Part C – Decision Under Appeal

The decision under appeal is the Ministry of Education and Child Care (ministry) reconsideration decision (decision) dated March 2, 2023, which determined that the appellant is not eligible for the Affordable Child Care Benefit (child care benefit) from her December 8, 2021 application, as per section 4 of the Child Care Subsidy Regulation.

Specifically, the ministry determined the appellant is not eligible as she did not provide the ministry with her spouse's social insurance number.

Part D – Relevant Legislation

Child Care Subsidy Act (Act), *s*ection 4

Child Care Subsidy Regulation (Regulation), sections 4 and 12

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show:

- On December 8, 2021, the ministry received a child care application form and a child care arrangement form, both dated November 24, 2021, identification for all family members and a visitor visa letter for the appellant's spouse. The ministry noted the appellant's spouse was not a Canadian citizen but in Canada on a temporary visitor visa. It was determined that proof of permanent residency status and social insurance number (SIN) verification for the appellant's spouse was required to assess the appellant's application.
- On December 16, 2021 the appellant submitted confirmation that a permanent residence application had been submitted to the federal government on December 1, 2021.
- On January 4, 2022 the ministry requested permanent residence verification and proof of SIN for the appellant's spouse. In response, the appellant submitted a copy of her spouse's immigration visitor record and his work permit application explaining there were lengthy delays at Immigration, Refugees and Citizenship Canada, and current processing times were three to twelve months.
- On January 5, 2022 the appellant was advised in a telephone call with the ministry that she was not eligible for the child care benefit as her spouse did not have a SIN. She was also advised that although only the main applicant is required to be a Canadian citizen, both the applicant and their spouse are required to have a SIN. It was recommended she apply for a SIN for her spouse.
- The appellant was advised her file would remain open for four months to allow time to submit the required documentation and that her current application could be backdated to November 18, 2021. However, if the file closed a new application would be required and her date of eligibility would be the first of the month from when the new application was received.
- On January 24, 2022 the appellant contacted the ministry to advise she had obtained a temporary taxation number from the Canada Revenue Agency (CRA) for her spouse. The ministry noted the letter from the CRA advised that despite being issued the temporary taxation number, her spouse would still have to obtain a SIN from Service Canada.
- On July 28, 2022, the appellant submitted a letter advising she wanted to apply for the Affordable Child Care Benefit (child care benefit).
- On February 3, 2023, the ministry sent a letter to the appellant advising the appellant that her application for the child care benefit was rejected because she had "not provided sufficient documentation to evidence [her] eligibility." In particular, the ministry noted that the appellant had failed to provide her spouse's SIN despite being required to do so.

Request for Reconsideration (February 23, 2023) - summary

The appellant states the ministry was incorrect in its decision because it applied a strict reading of the legislation in a manner that was contrary to policy.

Section 4.1(1) of the Regulation, states that an applicant must provide their SIN and that of their spouse. The appellant states her husband at the time of the application, had applied for permanent residency and was awaiting the issuance of his permanent resident card. As such, he was not able to get a SIN. Instead, the CRA had issued him a temporary taxation number, which was supplied with the application.

Section 4(2) of the Regulation provides that, "only one parent in the family may apply for a child care subsidy". Section 5(a) stipulates that only an applicant who is either a Canadian citizen or "is authorized under an enactment of Canada to take up permanent residence in Canada" will be eligible for the subsidy. Section 6 of the Regulation further states that residency of British Columbia is also required for eligibility.

The appellant states she is a Canadian citizen and a resident of British Columbia and, as the applicant, satisfies the section 5(a) requirement. Further, her husband, if he had been the applicant at the time, would have satisfied section 5(a)(ii) because he is authorized under section 10 (1) of the *Immigration and Refugee Protection Act* to take up permanent residency.

The appellant states the purpose of including the provision requiring a SIN by the applicant and the applicant's spouse is to ensure an accurate income assessment for a needs-based subsidy. Bill 13 was introduced in 1996 and included a provision at section 2 which stated that the purpose of the Act is to implement a child care system that will
(a) promote the health, safety and well-being of children receiving child care;
(b) promote quality in child care;
(c) improve access to child care, including child care for children with special needs; and
(d) provide financial help to families with limited incomes who need child care."

