

IN THE COURT OF APPEAL OF MANITOBA

BETWEEN:

	)	H. Gullu
	)	<i>on their own behalf</i>
HULYA GULLU)	
	)	D. Fenske
	)	<i>for the Respondent</i>
<i>(Appellant) Applicant</i>)	
- and -	)	A. H. Leaver
	)	<i>on a watching brief</i>
	)	<i>for the Social Services</i>
DIRECTOR, CENTRALIZED SERVICES	)	<i>Appeal Board</i>
)	
	)	<i>Chambers motion heard:</i>
<i>(Respondent) Respondent</i>	)	January 22, 2026
)	
	)	<i>Decision pronounced:</i>
	)	May 5, 2026

BEARD JA

[1] This is an application by the appellant, Hulya Gullu (Ms Gullu), under section 23 of *The Social Services Appeal Board Act*, CCSM c S167 [the *SSAB Act*], for leave to appeal an order of the Social Services Appeal Board (the board). In that order, the board dismissed Ms Gullu’s appeal from a decision of the respondent (the director) under *The Disability Support Act*, CCSM c D76 [the *DS Act*]. In that decision, the director dismissed Ms Gullu’s application for benefits under the Manitoba Supports for Persons with Disabilities (MSPD) program, which is a program under the *DS Act* and the MB, *Disability Support Regulation*, Man Reg 164/2022 [the *DS Regulation*].

[2] Ms Gullu acknowledges that her right of appeal is limited to questions of law and jurisdiction (see the *SSAB Act*, s 23(1)). Her position is that the grounds of appeal that she is raising are limited to questions of law and jurisdiction. She is requesting leave to appeal on the following grounds:

1. Did the [b]oard err in law by inventing substantive definitions for “severe” and “prolonged” disability where the [*DS Act*] is silent, contrary to principles of statutory interpretation?
2. Did the [b]oard exceed its jurisdiction by imposing extra-statutory requirements, including treatment exhaustion, medication compliance, and permanent capacity, none of which appear in the [*DS Act*]?
3. Did the [b]oard err in law by relying extensively on MBFE—a separate EIA program not at issue—to deny MSPD eligibility, thereby considering irrelevant factors and failing to decide the issue properly before it?
4. Did the [b]oard breach procedural fairness by denying [Ms Gullu’s] disability-related accommodation request for a non-telephone hearing, and then using the resulting evidentiary limitations to justify dismissal of MSPD?

[3] As this is an application of first instance, there is no standard of review. The test for granting leave to appeal was set out by Freedman JA in *Klippenstein v Director, Point Douglas*, 2011 MBCA 15 at para 2, quoting *Pelchat v Manitoba Public Insurance Corp and Automobile Injury Compensation Appeal Commission*, 2006 MBCA 90 at para 2, as follows:

1. The question must be truly one only of jurisdiction or of law, and not one which “involve[s] the court in an assessment or analysis of conflicting factual issues”.

2. The case must be one that warrants the attention of the court. “The issue must be one of importance; not just for the immediate case, but in determining other similar disputes which are apt to arise in [the] future”.
3. There must be an arguable case of substance; i.e., one with a reasonable prospect of success.

[4] See also *Gullu v Access River East (Director)*, 2025 MBCA 102 at para 14.

[5] The director’s position is that Ms Gullu has not raised an arguable ground of appeal, so the motion for leave to appeal should be dismissed.

THE BOARD’S DECISION

[6] The board set out Ms Gullu’s position before it, being that eligibility required that an applicant establish that their disability was severe and prolonged. It noted that the medical panel, in its report for the department, stated that it had reviewed her information and “concluded that it could not confirm Ms. Gullu’s eligibility for the MSPD program.” The board further noted that, while the department accepted that she suffered from anxiety, depression and post-traumatic stress disorder (PTSD), which “[could] be life-long”, “the impact of those conditions [could] be mitigated by treatment plans.” The department also found that, “[w]hile Ms. Gullu [was] engaging with yoga and meditation, she [had] not attempted other treatment options.”

[7] The board asked Ms Gullu to describe her treatment, including her discussions with her doctor. While her doctor said, in his report, that she could not work for two years, the board found that that was “not necessarily indicative of a prolonged or permanent condition.” The board also noted that

Ms Gullu was “not taking medication or engaging in therapy, and that the impact of these treatments on her ability to perform tasks [was] unknown.”

[8] The board analyzed the evidence as to the impact of the disability on Ms Gullu’s functionality and her ability to perform the referenced tasks, finding that she had reported that she could perform all five of the tasks by herself, although it took her longer than a non-disabled person to perform the fifth. It noted that her doctor’s evidence provided little information in that regard.

[9] The board then stated that “[t]he purpose of Manitoba Supports is to provide assistance to individuals who will never be able to support themselves.”

