

**HEALTH SERVICES APPEAL AND REVIEW BOARD**

PRESENT:

Christine Moss, Vice-Chair, Presiding  
Samia Makhamra, Board Member  
Elizabeth Mullan, Board Member

Heard April 15, 2014 at Toronto, Ontario

**IN THE MATTER OF AN APPEAL UNDER SECTION 20(1)** of the *Health Insurance Act*,  
Revised Statutes of Ontario, 1990, Chapter H.6, as amended

**B E T W E E N:**

**ABDUL HADI AHMED**

Appellant

and

**THE GENERAL MANAGER,  
THE ONTARIO HEALTH INSURANCE PLAN**

Respondent

Appearances:

The Appellant: Abdul Hadi Ahmed  
For the Respondent,  
General Manager, OHIP: Sue Graham, Agent

**DECISION AND REASONS**

**I. DECISION**

1. This decision arises from an appeal by Abdul Hadi Ahmed (the Appellant) from a decision of the General Manager, the Ontario Health Insurance Plan (the Respondent) respecting the eligibility of the Appellant for health insurance coverage.
2. For the reasons that follow, the Health Services Appeal and Review Board (the Appeal Board) finds that the Appellant did not demonstrate that he is “resident” as that term is defined in Regulation 552 made under the *Health Insurance Act*, Revised Statutes of

Ontario, 1990.c. H.6. (the *Act*) from March 28, 2011 to January 12, 2014. The Appellant has demonstrated that he is a “resident” for the period beginning January 13, 2014 to the present.

3. The appeal is therefore granted in part.

## **II. BACKGROUND**

4. The Appellant is a Canadian citizen who moved to the United States in 2000 for employment opportunities. His Ontario Health Insurance (OHIP) coverage was cancelled in 2001.
5. On March 28, 2011 the Appellant attended a ServiceOntario centre and requested that his OHIP coverage be reinstated. His health card was not reinstated “due to insufficient information”.
6. On April 18, 2011, the Appellant requested that the Ontario Eligibility Review Committee (OERC) review his eligibility. In a letter dated May 6, 2011, the OERC closed its file as it was unable to contact the Appellant.
7. The Appellant again presented at a ServiceOntario centre on August 21, 2013 and requested the OERC again review his entitlement to OHIP coverage. By letter dated October 11, 2013 OERC denied the Appellant OHIP coverage on the basis that there was “insufficient information” to support residency in Ontario.
8. On January 20, 2014 the Appellant requested OERC review his eligibility and this request was denied in a February 5, 2014 letter.
9. The Appellant appeals this decision.

## **The Appeal**

10. By letter dated April 4, 2014, the Appellant appealed this decision on the basis that he has provided the necessary documents to prove that he meets the residency requirements to be eligible for OHIP coverage.

## **Respondent's Response**

11. On May 16, 2014, the Respondent filed Grounds of Response setting out its reasons for denial including that the Appellant has not provided sufficient documentation to demonstrate that he has spent 153 days in any twelve-month period since March 2011 until the present in Ontario or that his primary place of residence is in Ontario; thus, he is not considered “resident” as that term is defined in the Act and its Regulations and is not entitled to OHIP coverage.

## **III. LAW**

12. Health insurance in Ontario is governed by the provisions of the *Health Insurance Act*, R.S.O. 1990, c. H.6 (the *Act*), and any regulations made pursuant to the *Act*. The *Act* and the regulations made under the *Act* constitute a comprehensive legislative and regulatory scheme setting out the circumstances in which health care is to be paid for under the Ontario Health Insurance Plan (OHIP). Regulation 552 (the Regulation) is the current governing regulation.
13. Section 10 of the *Act* states that the purpose of OHIP is to provide “insurance against the costs of insured services on a non-profit basis on uniform terms and conditions available to all residents of Ontario.”
14. Section 11(1) of the *Act* provides that every person who is a “resident” of Ontario is entitled to become an insured person upon application to the General Manager in accordance with the *Act* and regulations.