The appellant states further that a strict reading of section 4.1(1) creates a technical requirement for a SIN as a prerequisite to eligibility, which is clearly contrary to the legislative intent. The modern approach requires that the provision be read in the context of the entire Act and the legislative intent at the time of the enactment. For example, the language of section 5(a)(ii) carefully confers eligibility to those "eligible to take up

permanent residence" rather than those with permanent resident status. This distinction affirms that the legislature was not intending the provision be used to discriminate against those applicants with immigrant spouses, as this would clearly be contrary to the Canadian Charter of Rights and Freedoms (Charter).

The appellant adds that she has provided all the necessary information and to deny her eligibility to receive the child care benefit because of her husband's lack of a SIN has a discriminatory effect and amounts to a violation of section 14(1) of the Charter.

Additional Information

Appellant

Notice of Appeal (April 26, 2023)
The appellant states she received the reconsideration decision on or about March 8, 2023. The basis for denial was that she had not provided a SIN for her husband. He applied for and received his SIN on February 3, 2023. The appellant says that she sent the letter from Service Canada, providing her spouse's SIN, to the ministry when she received it. She also states that she attached a copy to the Notice of Appeal (although it did not appear in the Appeal Record.)

The appellant states she spoke with the ministry on February 10, 2023 and was advised that once she received the form to request a reconsideration she would need to promptly return it and that the ministry would be in touch to request additional information. However, when she didn't receive the form by February 17, 2023, she contacted the ministry and was provided the form the same day. She tried to return it as quickly as possible on February 23, 2023 and again on February 24, 2023 via fax but the fax number provided was not working. She mailed the form shortly thereafter. The appellant states she awaited confirmation of receipt and a request for information as advised by the ministry but instead received a decision denying her request for reconsideration.

The appellant states, not withstanding the above, it is unreasonable for the ministry to deny her application for the benefit on the basis that she had not provided her husband's SIN to the ministry. At the time of the first application, her husband was in Canada on a temporary work permit. At the time of her second application, her husband had submitted his application for an open work permit and for permanent residence. Immigration, Refugees and Citizenship Canada was experiencing significant delays in processing applications. As a result, it took over 15 months for her husband to receive confirmation of

permanent residence and has still never received a response on his open work permit application.

The appellant adds that this extreme delay is not due to any fault on the part of her or her husband but is solely attributable to the federal government. It is unfair of the ministry to demand a SIN when they have no control over her husband's ability to obtain same. The

appellant adds she made numerous attempts to progress her husband's application by contacting a Member of Parliament to no avail. And, contact with the Immigration, Refugees and Citizenship Canada, was also fruitless.

Further still, the appellant takes the position that there is no valid policy reason for insisting upon a SIN from an applicant's spouse when said applicant has provided all tax information and made every effort to comply with the legislative requirements, but is unable to, due to the inefficiency of the federal government. To deny application on this basis is clearly contrary to the purpose of the legislation and the interests of fairness and the administration of justice.

At the hearing, the appellant added that she and her family moved back to Canada in July 2021. In November 2021 she found a pre-school placement for her child. In January 2022 the child care facility was closed. The appellant submitted a second child care application in July 2022 once she found full-time care for her child in another facility.

As well, the appellant stated her spouse did receive a SIN (letter dated February 3, 2023, from Service Canada), which she submitted to the ministry with a new application. The new application was approved.

Ministry

The ministry relied on its record and reiterated that the denial of the child care benefit was strictly because of the lack of the appellant's spouse's SIN. The ministry was satisfied that sections 4(1)(a) (complete application) and (c) (supporting documents) of the Regulation were met. The ministry emphasized that section 4(1) of the Regulation states that in order to be eligible for a child care subsidy, a parent must supply the minister with the SIN of the parent and the parent's spouse, if any. As the legislation says, "must" and not "may" the ministry states it has no discretion in requiring the SIN. When asked if the ministry's interpretation of "if any" could be meant as "if any SIN", and not "if any spouse", the ministry's response was that this legislation has always been interpreted as "if any spouse".

When asked why the application asks for a "reason for no SIN", when the ministry stated it is a mandatory requirement, the ministry responded that it simply provides applicants a reason to explain why they don't have one.

When asked about the authority for the four month timeframe before the application closes, the ministry stated it responds to the difficulties applicants can have in obtaining a SIN by granting an additional four months to obtain it. However, the ministry was unsure of where the authority to grant an additional four months to applicants came from.

