

MANITOBA HEALTH APPEAL BOARD

IN THE MATTER OF:

APPELLANT,

- and -

(name removed) REGIONAL HEALTH AUTHORITY,
MAID PROGRAM,

Respondent.

AND IN THE MATTER OF:

An appeal hearing held in Winnipeg, Manitoba,
on Tuesday, July 17, 2018

BOARD QUORUM:

G. Driedger, Chairperson
E. Graham, Member
R. Kennett, Member
P. Shah, Member

R. Sample, Administrator

APPEARANCES:

For the Appellant

Appellant
Support Person

For the Respondent

DR, Legal Counsel
AD, Legal Counsel
Dr. KW, Medical Consultant
RK (Observer)

DECISION

Overview

[1] This hearing proceeded following a preliminary challenge of the jurisdiction of this Board to hear the appeal. The Respondent had objected that the Board had no jurisdiction to consider this appeal on its merits. In a split decision dated March 1, 2018 the majority of the panel concluded that the Board did in fact have jurisdiction to determine the appeal.

[2] Following that decision the Board conducted a hearing, held July 17, 2018, into the facts and merits of the appeal.

[3] The Appellant had contacted the Respondent's designated team for the administration of Medical Assistance in Dying ("MAiD" hereafter). He had an initial conversation with a nurse with the Respondent's MAiD team, who made notes of his particular medical condition. A physician with the MAiD team reviewed the notes of the nurse, and contacted the Appellant's family doctor to verify the background medical information. A conclusion was reached that the Appellant did not meet the criteria for MAiD. The MAiD team physician then contacted the Appellant by phone and advised that he did not meet the criteria.

[4] After hearing testimony from both the Appellant and the Respondent the Board determined that the Appellant had not been denied access to any insurable benefit. For the reasons that follow it was the unanimous decision of the Board to dismiss the appeal.

Loss of Panel Member

[5] The matter first came before the Board on the question of jurisdiction alone. A five person panel of the Board heard that issue, and it was determined as set out in detailed reasons referred to above. In between the date of the jurisdictional decision and the hearing into the facts and merits of the matter (held July 17, 2018) one of the members of the Board that had heard the jurisdictional matter resigned from the Board. The hearing

on the merits was continued with the remaining four panel members, in accordance with section 10(7) of *The Health Services Insurance Act*.

Issue

[6] The matter at issue is whether the Appellant was denied a benefit he was entitled to pursuant to *The Health Services Insurance Act*. In particular, the issue was whether a full clinical assessment by the Respondent's MAiD team was a "benefit" the Appellant was entitled to under that statute.

Facts

[7] Written materials were filed by both parties, and verbal testimony was heard. On the material points at issue there were not significant differences in the evidence.

[8] The Appellant suffers from a number of health issues, the most significant of which is (health condition). His (health condition) came on as an adult. He found the condition to be intolerable, and prefers to end his life.

[9] He testified that he had inquired with both his family doctor as well as an (specialist) about exploring MAiD. Eventually he was directed to contact the Respondent's MAiD team. In January of 2017 he phoned, spoke to someone that he believed to be a nurse, and explained that he was seeking to be assessed for the MAiD process. A few days later he received a call from a doctor with the MAiD team, who advised him that he did not qualify.

[10] Unhappy with that explanation the Appellant pursued avenues to appeal the denial. He was directed to, and spoke with, a physician who held a senior management role within the Respondent's organization, who confirmed the decision. From there he spoke with the office of his Member of Parliament, and eventually was directed to and commenced an appeal with this Board.

[11] The MAiD physician testified to the general manner in which the MAiD team handled inquiries from potential patients. First contact typically occurs by phone, and in the normal course the MAiD team conducts a triage assessment at the initial point of contact. A nurse fields intake calls, and records notes in an electronic file system. Approximately 50% of inquiries are screened early on as not meeting the criteria established in the federal MAiD related legislation, and the provincial MAiD policies. Those individuals are informed, verbally, that they do not meet the criteria.

[12] The physician noted that MAiD services are unique in that patients may self-refer. In Manitoba, most physicians who practice a speciality area of medicine have patients referred to them by their family doctor, or some other physician. In those situations the family doctor has already performed a screening function. For patients interested in MAiD they do not require another doctor to have made a referral, they can simply phone the team and inquire.

[13] According to the physician, in the case of the Appellant he had first spoken with a nurse when he called to inquire. In the course of the discussion with the nurse the Appellant explained that his primary health condition was (text removed). The nurse recorded notes of her discussion with the Appellant into the commonly accessed electronic file management system.

