

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

	)	<i>D. A. Diaz-Fullerton</i>
	)	<i>on their own behalf</i>
<i>DAVID ALAN DIAZ-FULLERTON</i>)	
	)	<i>D. Fenske</i>
<i>(Appellant) Applicant</i>	)	<i>for the Respondent</i>
)	
	)	<i>No appearance</i>
<i>- and -</i>	)	<i>for the Social Services</i>
	)	<i>Appeal Board</i>
)	
<i>DIRECTOR, MANITOBA SUPPORTS</i>	)	<i>Chambers motion heard and</i>
	)	<i>Decision pronounced:</i>
<i>(Respondent) Respondent</i>	)	<i>May 15, 2025</i>
)	
	)	<i>Written reasons:</i>
	)	<i>May 27, 2025</i>

EDMOND JA

Introduction

[1] The applicant sought an extension of time to file an application for leave to appeal an order of the Social Services Appeal Board (the board) issued on December 10, 2024.

[2] The respondent (the director) contests the motion.

[3] By reasons for decision dated December 17, 2024, the board allowed the applicant's appeal in part and varied the director's original decision to deny benefits and directed the Department of Families, Employment and

Income Assistance (the department) to provide benefits to the applicant under section 5(1)(a) of *The Manitoba Assistance Act*, CCSM c A150, for twenty-four months, effective December 10, 2024.

[4] The ground for the motion and the proposed appeal relate to the fact that the department failed to issue what the applicant refers to as “retroactive pay to when [his] benefits were varied”, which is alleged to be September 2024.

[5] After reviewing the written materials filed and hearing from the applicant and counsel for the director, I dismissed the motion with brief reasons to follow. These are those reasons.

The Test for Extending Time

[6] Recently, leMaistre JA in *Cann v Access Fort Garry (Director)*, 2025 MBCA 18 at paras 9-12, dealt with the test to be applied on a motion to extend the time for leave to appeal to this Court in the context of an application for leave to appeal an order of the board:

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).

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

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 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.

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 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.

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

Discussion

[7] The affidavit filed in support of the motion does not address the issue of whether the applicant had a continuous intention to appeal and has a reasonable explanation for the delay in filing the motion seeking an extension of time to file an application for leave to appeal. Nor did the director advance a position on those factors or whether the director would suffer any prejudice if the motion was granted.

[8] At the hearing, the applicant explained how he did not get answers to his questions from the department or the board about the start date of his benefits, and he was trying to resolve the issue. While the applicant did not provide evidence to prove he had a continuous intention to appeal or that he had a reasonable explanation for the delay in filing his motion to seek an extension of time to file an application for leave to appeal, in my view, neither of these factors is determinative of this motion. It is unnecessary to further consider these criteria in light of my finding on the main issue.

[9] The main issue raised by the applicant is whether he is entitled to retroactive benefits to the date when his original benefits were varied. The board allowed his appeal in part and ordered benefits effective December 10, 2024 (the decision).

[10] The bottom line is the applicant's motion to extend the time to file the application for leave does not have arguable merit because the application for leave does not raise a question of jurisdiction or of law. In the circumstances, I am not otherwise satisfied that it is in the interests of justice to grant an extension.

[11] The decision is clear and, on the facts of the case, the board ordered payment of benefits to the applicant effective December 10, 2024.

[12] While it is not clear why the board used December 10, 2024 as the effective date for benefits to resume, that is a question of fact and does not raise a question involving the board's jurisdiction or a point of law.

[13] The applicant's remedy, if he had one, was to seek clarification from the board pursuant to section 22(1) of *The Social Services Appeal Board Act*, CCSM c S167, regarding the start date of his benefits, not advance an application for leave to appeal in this Court. A request for reconsideration must be in writing and must be filed within thirty days after the date of the board's order. If the applicant elects to file a request for reconsideration now, I leave it to the board to decide whether it extends the time limit in the circumstances of this case.

[14] Examining all of the factors, the applicant has failed to satisfy me that he has 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.

Disposition

[15] In the result, the motion to extend the time to file an application for leave to appeal is dismissed. I make no order of costs.

Edmond JA