

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

)	<i>N. Cox</i>
)	<i>on her own behalf</i>
<i>NIKKI COX</i>)	
)	<i>A. J. Ladyka</i>
<i>(Appellant) Applicant</i>)	<i>for the Respondent</i>
)	<i>(via teleconference)</i>
<i>- and -</i>)	
)	<i>Chambers motion heard:</i>
<i>DIRECTOR, ST. BONIFACE/ST. VITAL</i>)	<i>December 10, 2020</i>
)	
<i>(Respondent) Respondent</i>)	<i>Decision pronounced:</i>
)	<i>January 11, 2021</i>

COVID-19 NOTICE: As a result of the COVID-19 pandemic and pursuant to r 37.2 of the MB, *Court of Appeal Rules*, MR 555/88R, this motion was heard remotely by teleconference.

PFUETZNER JA

[1] The applicant is seeking leave to appeal an order of the Social Services Appeal Board (the Board). The order confirmed a decision of the respondent (the Decision) assessing an overpayment of assistance to the applicant under the Employment and Income Assistance Program (the Program).

[2] The applicant is disabled and cannot work. She receives income assistance pursuant to *The Manitoba Assistance Act*, CCSM c A150 (the *Assistance Act*). She went to Germany for medical consultation and treatment in October 2018. While she intended to return within about 30 days of her departure, she did not return to Canada until July 2019. She did not advise

the Program that she was in Germany as required under section 12.1(1) of the Manitoba, *Assistance Regulation*, Man Reg 404/88R. Upon the Program determining in late December of 2018 that the applicant was no longer residing in Manitoba, it closed her assistance file. After her return to Manitoba in July 2019, she re-applied, and was approved, for income assistance. The respondent subsequently issued the Decision, assessing an overpayment of \$18,824.30. That figure represents the payment of benefits (primarily the cost of prescription drugs) to the applicant under the Program for the months of November and December 2018, while she was in Germany.

[3] The applicant appealed the Decision—a hearing was held before the Board on October 15, 2020, and its order confirming the Decision was issued on October 22, 2020. On October 27, 2020, the applicant wrote to the Board requesting that it reconsider her appeal, claiming that she had additional evidence. On the same day, the Board denied the request for reconsideration, writing:

...

A request for reconsideration is granted only when:

- The panel was biased;
- A party was impeded in its ability to present its case;
- The Board erred in applying the law; or
- An administrative error was made.

Your request makes no reference to any of the grounds listed above. You raise a new issue which was not argued before the original panel, namely that you did not receive the medications that gave rise to a significant part of the overpayment.

...

[4] In her material filed with this Court, the applicant raises two issues.

[5] First, she says that the Board “erred in their decision against me [and] denied my [request] for reconsideration, not considering all evidence.” I understand this to be a reference to further evidence that she wished to introduce—that the medications were not delivered to her by the pharmacy. Essentially, the applicant’s position is that the Board should have accepted her request for reconsideration so that it could consider her additional evidence.

[6] Second, she questions whether the three members of the Board could legally make the order as they are not lawyers or judges.

[7] The applicant does not have an automatic right to appeal the order of the Board. Leave of this Court is required and can only be granted on a “question involving the board’s jurisdiction or on a point of law” (section 23(1) of *The Social Services Appeal Board Act*, CCSM c S167 (the *Appeal Board Act*)). Leave to appeal cannot be granted on questions of fact or on questions of mixed fact and law which will “involve the court in an assessment or analysis of conflicting factual issues” (*Shersty v Manitoba Public Insurance Corp*, 2002 MBCA 108 at para 2; see also *Klippenstein v Director, Point Douglas*, 2011 MBCA 15 at para 2).

[8] In addition, even if a question of law or jurisdiction is identified, it must be of sufficient importance to merit the attention of a full panel of the Court. The proposed appeal must also have arguable merit, that is, it must have a reasonable prospect of success. Finally, even if not all of these criteria are met, the Court has the discretion to grant leave if the refusal to grant leave might result in an injustice.

[9] The first issue raised by the applicant involves how the Board dealt with her request for reconsideration so that she could introduce new evidence.

[10] The Board has the discretion under section 22(1) of the *Appeal Board Act* to reconsider its orders at the request of a party to the appeal or on its own initiative. The Board promptly considered the applicant's request for a rehearing and provided cogent written reasons for its decision to deny the request. In my view, there is no basis to argue that the Board erred in principle or failed to observe the rules of natural justice in making this discretionary order. As a result, I am not persuaded that this issue raises a question of jurisdiction or a point of law.

[11] The second issue questions the ability of the Board members to render a legally binding order based on their lack of legal training.

[12] While this issue is arguably a question of jurisdiction, it has no reasonable prospect of success. As pointed out by counsel for the respondent, section 4(2) of the *Appeal Board Act* sets out the qualifications required to be appointed to the Board. The requirements include that the members must "be representative of the regional, economic and cultural diversity of Manitoba"; that they "be knowledgeable about social services and programs" dealt with under the designated statutes over which the Board has jurisdiction; and that they "not be employees under the control of a minister responsible" for a designated statute. There is no statutory requirement that the Board members be judges, lawyers or have any legal training.

[13] For these reasons, in my view, there is no issue raised by the applicant that could be considered an arguable question of jurisdiction or point of law. Finally, I am not persuaded, in the circumstances of this case, that

denying leave to appeal might result in an injustice.

[14] Accordingly, the motion for leave to appeal is dismissed without costs.

“Pfuetzner JA”