[14] Following a discussion with the nurse and a review of the notes, the physician contacted the Appellant's family doctor. The family doctor confirmed that the Appellant's primary medical condition was (text removed), and he did not suffer from any irremediable medical condition such that his natural death had become reasonably foreseeable. The information conveyed by the nurse having been confirmed and enhanced by her discussion with the family doctor, the MAiD physician concluded that the Appellant clearly did not meet one of the essential criteria to be eligible for MAiD, that of a condition which made his natural death reasonably foreseeable.

[15] The MAiD physician testified that after speaking with the family doctor she contacted the Appellant by telephone. In the phone conversation she confirmed the information she had received from the nurse and the family doctor as to his medical condition. She then advised him that he did not meet the MAiD criteria, and they could not assist him in ending his life. She testified that the discussion with the Appellant lasted approximately 30 minutes.

[16] The Appellant was not impressed with this decision, and asked to speak with the “boss” of the MAiD physician. After the conclusion of the call the MAiD physician contacted another physician within the Respondent’s organization, one who held a senior management position. This senior manager agreed to discuss the matter with the Appellant. A call was arranged, and the Appellant was again advised, this time by the senior management physician, that he did not meet the criteria for MAiD.

[17] The MAiD doctor indicated that at times they receive requests for MAiD from individuals who could be characterized as in the “grey area” of meeting the criteria. In her opinion, the Appellant was not even in the grey area, it was clear that he did not meet the criteria.

Appellant’s Position

[18] The Appellant argued that he had been denied a proper assessment. He submitted that the Respondent’s MAiD team reached its conclusion prematurely, without a full clinical assessment. Some of the literature published by the Respondent referred to a MAiD assessment as including a multi-disciplinary approach, including input from nurses, social workers and physicians. He said that he could have been more persuasive had he been afforded an in person meeting.

Respondent’s Position

[19] The Respondent argues, first, that there is no right to an assessment. Secondly, the Respondent submits that even if there is a right to an assessment (which it denies), the Appellant was assessed. The Respondent submits that no person is entitled to dictate

the scope and terms of their health care services. The assessment conducted by the MAiD team was reasonable, in all of the circumstances.

Legislation

[20] The legislation relevant to this appeal is contained in *The Health Services Insurance Act* C.C.S.M. c. H35 (“the Act” hereafter). Section 10(1) of the Act states:

Right of appeal

10(1) An appeal may be made to the board by a person

- (a) who has been refused registration as an insured person under this Act or the regulations;
- (b) who has been denied entitlement to a benefit under this Act or the regulations;
- (c) who has been refused an approval to operate a laboratory or a specimen collection centre, on whose approval conditions have been imposed, or whose approval has been revoked under subsection 127(1);
- (d) who has been refused a licence to operate a personal care home under section 118.2 or whose licence to operate a personal care home has been suspended, cancelled or not renewed under that section; or
- (e) prescribed by the regulations as being entitled to appeal to the board.

[21] In the preliminary decision as to jurisdiction the majority of the panel concluded that the appeal was captured within section 10(1)(b), that the right to access MAiD was potentially an entitlement to a benefit under the Act.

Analysis and Decision

[22] The Board concluded that the Respondent had met its obligations to the Appellant.

[23] The practice of the Respondent’s MAiD team seemed reasonable in all of the circumstances. To have a triage function to screen out patients who fail to meet key elements of the criteria is not a denial of a benefit within the meaning of the Act.

[24] The Appellant was first interviewed by a nurse, and he provided relevant information as to his medical condition and his reason for seeking to end his life. Nothing in the evidence suggested that the information provided to the nurse was inaccurate. That

information was then reviewed by a physician, who went on to corroborate it by contacting the Appellant's family doctor. The Appellant then had a telephone interview with the MAiD physician, which was followed by another telephone interview with another physician with the Respondent's organization.

[25] That evidentiary record shows clearly that the Appellant's circumstances were thoroughly reviewed. Nothing suggests there was any misapprehension about the Appellant's situation, nothing suggests that further assessment could have yielded some other result.

[26] No patient in our health care system has the right to unlimited access. The Appellant's application for MAiD was considered, he did receive an assessment. That the Respondent established limits beyond which it deemed expending additional health care resources unnecessary is a reasonable exercise of its discretion in how it allocates health care resources.

Conclusion

[27] Having considered the evidence and submissions of all parties at the hearing, it is the unanimous decision of the Board that the appeal is dismissed.

DATED at Winnipeg, Manitoba, this 30th day of August, 2018.

Grant Driedger, Chairperson
Manitoba Health Appeal Board