15. In section 1 of the Regulation, the term “resident” is defined for the purposes of the *Act*. Under section 1, a “resident” must hold (i) citizenship status, permanent residence status or landed immigrant status, (ii) make Ontario his or her primary place of residence and (iii) must be physically present in Ontario for a required period of time.
16. In order to qualify for health insurance, the Appellant must meet this definition of resident and apply for OHIP coverage from within the province. There is a three-month waiting period from the day an applicant becomes a resident, mandated by section 3(3) of the Regulation.
17. Section 3(1) of the Regulation states that the onus for demonstrating that a person is resident is on the applicant.
18. There are limited exemptions from the three-month waiting period set out in sections 6 to 6.3 of Regulation 552. The limited exemptions do not apply to the Appellant’s circumstances.
19. Section 12 of the *Act* provides that every insured person is entitled to payment for insured services. The term “insured services” is defined in section 11.2 of the *Act*.

#### **IV. JURISDICTION OF THE APPEAL BOARD**

20. The jurisdiction of the Appeal Board is set out in section 21 of the *Act*. The Appeal Board is limited to ordering the General Manager to do that which the General Manager is authorized to do under the *Act* or the regulations. The Appeal Board has no jurisdiction to order OHIP, for any reason, to do something that is not permitted under the *Act* or the regulations.
21. This hearing before the Appeal Board is a hearing de novo, a fresh look at the matter in dispute. Subject to the requirements found in the governing legislation and regulations, and based on the evidence, the Appeal Board has the power to make its own findings, reach its own conclusions, and make a new decision in the matter under appeal. In doing

so, it is the role of the Appeal Board to determine the appropriate weight to give to the evidence.

22. Neither the *Act* nor the Regulation includes a provision that would permit OHIP to declare a person to be resident or declare a resident to be eligible for health insurance coverage on the basis of compassion or financial hardship.

## **V. ISSUE(S)**

23. There is no dispute that the Appellant is a Canadian citizen and as such satisfies the requirement in section 1.4 of the Regulation. The remaining issues before the Appeal Board is whether the Appellant meets the residency requirements to be an insured person under the Act. Specifically the issues are whether the Appellant:

- i) has made his primary home in Ontario since March 2011; and
- ii) has been present in Ontario for at least 153 days in any given twelve-month period since March 2011?

## **VI. REASONS**

### ***Primary Place of Residence***

24. Section 3(1) of the Regulation states that it is the obligation for the person making the assertion that he is a resident to provide evidence to the Respondent that he meets the requirements to be an insured person.
25. In order for the Appeal Board to find that the Appellant's primary place of residence is in Ontario, the Appeal Board looks for evidence of his ties to Ontario that demonstrate his intention to make Ontario his primary home. The parties presented evidence at the hearing.

26. At the hearing, the Appellant testified that he arrived back in Canada on June 2, 2013. He stated that he returned to Ontario following a devastating motor vehicle accident in the United States that “ruined his life.”
27. The Appellant testified that since returning to Ontario he has traveled to the United States on a couple of occasions for treatment. He testified that he did not stay long, a few days or maybe a week.
28. In December, 2013 he traveled to Hungary for treatment and returned to Ontario on January 13, 2014.
29. In his written submissions, the Appellant provided three letters testifying to his connections in Ontario. The first, a letter from his nephew, Mr. Osman Badorahmed, dated May 30, 2014 states “I see him on daily basis and help him with his grocery and other staff (sic).”
30. The second, a letter dated June 4, 2014 from a musician friend, Mr. Waleed Abdlhamed, states in part “I would like to confirm that Mr. Abdul-hadi Ahmed is an active member of our music association in Canada; he participates and performs in all our events since he came back to Toronto last June 2013.” In addition, the Appellant provided a letter dated June 4, 2014 from Mr. Amar Omer, Vice President, Sudanese Community Association of Ontario which states “... As such, the Sudanese Community Association certifies that Mr. Hadi Ahmed is an active and supportive member of the Sudanese Community Organization of Ontario since June 2013.”
31. In the Grounds of Response, the Respondent submitted that while the Appellant has provided some documentation to support that he has connections to Ontario, such documentation does not confirm that “Ontario is his primary place of residence.” The Respondent identified a number of inconsistencies in the information provided by the Appellant including differing addresses and supporting documents. The Respondent’s

agent advised she has been unable to verify that the Appellant is living in Ontario as she has been unable to reach his landlord.

