



Ontario (General Manager, The Ontario Health Insurance Plan) v. Clarke & Williams

2014 ONSC 2009

Country: Canada

Region: Americas

Year: 2014

Court: Ontario Superior Court of Justice, Divisional Court

Facts

The General Manager of the Ontario Health Insurance Plan (hereinafter "OHIP") appealed from the decision of the Health Services Appeal and Review Board (hereinafter "the board") which was confirmed by the Reconsideration decision of the Board. The appellant had ruled that the respondents, who were seasonal workers in Canada, were not eligible for continued coverage under the Ontario Health Insurance Plan.

The respondents after arrival in Canada under the Seasonal Agricultural Worker Program (hereinafter "SWAP") were covered under health insurance. Unfortunately, shortly after their arrival, they met with an accident. Their medical treatment required them to extend their stay beyond the stipulated time of their work permit. They made an appeal before the Federal government for extension of their visa and medical insurance coverage. Their requests for visa extensions were granted, but their requests for OHIP extensions were denied. The workers appealed to the Health Services Appeal and Review Board, which found that they were indeed residents of Ontario and thus eligible for OHIP coverage.

The General Manager of OHIP appealed against the Board's decision before the Ontario Superior Court of Justice. The issue before the Ontario Superior Court of Justice was the interpretation of section 1.3(2) of Regulation 552 under the Health Insurance Act, R.S.O. 1990, c. H.6., which lists down the category of the people who would be regarded as residents of Ontario.

Decision and Reasoning

The Ontario Superior Court of Justice held that, from the plain wording of the Regulation, it was clear that the province intended for seasonal workers to be covered by a provincial health insurance scheme while residing in Canada on a valid work permit.

It applied the basic rule of statutory interpretation and held that Section 1.3(2) of the Regulation did not contemplate its application beyond the situation where a worker was present in Ontario under the terms of the SAWP. An interpretation of the Regulation which provided for an extension of health coverage to workers as long as they, at one point, had valid work permits was inconsistent with the language of the provision. It could have the effect of extending health insurance coverage in perpetuity. The Court observed that it was implicit that the work permit had to be a valid one as the government would not have passed a regulation that contemplated its application based on an invalid work permit.

The Court held that the Board had incorrectly relied on the SAWP Agreement while interpreting the regulation. The SAWP Agreement was not an appropriate external interpretive aid for that purpose as the Province of Ontario was not a party to the SAWP Agreement.

The Court stated that if there is a lacuna in providing health care coverage for seasonal workers who are required to remain in Ontario for legitimate medical reasons after the expiration of their work permit, then that lacuna must be filled by devising supplemental health insurances or through agreements between the Federal and Provincial governments. The lacuna cannot be filled by misinterpreting an existing regulation. Hence, the Court had set aside the decision and reconsideration decision of the Board and restored the original decision of the appellant.

Decision Excerpts

"The respondents argue that OHIP coverage only ceases when there is no longer a causal connection between the respondents' physical presence in Ontario and the SAWP. In my view, when the work permit

issued pursuant to the SAWP expires, it can no longer be reasonably said that there remains a causal connection between the person's physical presence in Ontario and the SAWP. When the work permit expires, the person's employment is legally at an end. If the person then remains in Ontario, their presence in Ontario is no longer an outcome connected to the SAWP. To say that such a person remains, in the words of s. 1.3(2):

present in Ontario because they have a work permit issued under the program of the Government of Canada known as the "Seasonal Agricultural Worker Program" is simply factually incorrect. It is a conclusion that is also unreasonable. (Para 19)

Under the respondents' interpretation, a seasonal worker can always have a work permit as long as s/he hangs on to the original document. Given that possibility, under the respondents' interpretation of the Regulation, any seasonal worker, who simply keeps possession of the original work permit, could have OHIP coverage essentially in perpetuity. While the respondents insist that that is not the result of their position, they cannot point to any objective indicator, under their interpretation of the Regulation, that would lead to a cessation of coverage. Instead, they say that it will fall to the appellant to determine that issue on a case by case basis. (Para 20)

Before leaving this issue, I will say that, if there is a gap in the parameters of the SAWP that do not ensure health care coverage for seasonal workers who are required to remain in Ontario for legitimate medical reasons after the expiration of their work permit, then that gap should be filled, either by requiring the employers to obtain supplemental health insurance or through an agreement negotiated between the Federal and Provincial governments. It cannot be filled by a contrived interpretation of existing regulation. (Para 27)