:
    - (A)offering support services or agreements to the child and family;
    - (B)beginning an assessment of the child's family;
    - (C)beginning an investigation of the child's need for protection.

(3)Without limiting subsection (1) or (2), the minister may pay a child care benefit in an amount that is greater than an amount determined under section 18 if

- (a)the minister considers the greater amount necessary to ensure that child care arranged or recommended by the director or Indigenous authority is provided to a child, and
- (b)the child resides with an applicant, other than a parent in respect of whom a step referred to in subsection (1) (b) (i), (ii) or (iii) or (2) (b) (ii) (A), (B) or (C) was taken.

### **When child care benefit may be paid**

**20** (1)The minister may pay a child care benefit to or on behalf of a parent from the first day of the month in which the parent completes an application under section 9 [*applications and eligibility for child care benefits*].

(2)If an administrative error has been made, the minister may pay a child care benefit to or on behalf of a parent for child care provided in the 30 days before the parent completes an application under section 9.

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**Part G - Order**

**The panel decision is: (Check one)**       **Unanimous**       **By Majority**

The Panel       **Confirms the Ministry Decision**       **Rescinds the Ministry Decision**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?   Yes    No

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

Section 24(1)(a)    or Section 24(1)(b)

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

**Part H - Signatures**

Print Name

Charles Schellinck

Signature of Chair

Date (Year/Month/Day)

2025/03/21

Print Name

Glean Prior

Signature of Member

Date (Year/Month/Day)

2025/03/21

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2025/03/24