

**IN THE COURT OF APPEAL OF MANITOBA**

**BETWEEN:**

	)	<b><i>N. Cann</i></b>
	)	<i>on their own behalf</i>
	)	
<b><i>NIGEL CANN</i></b>	)	<b><i>D. Fenske</i></b>
	)	<i>for the Respondent</i>
<i>(Appellant) Applicant</i>	)	
	)	<b><i>No appearance</i></b>
<i>- and -</i>	)	<i>for the Social Services</i>
	)	<i>Appeal Board</i>
<b><i>DIRECTOR, ACCESS FORT GARRY</i></b>	)	
	)	<i>Chambers motion heard and</i>
<i>(Respondent) Respondent</i>	)	<i>Decision pronounced:</i>
	)	<b><i>February 20, 2025</i></b>
	)	
	)	<i>Written reasons:</i>
	)	<b><i>February 28, 2025</i></b>

**LEMAISTRE JA**

**Introduction**

[1] The applicant (Mr. Cann) sought to extend the time to file an application for leave to appeal an order of the Social Services Appeal Board (the board) issued on October 29, 2024 (see MB, *Court of Appeal Rules*, Man Reg 555/88R, r 11; *The Social Services Appeal Board Act*, CCSM c S167, s 23(2) [the *SSABA*]). The board dismissed Mr. Cann’s appeal and confirmed the decision of the respondent (the director) to suspend Mr. Cann’s income assistance benefits. The board also denied Mr. Cann’s request to revisit a

previous order confirming the director's decision to deny funding for Mr. Cann's service animal.

[2] After reviewing the written materials filed by Mr. Cann and hearing from him and from counsel for the director, I dismissed the motion with reasons to follow. These are those reasons.

### Background

[3] On July 8, 2024, Mr. Cann's employment and income assistance (EIA) counsellor (the counsellor) sent Mr. Cann a letter, asking him to provide an update on his circumstances. On July 12, 2024, Mr. Cann responded by fax, indicating that the director had previously agreed to communicate with him only in writing.

[4] On September 13, 2024, the counsellor tried to call Mr. Cann, then sent him a letter advising that a meeting had been scheduled for September 27, 2024 and that he could attend the meeting by phone or in person. The letter also stated that his benefits would be put on hold if he did not contact the counsellor.

[5] On September 19, 2024, Mr. Cann again responded by fax, asserting the agreement to communicate only in writing. On the same day, the counsellor sent Mr. Cann a letter informing him that his benefits were put on hold until he contacted the counsellor to provide an update. Mr. Cann did not attend the September 27 meeting or contact the counsellor.

[6] Mr. Cann appealed the director's decision to the board (see *The Manitoba Assistance Act*, CCSM c A150, s 9(3)). At the hearing, Mr. Cann's

position was that, because of the way he was treated in the past, he would only communicate with the director in writing and that the director had previously agreed to do so. He also stated that he would not meet with the counsellor until the director provided funding for his service animal. In addition, Mr. Cann raised the issue of funding for his service animal. In a previous order that was not appealed, the board confirmed the director's decision to deny funding for Mr. Cann's service animal.

[7] The director's position before the board was that the director was required to review Mr. Cann's circumstances and was entitled to suspend his benefits pending a review. The director also asserted that it needed to speak with Mr. Cann to conduct this review and it denied that there was an agreement to communicate with him only in writing.

[8] The board found that Mr. Cann had failed to produce evidence of an agreement to communicate only in writing and confirmed the director's decision to suspend his benefits. It found that the director's decision to suspend Mr. Cann's benefits until he meets with them by phone or in person to provide an update on his circumstances was consistent with existing "legislation, regulations and policy." The board also denied Mr. Cann's request to revisit the issue of funding for his service animal.

#### The Test for Extending Time

[9] Recently, in *Bartel-Zobarich v Manitoba Association of Health Care Professionals (MAHCP-Bargaining Unit)*, 2022 MBCA 64, this Court reviewed the criteria for granting an extension of time to commence an appeal at paras 11-12:

The factors for this Court to consider when determining whether to grant an extension of time to commence an appeal are well settled. They are whether:

- 1) the applicant had a continuous intention to appeal from a time within the period when the appeal should have been filed;
- 2) the applicant has a reasonable explanation for the delay;
- 3) the applicant has an arguable ground of appeal;
- 4) any prejudice suffered by the other party can be addressed if the extension is granted;
- 5) whether it is right and just in all the circumstances that the time for commencing the appeal be extended.

See *Delichte v Rogers*, 2018 MBCA 79 at paras 16-17; *Samborski Environmental Ltd v The Government of Manitoba et al*, 2020 MBCA 63 at para 36; and *Guilbert v Economical Mutual Insurance Company*, 2022 MBCA 1 at para 13.