The ministry confirmed that the letter sent to the appellant dated February 3, 2023, denying the child care benefits as of November 18, 2021 was the first written notification sent to the appellant advising her of her ineligibility.

Admissibility

The panel determined the additional information that the appellant's spouse received his SIN (letter dated February 3, 2023) is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act.*

The ministry did not object to the admissibility of this new information.

The panel determined the rest of the additional information to be argument.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, was the ministry reasonable to decide that the appellant is not eligible for the child care benefit from her November 24, 2021 application, as per section 4 of the Regulation, as she did not provide the ministry with her spouse's SIN?

Appellant Position

The appellant argues that it is unreasonable for the ministry to deny her application for the child care benefit because of a processing delay by Immigration, Refugees and Citizenship Canada. This extreme delay is not due to any fault on their part. She argues that it is unfair of the ministry to demand a SIN when they have no control over her husband's ability to obtain same.

She also argues that there is no valid policy reason for insisting upon a SIN from an applicant's spouse when said applicant has provided all tax information and made every effort to comply with the legislative requirements but is unable to. To deny application on this basis is clearly contrary to the purpose of the legislation and the interests of fairness and the administration of justice.

In addition, the appellant argues that the ministry applied a strict reading of the applicable legislation in a manner that was contrary to the related policy.

Section 4.1(1) of the Regulation, states that an applicant must provide their SIN and that of their spouse. However, the appellant argues, at the time of the application, he was not able to get a SIN. Instead, the CRA had issued him a temporary taxation number, which was supplied with the application.

The appellant also argues that the purpose of including the provision requiring a SIN by the applicant and the applicant's spouse is to ensure an accurate income assessment for a needs-based subsidy. Bill 13 was introduced in 1996 and included a provision at section 2 which stated, The purpose of the Act is to implement a child care system that will
(a) promote the health, safety and well-being of children receiving child care;
(b) promote quality in child care;
(c) improve access to child care, including child care for children with special needs; and

(d) provide financial help to families with limited incomes who need child care.

The appellant argues further that a strict reading of section 4.1(1) is clearly contrary to the legislative intent. The modern approach requires that the provision be read in the context of the entire Act and the legislative intent at the time of the enactment. For example, the language of section 5(a)(ii) carefully confers eligibility to those "eligible to take up permanent residence" rather than those with permanent resident status. This distinction affirms that the legislature was not intending the provision be used to discriminate against those applicants with immigrant spouses, as this would clearly be contrary to the Canadian Charter of Rights and Freedoms (Charter).

Section 4(2) of the Regulation provides that, "only one parent in the family may apply for a child care subsidy". Section 5(a) stipulates that only an applicant who is either a Canadian citizen or is authorized to take up permanent residence in Canada will be eligible for the subsidy. Section 6 of the Regulation further states that residency of British Columbia is also required for eligibility. The appellant argues she is a Canadian citizen and a resident of British Columbia and, as the applicant therefore satisfies the section 5(a) requirement.
Further, her husband, if he had been the applicant at the time, would have satisfied section 5(a)(ii) because he was authorized under section 10 (1) of the *Immigration and Refugee Protection Act* to take up permanent residency.

In conclusion, the appellant argues that they have provided all the necessary information and to deny her eligibility to receive the child care benefit because of her husband's lack of a SIN has a discriminatory effect and amounts to a violation of section 14(1) of the Charter.

Ministry Position

The ministry argues the appellant is not eligible for the child care benefit from her November 24, 2021 application. The ministry acknowledges receipt of a signed and dated application from the appellant and determined the appellant met the requirements under sections 4(1)(a) and (c) of the Regulation. The ministry also acknowledges the appellant provided a SIN number for herself but argues she has not provided a SIN for her spouse.

The ministry emphasized that section 4(1) of the Regulation states that in order to be eligible for a child care subsidy, a parent must supply the minister with the SIN of the
parent and the parent's spouse, if any. As the legislation says, "must" and not "may" the ministry states it has no discretion in requiring the SIN. The ministry also argues its interpretation of "if any" is interpreted as "if any spouse". As the appellant provided a marriage certificate showing she was married to her spouse, the ministry is satisfied that the appellant's spouse meets the definition of a "spouse" and argues she is therefore

required to submit proof of SIN for the purposes of determining eligibility for the child care benefit under section 4(1)(b) of the Regulation.