32. The Respondent takes the position that the Appellant has greater connections in the United States where he owns a home. The Respondent's Agent testified that records from Virginia indicate that the Appellant is still an owner of the property in Virginia.
33. The Appellant testified that he no longer owns a house in Virginia. He stated that he "gave it back to the bank" as he was unable to make mortgage payments. He confirmed that he has lived at his present address since June, 2013 and has been receiving Ontario Disability Support Program (ODSP) benefits.
34. The Appellant takes the position that Ontario has been his primary place of residence since June 2, 2013 and points to his rental of an apartment here and his letter of support from his cousin and nephew as well as friends. In support of his claim that he has an apartment in Ontario, the Appellant provided copies of his lease agreement.
35. After considering the oral testimony of the Appellant at the hearing, and considering the letters of support the Appellant submitted, the Appeal Board is persuaded that, on balance, the Appellant's family, social and religious connections, as well as his present and future anticipated living arrangements, have been in Ontario since January 13, 2014. For the dates prior to this time, the Appellant has not provided sufficient evidence of his length of stay in Ontario and accordingly, the Appeal Board cannot determine his primary connection to Ontario prior to January 2014. As such, the Appeal Board finds that the Appellant meets the criteria of section 1.3 (1) 2 to be considered "resident" in that his primary place of residence, as defined in section 1 of Regulation 552 of the Act, is in Ontario beginning in January 2014.

***Present in Ontario for 153 Days in Any Twelve-Month Period***

36. To continue to be recognized as a "resident", Regulation 1.5 (1) 3 requires that a person must be physically present in Ontario for at least 153 days in any given 12-month period. The Appeal Board will now determine whether the Appellant has met this requirement.

37. The Appellant testified that he has traveled to the United States for treatment “a couple of times” for a “short period, maybe a week”. He was unable to provide dates of travel.
38. The Respondent stated that the Appellant has not provided any details of the dates he has traveled outside Ontario. She stated that the additional information from border services detailing the Appellant’s absences has been requested but not provided by the Appellant and as such his absences could not be verified.
39. At the hearing, the Appellant testified that he has not been outside of Ontario, with the exception of two brief trips to the United States in January and February 2014 for medical reasons. This evidence was not seriously challenged by the Respondent.
40. The Appellant provided the approximate dates of his absences from Ontario from June, 2013. He stated that he traveled to the United States on a couple of occasions for up to one week each time. He stated that he traveled for treatment. In addition he stated that he traveled to Hungary in December, 2013 for a month or so for treatment.
41. The Appeal Board notes that there is conflicting evidence concerning the Appellant’s travel outside of Canada prior to January, 2014. The Appellant did not present in evidence his previous passports or any other documents to verify his presence in Ontario between March 31, 2011 and January 13, 2014. As such, the Appeal Board is unable to determine whether during that time he spent 153 days out of any twelve month period in Ontario. Based on the evidence, the Appeal Board is unable to make a finding as to whether the Appellant meets the requirement of section 3(1) of Regulation 552 to be recognized as a resident from March 21, 2011 to January 12, 2014.
42. The Appeal Board accepts the Appellant’s general evidence that he travels to the United States for treatment but spends more time in Ontario. The Appeal Board finds, on a balance of probabilities, based on the evidence overall, that the Appellant has been present in Ontario for at least 153 days in any twelve- month period since January 13, 2014.



**VII. DECISION**

43. The Appeal Board finds that the Appellant has satisfied the criteria of residency as that term is defined in Regulation 552 made under the Act from January 13, 2014 to present. The Appeal Board finds that the Appellant did not demonstrate that he is “resident” from March 28, 2011 to January 12, 2014.
44. The appeal is granted in part.