As noted by Mainella JA in *Delichte*, consideration of the final factor requires the Court to “look broadly at the relevant circumstances and do what justice requires” (at para 17; see also *Samborski* at para 36; and *Guilbert* at para 13).

[10] These factors are equally applicable on a motion to extend time to file an application for leave to appeal.

[11] Section 23(1) of the *SSABA* provides a limited right to appeal an order of the board:

**Appeal to Court of Appeal**  
**23(1)** Any party to the appeal before the appeal board may appeal the board’s order to The Court of Appeal on any

**Appel à la Cour d’appel**  
**23(1)** Avec l’autorisation d’un juge de la Cour d’appel, toute partie à un appel devant la Commission d’appel peut

question involving the board's jurisdiction or on a point of law, but only after obtaining leave to appeal from a judge of The Court of Appeal.

interjeter appel à la Cour d'appel de l'ordonnance de la Commission d'appel sur une question qui touche la compétence de celle-ci ou sur une question de droit.

[12] Therefore, in order to establish an arguable ground of appeal, the applicant must raise a question of jurisdiction or of law.

### Discussion

[13] I am satisfied that Mr. Cann had a continuous intention to appeal and that he has a reasonable explanation for the delay. In his affidavit, Mr. Cann attests that, due to the recent postal strike, he did not receive notice of the board's order until December 31, 2024. While that does not explain all of the delay, I appreciate that he is a person with a disability and his affidavit explains some of the challenges he has faced accessing services (see *Cann v Fort Garry/River Heights (Director)*, 2021 MBCA 75 at para 4).

[14] I am also satisfied that any potential prejudice to the director is not a bar to granting an extension.

[15] The difficulty with Mr. Cann's motion to extend the time to file his application for leave is that he has not raised a question of jurisdiction or of law and, in the circumstances, I am not otherwise satisfied it is in the interests of justice to grant an extension.

[16] Mr. Cann's main argument is that the director's decisions and the conduct of its employees have been unreasonable. He provided numerous examples in his written materials and in his oral submission. He also

suggested that the director has made decisions that are contrary to other legislation, such as *The Human Rights Code*, CCSM c H175 and *The Service Animals Protection Act*, CCSM c S90.

[17] While I am sympathetic to Mr. Cann's circumstances and, in particular, the effect on him of having his benefits withheld and having no financial support for his service animal, the Legislature has explicitly limited this Court's ability to interfere with an order made pursuant to section 20 of the *SSABA*. The issues Mr. Cann raises are issues of fact or, at best, issues of mixed fact and law.

[18] Section 12 of the MB, *Assistance Regulation*, Man Reg 404/88R, requires the director to review the circumstances of a recipient of benefits at least once per year. It requires a recipient to report "any material change in circumstances" (*ibid* at s 12.1(1)) that may affect their benefits and make efforts to access benefits that may be available under other programs (see *ibid* at s 12.1(2)). The EIA Administrative Manual requires individuals who are applying for or receiving benefits "to engage in meaningful contact with EIA staff." Similarly, EIA staff are required "to engage in meaningful and purposeful assessment and counselling with participants to help them improve their personal, health and household circumstances while on income assistance" (Manitoba, Department of Families, "EIA Administrative Manual" (last visited 27 February 2025), online: <[gov.mb.ca/fs/eia\\_manual/sec6/index.html](http://gov.mb.ca/fs/eia_manual/sec6/index.html)>).

[19] In my view, the board's finding that the director's decision was consistent with legislative requirements and government policy does not involve a question of jurisdiction or of law.

[20] Mr. Cann provided proof that the director has, by letter on two occasions, agreed to communicate with him in writing. However, one of the letters makes clear there may be circumstances when the director will need to contact him by phone and neither of the letters relieves him of in-person meetings. While there may be an apparent factual error in the board's reasons on this point, that does not provide the jurisdiction for this Court to interfere with the board's order.

[21] I also see no appealable error in the board's decision refusing to revisit the issue of funding for Mr. Cann's service animal. Although Mr. Cann did not file the board's decision issued February 20, 2020, confirming the decision of the director dated December 16, 2019 regarding this issue, and it is not the subject of his current motion, he provided a copy for me to review during the hearing and I have considered its contents.

[22] Although these written reasons address Mr. Cann's motion for an extension of time, I wish to make clear that timeliness was not the issue in this case. As was discussed at the hearing, the test for leave to appeal under section 23(1) of the *SSABA* requires an applicant to establish an arguable ground of appeal on a question of jurisdiction or of law that is of sufficient importance to merit the attention of this Court (see *Cann v Director, Fort Garry/River Heights*, 2020 MBCA 101 at paras 28-30). Unfortunately, as I have explained, Mr. Cann has been unable to meet that hurdle.

Disposition

[23] In the result, the application to extend the time to file an application for leave to appeal was dismissed. I make no order for costs.

leMaistre JA

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