

Reasons for Decision:

Order # AP1819-0593

On <date removed>, <name removed> filed an appeal of the Director's decision to deny their eligibility under Section 5(1)(a) of The Manitoba Assistance Act. The decision letter was dated <date removed>.

The decision letter stated the Department was unable to confirm the appellant's condition precluded them from all employment.

At the hearing, the Department referenced the written report it submitted as evidence. The Department stated <name removed> first received assistance as a single parent, beginning in <date removed>. In <year removed>, the Department became aware that <name removed> had medical issues, so it provided them with the medical forms package.

<name removed> submitted the package in <date removed>. The medical review panel granted them one year of eligibility, so that they could explore surgical options.

<name removed> submitted a new forms package after their eligibility expired in <date removed>. The Department stated the only supporting document submitted with the package was a CT scan of their back. The appellant's eligibility was extended to <date removed>, and the medical review panel requested a report from the pain clinic and information on their surgical options.

The Department asserted <name removed> did not submit new information, so their disability eligibility expired on <date removed>. Subsequent to that decision, the appellant's doctor confirmed they were on the waiting list for the pain clinic, but the wait might be two years.

The medical review panel determined there was not enough information to determine the severity of <name removed>'s injury and its impact on their functionality. In particular, the information did not rule out the possibility of sedentary work.

The Department noted <name removed>'s doctor provided a <year removed> report from an orthopedic surgeon. The surgeon's report concluded <name removed>'s previous injury had healed. <name removed>'s knee showed 80% flexion, but the surgeon was unable to complete the examination because <name removed> terminated the appointment. The Department stated the surgeon commented on <name removed>'s use of narcotics, and expressed concern about the effectiveness

of surgery

The Department asserted it would not have approved the initial period of disability eligibility if it had received the <year removed> report as part of the initial application.

<name removed> explained to the Board that the surgeon who performed the last examination was the same surgeon that performed their first surgery. <name removed> stated they were not satisfied with the results of the first surgery, and they did not realize they had been referred to the same surgeon. When they realized they were being examined by the surgeon who performed the first surgery, the appellant terminated the examination .

<name removed> told the Board the meniscus in their knee is gone, and their bones grind on each other. The appellant also has torn ligaments, as well as a herniated disc in their back. The appellant also experiences depression. The appellant asserted their doctor told them they needed a new knee, but their surgery was a low priority for the health system because of their age.

<name removed> told the Board they are a single parent with three children. The appellant experiences constant pain that they described as crippling. The appellant asserted the pain makes it difficult to sleep some nights. The appellant uses a cane and a walking brace, but needs narcotics to function.

<name removed> stated they have a brother who periodically provides transportation, but otherwise it is difficult to function in their home town. The appellant has considered moving to a larger town, but owns a house in his current town, and their children attend school there. The appellant asserted the Department's requirement for testing and doctor reports can be a burden, because they have a considerable distance to drive to get to their doctor.

<name removed> stated they were optimistic they would receive help from the Pan Am Clinic, but the clinic advised them that there were more than 2,000 people on the waiting list in front of them. <name removed> stated the Department should maintain their eligibility until they receive an assessment from the Pan Am Clinic.

The Department responded that it was no longer necessary to wait for an assessment from the Pan Am Clinic, because the report from the orthopedic surgeon was sufficient to deny eligibility. The original decision was to provide <name removed> with time to explore surgical options. The Department did not know the appellant had already seen a surgeon.

<name removed> stated their doctor in <text removed> had a significant amount of their medical information. The appellant asserted they were told by the Department they could not submit out-of-province information. The Department stated the Disability Assessment Report must be completed by a Manitoba doctor, but the

Department would accept objective data from out-of-province.

In response to a question from the Board, <name removed> stated they would ask their Manitoba doctor to request the results from their out of province doctor.

In response to a question from the Board, the Department stated the wait list for the Pan Am Clinic was secondary to the lack of information about the appellant's ability to do sedentary work, and to the fact <name removed> had seen an orthopedic surgeon.

The Board notes the Department's original position was that <name removed> needed to provide a report from the pain clinic, and information about their surgical options. <name removed>'s doctor has verified that they are on the waiting list for the pain clinic, and that the wait time is considerable.

The Department modified its position after it received the report from the orthopedic surgeon, asserting that the report met its requirement that <name removed> explore their surgical options. With due respect, the Board disagrees with the Department's assertion. The surgeon did not do a complete examination, and while they expressed reservations about surgery, they did not rule it out. <name removed> stated they did not have confidence in the surgeon's abilities. Given that <name removed> knew the surgeon, their concern about the surgeon's competence was a plausible reason for terminating the exam.

In his letter to <name removed>'s doctor, the orthopedic surgeon recommended that <name removed> see a different surgeon. This statement suggests that the orthopedic surgeon believed that <name removed> could benefit from surgery. <name removed> requires time to explore those options and to be assessed at the pain clinic.

After carefully reviewing the verbal and written evidence presented to it, the Board determines that <name removed> is unable to earn an income sufficient to support their basic necessities for a period of more than 90 days. The Board rescinds the Director's decision, and directs the Department to enrol <name removed> under Section 5(1)(a) of The Manitoba Assistance Act effective <date removed> for a period of eighteen months.

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