ISSUED June 8, 2015



---

Christine Moss



---

Samia Makhamra



---

Elizabeth Mullan

## Appendix to Decision

### *Health Insurance Act, Regulation 552*

- 1.1 “primary place of residence” means the place with which a person has the greatest connection in terms of present and anticipated future living arrangements, the activities of daily living, family connections, financial connections and social connections, and for greater certainty a person only has one primary place of residence, no matter how many dwelling places he or she may have, inside or outside Ontario;
- 1.2 For the purposes of the Act and any regulation made under the Act, and despite any other meaning of the term “resident”, resident means a person described in sections 1.3 to 1.14 who meets the requirements set out in this Regulation to be recognized as a resident, and for greater certainty, a person whose primary place of residence ceases to be Ontario ceases to be a resident, unless subsection 1.3 (2) applies. O. Reg. 133/09, s. 2.
- 1.3 (1) Upon application to be an insured person, a person must meet the following requirements in order to be considered a resident, unless subsection (2) or another provision of this Regulation provides otherwise:
1. The person must possess an eligible status set out in section 1.4. A person who has an eligible status, then loses it, is no longer a resident, but may regain resident status at a later date by meeting the necessary requirements at that time.
  2. The person’s primary place of residence must be in Ontario. For this purpose, the General Manager will consider a child under 16 years old to have the primary place of residence of a person who has lawful custody of the child unless the General Manager has information to the contrary. O. Reg. 133/09, s. 2.
- ...
- 1.4 A person cannot be recognized as a resident, unless the person has one of the following eligible statuses:
1. Being a Canadian citizen.
  2. Being a landed immigrant under the former *Immigration Act* (Canada), or a permanent resident under the *Immigration and Refugee Protection Act* (Canada).
  3. Being registered as an Indian under the *Indian Act* (Canada).
  4. Being a “protected person”, as that term is used in the *Immigration and Refugee Protection Act* (Canada).

5. Being a person who has submitted an application for permanent residence in Canada to the proper federal government authority, even if the application has not yet been approved, as long as Citizenship and Immigration Canada has confirmed that the person meets the eligibility requirements to apply for permanent residency in Canada, and the application has not yet been denied.

...

1.5 (1) The following requirements must be met for a person to be continued to be recognized as a resident:

1. The person must be in Ontario for at least 153 of the first 183 days after becoming a resident, except for,
  - i. a person who has moved to Ontario directly from another province or territory of Canada where he or she was insured under a publicly funded health care insurance plan,
  - ii. a mobile student or a mobile worker,
  - iii. a child to whom section 6 applies, or
  - iv. a person who is exempt from the waiting period under subsection 11 (2.1) of the Act.
2. Except for those persons listed in subsection 1.3 (2), the person must continue to maintain his or her primary place of residence in Ontario.
3. Subject to sections 1.6 to 1.14, the person must be physically present in Ontario for at least 153 days in any given 12-month period.
4. The person must continue to hold an eligible status as listed in section 1.4. However, in order to maintain their eligible status as a resident, a person referred to in paragraph 13 of section 1.4 must be legally entitled to remain in Canada and will only maintain their eligible status under that paragraph as long as reasonable efforts are being made for the person to obtain one of the other eligible statuses under section 1.4. O. Reg. 133/09, s. 2.

.....

### **Insured services**

11.2 (1) The following services are insured services for the purposes of the Act:

1. Prescribed services of hospitals and health facilities rendered under such conditions and limitations as may be prescribed.
2. Prescribed medically necessary services rendered by physicians under such conditions and limitations as may be prescribed.
3. Prescribed health care services rendered by prescribed practitioners under such conditions and limitations as may be prescribed. 1996, c. 1, Sched. H, s. 8.

### **Establishing status**

3. (1) Where anyone asserts that he or she is a resident, or is entitled to any exemption from the requirements to be recognized as a resident, or in any other way is entitled to payment from the Plan, it is the obligation of the person making the assertion to prove to the General Manager that he or she meets the requirements to be an insured person. O. Reg. 133/09, s. 3.

### **Waiting Periods**

5. (1) Subject to subsection (2) and sections 6 to 6.3, and to subsection 11 (2.1) of the Act, a person shall only start receiving insured services once the General Manager is satisfied that he or she has been a resident for three full consecutive months, and has not stopped being a resident since meeting that three-month waiting period requirement. O. Reg. 133/09, s. 3.

.....

### **Entitlement to insured services**

12. (1) Every insured person is entitled to payment to himself or herself or on his or her behalf for, or to be otherwise provided with, insured services in the amounts and subject to such conditions and co-payments, if any, as are prescribed.

### **Powers of Appeal Board**

21. (1) If a person requires a hearing, the Appeal Board shall appoint a time for and hold the hearing and may, by order, direct the General Manager to take such action as the Appeal Board considers the General Manager should take in accordance with this Act and the regulations. 2002, c. 18, Sched. I, s. 8 (12).