The ministry also argues that although the appellant provided verification that her spouse obtained a temporary taxation number, there is no evidence he has applied for, or obtained a SIN.

Panel Analysis

Section 4, Act – child care subsidies

Section 4 of the Act states subject to the Regulations, the minister may pay child care subsidies.

Section 4, regulation – eligibility for a subsidy

Section 4(1)(b) of the Regulation states, to be eligible for a child care subsidy, a parent must supply the minister with the social insurance number of the parent and the parent's spouse, if any. The panel noted that "if any", could be interpreted as "if any SIN". The ministry argued that it interprets this legislation as "if any spouse". The panel finds the ministry's interpretation of this legislation reasonable. However, the panel finds given the new evidence that the appellant's spouse obtained a SIN on February 3, 2023, the ministry decision that determined the appellant is not eligible for the child care benefit because her spouse does not have a SIN, is no longer reasonable.

Section 12, Regulation – notification of outcome

The panel notes section 12 of the Regulation states that the minister must notify the applicant as to whether or not the application is approved and if the application is not approved, the notification must be in writing and must include the minister's reason for refusing to pay a child care subsidy.

The panel notes the letter sent to the appellant denying the child care benefit as of November 18, 2021, is dated February 3, 2023. Although ministry records show that on January 5, 2022 the appellant was advised over the telephone that she was not eligible for the child care benefit, at the hearing, the ministry confirmed that this letter was the first written correspondence sent to the appellant advising her of her ineligibility.

The panel recognizes that the ministry allowed four months from the time of application for the appellant to provide her spouse's SIN. However, the panel notes the four month window is not included in the legislation and finds it is simply a discretionary period of time determined by the ministry. As well, the panel finds the issue is not that the ministry allowed additional time for the appellant to provide the required documentation, but

whether the ministry satisfied the requirement in the legislation to provide notification in writing of a decision to a parent who has applied under section 4 of the Regulation. The panel finds the decision from the November 24, 2021 application was not communicated in accordance with section 12 of the Regulation until February 3, 2023. By not clearly communicating a final

decision until February 3, 2023, the day on which the appellant's spouse received his SIN, the ministry deprived the appellant of her rights to reconsideration and appeal of that decision for over a year.

As the panel finds the appellant was only notified of the decision on her November 24, 2021 child care application, on February 3, 2023 and has now provided the ministry with her spouse's SIN, she has met all the requirements under section 4 of the Regulation effective November 18, 2021.

Given the panel's determination, it will not comment on the appellant's arguments regarding the intent or policy context of the legislation, nor on the Charter issues raised by the appellant. However, the panel notes that it is bound by legislation, not policy, and Charter issues are not within the panel's jurisdiction.

Conclusion

In conclusion, the panel finds the ministry decision that determined the appellant is not eligible for the Affordable Child Care Benefit from her November 24, 2021 application, as per section 4 of the Child Care Subsidy Regulation, is not reasonably supported by the new evidence.

The appellant is successful on appeal.

Schedule of Legislation

Child Care Subsidy Act

Child care subsidies

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

Child Care Subsidy Regulation

How to apply for a subsidy

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.

Authorizations required

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

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

Citizenship requirements

5 An applicant is eligible for a child care subsidy only if

(a)the applicant

(i)is a Canadian citizen,

(ii)is authorized under an enactment of Canada to take up permanent residence in Canada, or

(iii)is determined under the *Immigration and Refugee Protection Act* (Canada) to be a Convention refugee or a person in need of protection.

Residency requirement

6 An applicant is eligible for a child care subsidy only if the applicant is a resident of British Columbia.

Applicant must be notified of outcome

12 (1)The minister must notify the applicant as to whether or not the application is approved.

(2)If the application is not approved, the notification must be in writing and must include the minister's reason for refusing to pay a child care subsidy.

APPEAL NUMBER 2023-0119

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 Connie Simonsen	
Signature of Chair	Date (Year/Month/Day) 2023/05/20

Print Name Greg Allen	
Signature of Member	Date (Year/Month/Day) 2023/05/20
Print Name Susan Ferguson	
Signature of Member	Date (Year/Month/Day) 2023/05/20