

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

The decision under appeal is the March 12, 2025 decision of the Ministry of Education and Child Care (the “Ministry”) that it could not reconsider its earlier decision regarding the amount of Affordable Child Care Benefit the Appellant received for the period May 2021 to September 2023 and the resulting overpayment of \$51,820.65.

The Ministry stated that section 26(2)(b) of the Early Learning and Child Care Regulation required a Request for Reconsideration to be submitted within 20 business days of receiving notice of the Ministry’s decision and that the Appellant missed the deadline for submitting a Request for Reconsideration. The Ministry stated that it had no authority to extend the timeline for filing and could not reconsider the decision.

### **Part D – Relevant Legislation**

*Early Learning and Child Care Act*, SBC 2021, c. 22, section 13 (the “Act”).

Early Learning and Child Care Regulation, B.C. Reg. 189/2024, section 26 (the “Regulation”).

Full text of these sections of legislation can be found in the Schedule of Legislation at the end of this decision.

## **Part E – Summary of Facts**

The hearing of this appeal took place via video-conference on April 14, 2025. A representative of the Appellant and Ministry attended along with two witnesses in support of the Appellant.

### **Evidence Prior to Appeal**

The Ministry stated on March 12, 2025 that it could not reconsider its Decision that the Appellant was ineligible for the Affordable Child Care Benefit paid to the Appellant between November 2021 and September 2024 and this resulted in an overpayment of \$51,820.56 (the "March 12<sup>th</sup> Decision").

A review of the Ministry records shows the following timeline of events leading up to the March 12<sup>th</sup> Decision:

- On October 17, 2024, the Appellant was informed by the Verification and Audit Unit of the Ministry that the Appellant was ineligible for the Affordable Child Care Benefit claimed for the period between November 2021 and September 2024 resulting in an overpayment of \$51,820.56 (the "Decision").
- Canada Post records confirm that this information was received by the Appellant on October 23, 2024.
- On November 19, 2024, a representative of the Appellant contacted the Verification and Audit Unit to request reconsideration of the Decision.
- On November 28, 2024, the Verification and Audit Unit emailed the Appellant to state that a reconsideration package had been prepared and sent to the Appellant via Canada Post. They noted that due to a postal strike, delivery might be delayed and offered to send a copy by email for quicker access. Later this day, the Appellant responded stating that they were willing to wait for delivery by Canada Post.
- Canada Post records confirm that the Appellant received the reconsideration package on January 3, 2025.
- On February 19, 2025, the Verification and Audit Unit emailed the Appellant to inform them that the deadline for submitting a Request for Reconsideration had passed.
- On March 4, 2025, a completed Request for Reconsideration form was received by the Ministry.

### **Evidence on Appeal**

At the hearing, the Appellant's representative stated that she did not dispute the above timeline, but did dispute the characterization of certain communications. She stated that prior to the dates in question she had been working with the Ministry's auditor to address the calculations of overpayments and that they had had numerous telephone conversations about the amounts

paid and had exchanged many emails. She stated that the auditor had agreed to present her information for her review and comment before finalizing any numbers. She also stated that while the Decision and Request for Reconsideration Package were delivered to the Appellant that she did not see the Decision until February 2025. Details of this testimony are set out below.

The Appellant also attached written submissions to the Notice of Appeal filed with the Tribunal. In these written submissions the Appellant's representative stated:

- She told the Verification and Audit auditor that the Appellant would appeal if good faith was not shown by the Ministry. The auditor responded that he was still willing to work with the Appellant going forward.
- She trusted what the auditor said and believed that the package being sent to her in October was a package for her and the auditor to review together rather than the Decision.
- She trusted that the auditor was prepared to still work together to review the overpayment numbers and that is why she agreed to have the package come via Canada Post rather than email. She did not feel that the communication was going to be time sensitive.
- She became very ill at the beginning of January and was away from the office for many weeks and had no idea the package was received or what the contents of the package was.
- Upon return to the office, she had to play "catch up" with paper work. Nobody else in the office opened the package while she was off sick.
- As soon as she opened the package from the Ministry, she realized it was the Decision and immediately contacted the Ministry to let them know that she had only just received the Decision and wished to file a Request for Reconsideration of the Decision.
- She stated that she would have replied sooner; however, she had been away from work due to illness.
- She felt that the Verification and Audit staff did not communicate with any intent to review the amounts in question fairly.