[10] The board acknowledged the impact of Ms Gullu’s diagnoses on her life, but concluded:

The [b]oard is concerned that Ms. Gullu’s current treatment program does not seem to be having a positive effect on her functioning, and that she is resistant to other proven treatment approaches. It is difficult to determine the severity and duration of her diagnoses, and their impact on her daily functioning, as long as a more thorough treatment approach has not been attempted. In summary, the [b]oard is unconvinced that Ms. Gullu’s medical condition is so severe and prolonged that she cannot achieve a higher level of functioning through therapy and medication, particularly since she has not successfully attempted these therapies.

[11] The board stated that, if Ms Gullu did not improve her functioning after engaging in the other available therapies for 12 months, she may be eligible for the MSPD program, but that it was premature to conclude that she

was eligible before undertaking further treatment. It concluded that it had insufficient information to determine her eligibility at that time, so it confirmed the director's decision to deny her coverage.

[12] The board rejected Ms Gullu's argument that it should apply the provisions of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the *ITA*], to interpret the words "prolonged" and "severe" as used in the *DS Act* on the basis of differences in the wording of the provisions.

[13] The board also denied Ms Gullu's request for accommodation by having an in-person or video conference hearing, which it found to be unreasonable, directing instead that the hearing be held by teleconference.

THE STATUTORY FRAMEWORK

[14] To understand some of the board's findings now being challenged, it is necessary to understand the statutory framework. The relevant provisions are set out in the attached appendix.

[15] Counsel for the director explained at the hearing that the *DS Act* must be read together with *The Manitoba Assistance Act*, CCSM c A150 [the *MA Act*], and their related regulations, as the two assistance schemes provide complementary benefits. Section 2(5)(b) of the *DS Regulation* states that a person is not eligible to receive any supports under the *DS Act* if they are receiving any assistance or other benefits under the *MA Act*. A mirror provision is found at section 4(7) of the MB, *Assistance Regulation*, Man Reg 404/88R, which is under the *MA Act*.

[16] Both benefit schemes have mandatory financial and disability eligibility requirements. While the financial eligibility requirements in the two benefit schemes are similar, the disability eligibility requirements differ. The financial eligibility requirements are not at issue in this matter, so I will not address them.

[17] Under section 5(1)(a) of the *MA Act*, the disability eligibility provisions state that a person is entitled to income assistance if, “by reason of . . . physical or mental ill health, incapacity or disorder likely to continue for a period of more than one year” (the disability component), that person is unable to earn sufficient income to meet their basic needs or is unable to care for themselves and requires to be cared for by another person (the functional component). The Medical Barriers to Full Employment (MBFE) program is a program under the *MA Act*.

[18] Under section 3 of the *DS Act*, the disability eligibility provisions state that a person is entitled to receive disability support if that person “has a severe and prolonged disability and . . . meets the eligibility criteria established in the regulations”. Under sections 2(1)(d) and 2(1)(e) of the *DS Regulation*, a person must have a severe and prolonged disability (the disability component) and that disability must result in the person experiencing significant barriers to the activities of daily living or full participation in society (the functional component).

[19] The definition of a severe and prolonged disability is set out in section 1(2) of the *DS Regulation*, being “a significant impairment or condition of the body or mind that is permanent or likely to be permanent.”

[20] Under the *DS Regulation*, an applicant may be required to submit a medical assessment by a physician or other acceptable medical professional (see s 6(1)) and that their application will be rejected if the assessment “does not confirm that the applicant has a severe and prolonged disability” (at s 7). Further, if the medical assessment confirms a severe and prolonged disability, the applicant must undergo a functional assessment to determine the impact of the disability on their daily living and their participation in society (see *ibid*, s 8(1)).

[21] Finally, under section 9 of the *DS Regulation*, the director is required to review the applicant’s information, as well as the medical and functional assessments, and may approve the application if they are satisfied that the applicant meets the eligibility criteria set out in section 2(1). Thus, the director’s decision is discretionary.

ANALYSIS

Ground 1: Did the Board Err in Law by Inventing Substantive Definitions for “Severe” and “Prolonged” Disability Where the DS Act Is Silent, Contrary to Principles of Statutory Interpretation?

[22] Ms Gullu’s first ground of appeal stems from her argument that the board erred in law in its interpretation and application of section 3 of the *DS Act*. She argues that “[t]he Legislature deliberately left the terms ‘severe’ and ‘prolonged’ undefined in the [*DS Act* and that] . . . the [b]oard erred by treating that silence as authorization to impose restrictive, extra-statutory requirements, thereby frustrating the purpose of the legislation.”

[23] In fact, as noted above, the *DS Regulation* provides that definition at section 1(2), which states:

1(2) For the purpose of the [*DS Act*], a person has a severe and prolonged disability if they have a significant impairment or condition of the body or mind that is permanent or likely to be permanent.

1(2) Pour l'application de la *Loi*, une personne a un handicap grave et prolongé lorsqu'elle a une déficience ou un problème de santé importants d'ordre physique ou mental et de nature permanente ou vraisemblablement permanente.

[24] This is the provision that the board used in interpreting and applying the eligibility requirements.