In addition to the above, the Appellant's representative stated the following at the hearing:

- She had been working with the Auditor since not too long after the Appellant's last appeal hearing.
- The auditor was very condescending in his discussions with her.

- The auditor seemed to believe that the parents of the children had been billed for childcare that should have been offset by the Affordable Child Care Benefits paid to the Appellant.
- She could not show her billing to the auditor as it contained confidential information, but she did offer to get letters from parents about what they were billed.
- She and the auditor had difficulty scheduling a meeting to review the Ministry's revised numbers and she and the auditor agreed to exchange calculations.
- The auditor told her that the Ministry's calculations would be sent in the mail and warned that there could be delay caused by a strike with Canada Post. She stated that she was fine with a delay and did not need the numbers emailed to her.
- She does not believe that the auditor dealt in good faith with her or the Appellant.
- She first saw the Decision in February 2025 and upon seeing the Decision immediately contacted the auditor via email to let him know that she disagreed with the Decision and thought that they were still supposed to be reviewing calculations together.
- The Appellant is a society, and she is the sole employee responsible for paperwork and finances and she does this part of her work while also ensuring that the families served by the Appellant are cared for. There are other staff members, but they do not deal with paperwork and correspondence.

In answer to a question from the panel regarding the timing of events, the Appellant's representative referred to an email chain between her and the auditor and shared images of the email referred to at the hearing. This email chain shows that the Ministry emailed the Appellant's representative on February 12, 2025, enclosing a letter regarding a \$51,820.65 overpayment. The Appellant's representative responded to this email on February 19, 2025, and stated that the Appellant wished to proceed with an appeal of the Decision. The auditor responded on the same date indicating that the timeline for submitting a Request for Reconsideration had expired, but that the Appellant could still submit a request, and they would forward it to the appropriate office to see if the request could be considered. The auditor also offered to meet with the Appellant to review the Decision.

Two witnesses testified in support of the Appellant at the hearing. Both were employees of the Appellant. Both witnesses stated that they witnessed the auditor speaking to the Appellant's representative on speaker phone a few times. Both witnesses provided similar evidence and stated that the auditor was very unprofessional during the phone calls and spoke in a condescending tone and belittled the Appellant's representative during the conversations overheard.

The Ministry's representative stated the following at the hearing:

- She believes that the auditor never agreed to discuss the calculations in a way that would be a negotiation or consensus reaching of the numbers. Rather, she believes the auditor

meant that he was prepared to explain the Ministry's calculations to the Appellant's representative when he agreed to discuss the calculations.

- The Ministry looks at the registered mail delivery notices to determine the date documents are received by individuals and counts the timeframe for a response from that date.
- The legislation requires a Request for Reconsideration to be filed within 20 business days of receipt of the decision sought to be reviewed.
- The Decision and the Reconsideration Package were both sent to the Appellant and were signed for upon delivery.
- The legislation gives 20 business days after notice to file a Request for Reconsideration, but the Ministry's policy is to start counting business days from the date a Request for Reconsideration Package is received from the Ministry as they do not include such packages with the initial decisions and send them to individuals when they receive notice that someone wishes to request reconsideration of a decision.
- The Appellant missed the deadline for filing a Request for Reconsideration.
- The Ministry has no authority to extend or amend the legislated timeframe for requesting reconsideration.

### **Admission of Evidence**

Neither party objected to the admission of the other's new evidence provided on appeal. The Panel determined that the new evidence provided is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

## Part F – Reasons for Panel Decision

The issue that must be determined is whether the Ministry's March 12<sup>th</sup> Decision, that it could not issue a reconsideration decision because the Appellant had not filed its Request for Reconsideration in time, was a reasonable application of the relevant legislation in the circumstances of the Appellant.

This decision deals only with the merits of the March 12<sup>th</sup> Decision as it relates to the refusal of the Ministry to provide a reconsideration of the Decision. It does not deal with the merits or reasonableness of the underlying Decision itself.

### The Legislation

Section 13 of the Act states that a request for reconsideration must be made in accordance with any rules set out in the regulations.

Section 26(2) of the Regulation states:

For the purposes of section 13 (3) [*reconsiderations*] of the Act, a person who requests the minister to reconsider a decision referred to in section 13 (1) or (2) of the Act must make that request as follows:

- (a) in the form required by the minister;
- (b) by delivering the request to the Child Care Service Centre, in accordance with subsection (3) of this section, within 20 business days after the person received notice of the minister's decision.

The panel finds that this means that any request for reconsideration must be made within 20 business days after receiving notice of the ministry decision in dispute. Further, there are no provisions in the legislation allowing for the time limits set out in this section of the legislation to be altered, even in cases of extenuating circumstances.

### The Decision

After reviewing the appeal record and written submissions and oral evidence of the parties, the panel notes that while there is confusion as to exactly who knew what when, the documentary evidence contained in the appeal record clearly shows the following:

1. A Request for Reconsideration package concerning the Decision was delivered to the Appellant on January 3, 2025, and the package was signed for by someone at the Appellant's address.

2. The Appellant's representative emailed the auditor on February 19, 2025, in response to an email received from the Ministry. In this email the Appellant's representative advised that they had been sick and out of the office and stated that they wanted to appeal the Ministry's Decision. The auditor responded to this email the same day advising that the deadline to file a Request for Reconsideration had expired.
3. A Request for Reconsideration form concerning the Decision was signed on February 25, 2025.
4. The Request for Reconsideration was received at the Ministry on March 4, 2025.

By any calculation, the Appellant's Request for Reconsideration was submitted to the Ministry well after the 20-business day timeframe for submitting such a request.

The panel acknowledges the Appellant's representative and witnesses' concerns regarding the demeanor of the auditor during discussions, confusion regarding the Verification and Audit Unit's discussions around the Decision and its processes, and the delay in being able to open and read the Decision and Request for Reconsideration package. However, as the legislation provides no ability for the Ministry or the panel to extend or amend the timelines set out in the legislation, the panel finds that the Ministry reasonably determined that the Request for Reconsideration was filed outside of the legislated timelines and a reconsideration decision could not be provided.

Accordingly, the panel confirms the Ministry's March 12<sup>th</sup> Decision. The Appellant's appeal is not successful.

## Schedule of Legislation

### Early Learning and Child Care Act

#### Reconsiderations

13 (1) Subject to section 15, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to pay a child care benefit to or for the person;
- (b) a decision that results in a discontinuance or reduction of the child care benefit paid to or for the person;
- (c) a decision made under section 10 (2) *[overpayments]*.

(2) A child care provider may request the minister to reconsider a decision made under section 10 (3).

(3) A request under subsection (1) or (2) must be made, and the decision reconsidered, in accordance with any rules specified in the regulations.

### Early Learning and Child Care Regulation

26 (1) In this section, "**business day**" means a day other than Saturday or a holiday.

(2) For the purposes of section 13 (3) *[reconsiderations]* of the Act, a person who requests the minister to reconsider a decision referred to in section 13 (1) or (2) of the Act must make that request as follows:

- (a) in the form required by the minister;
- (b) by delivering the request to the Child Care Service Centre, in accordance with subsection (3) of this section, within 20 business days after the person received notice of the minister's decision.

(3) A request for reconsideration must be delivered by mail or fax or by submitting the request through the online platform known as My Family Services.

(4) A request for reconsideration that is delivered by mail is deemed to have been delivered 3 business days after the date it is mailed.

(5) Within 10 business days after receiving a request for reconsideration, the minister must

- (a) reconsider the decision in respect of which the request was made, and
- (b) give to the person who delivered the request notice of the minister's decision on the reconsideration.

(6) A notice of decision under subsection (5) (b) must be in writing and must include the minister's reasons for the decision.



(7) If a person delivers a request for reconsideration of a decision of the minister that results in a discontinuation or reduction of a child care benefit, the minister's decision is set aside and the child care benefit is reinstated until the minister gives to the person notice under subsection (5) (b) of the result of the reconsideration.

(8) For certainty, a request for reconsideration of a decision of the minister that results in a refusal of a child care benefit does not operate to set aside the minister's decision during the period of time before notice of the result of the reconsideration is given under subsection (5) (b).

**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

Emily C. Drown

Signature of Chair

Date (Year/Month/Day)

2025/05/02

Print Name

Signature of Member

Date (Year/Month/Day)

2025/05/06

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2025/05/07