[25] Further, given this specific definition and based on the different wording of the *ITA* provisions, I am satisfied that the board did not err in rejecting the argument that it should look to the *ITA* provisions to assist with its interpretation of the *DS Act*.

Ground 2: Did the Board Exceed Its Jurisdiction by Imposing Extra-Statutory Requirements, Including Treatment Exhaustion, Medication Compliance and Permanent Capacity, None of Which Appear in the DS Act?

[26] While Ms Gullu argues that the board imposed extra-statutory requirements like “treatment exhaustion, medication compliance, and permanent incapacity”, I do not agree. Permanent incapacity is part of the definition of a severe and prolonged disability found in section 1(2) of the *DS Regulation*, so it is a statutory, not an extra-statutory, requirement.

[27] The board did not impose either treatment exhaustion or medication compliance as extra-statutory requirements. Rather, it found as a fact that the evidence was that her anxiety, depression and PTSD might be treatable by therapy and medication and, until those modalities were tried, it was difficult to “determine the severity and duration of her diagnoses, and their impact on her daily functioning”. It then concluded that her application was premature. This was not the imposition of extra-statutory requirements; it was the application of the facts to the law, which is not open to appeal to this Court.

Ground 3: Did the Board Err in Law by Relying Extensively on MBFE—a Separate EIA Program Not at Issue—to Deny MSPD Eligibility, Thereby Considering Irrelevant Factors and Failing to Decide the Issue Properly Before It?

[28] The third ground of appeal alleges that the board erred by relying extensively on the fact that Ms Gullu was eligible for benefits under the MBFE program, which relates to employment and is irrelevant to her application for disability support under the *DS Act*. In fact, while the board confirmed that Ms Gullu was categorically eligible for the MBFE program, it noted that she had not submitted the required documentation to establish her financial eligibility.

[29] A fair reading of the board’s reasons discloses that it did not rely on Ms Gullu’s eligibility for the MBFE program in deciding her appeal. It found that the evidence did not show that her medical condition was so severe and prolonged that she could not achieve a higher level of functioning, with the result that she had not established that she met the functional component of the eligibility requirements to qualify for the MSPD program.

Ground 4: Did the Board Breach Procedural Fairness by Denying Ms Gullu's Disability-Related Accommodation Request for a Non-Telephone Hearing, and Then Using the Resulting Evidentiary Limitations to Justify Dismissal of MSPD?

[30] The fourth ground of appeal raises the issue of procedural unfairness, being the board's denial of her request for a disability-related accommodation for a non-telephone hearing.

[31] The *SSAB Act* provides that (i) the board can establish its own rules of practice and procedure (see s 9), and (ii) an oral hearing can be in person, by telephone or by other means (see s 19(2)). Ms Gullu has provided no evidence to support her argument that having the hearing by teleconference was unfair to her or that her disability required her to have a different kind of hearing. The board explained that it does not have video conferencing facilities and that her request for an in-person hearing was denied because she had been identified as a safety concern. It was up to Ms Gullu to point to evidence to support her claim of procedural unfairness; there was none.

[32] Finally, the board did not err in pointing out that Ms Gullu had attended three recent prior hearings without requesting any accommodations; rather, this supported the inference that she did not require this type of accommodation.

CONCLUSION

[33] For the above reasons, I am of the view that Ms Gullu has not established that any of the proposed grounds of appeal has a reasonable prospect of success. I am, therefore, denying her application for leave to appeal the board's order.

[34] The director is not asking for costs, so there will be no order in that regard.

Beard JA

APPENDIX

Pertinent provisions referenced in this reasons:

Under the *SSAB Act*:

Procedural rules

9 The appeal board may establish its own rules of practice and procedure and must make them available to the public.

Hearing conducted orally or in writing

19(2) The appeal board may conduct a hearing orally or in writing. An oral hearing may be held in person or by telephone or through the use of other electronic means.

Règles de procédure

9 La Commission d'appel peut établir ses propres règles de procédure, auquel cas elle les rend accessibles au public.

Audience tenue oralement ou par écrit

19(2) La Commission d'appel peut tenir une audience oralement ou par écrit. Les audiences orales peuvent avoir lieu en personne, par téléphone ou par tout autre moyen électronique.

Under the *DS Act*:

Disability support

3 A person who has a severe and prolonged disability and who meets the eligibility criteria established in the regulations is entitled to receive disability support in an amount determined in accordance with the regulations

Soutien pour personne handicapée

3 Les personnes qui ont un handicap grave et prolongé et qui répondent aux critères d'admissibilité réglementaires ont droit à un soutien pour personne handicapée dont le montant est calculé en conformité avec les règlements.

Under the *DS Regulation*:

1(2) For the purpose of the Act, a person has a severe and prolonged disability if they have a significant impairment or condition of the body or mind that is permanent or likely to be permanent.

1(2) Pour l'application de la *Loi*, une personne a un handicap grave et prolongé lorsqu'elle a une déficience ou un problème de santé importants d'ordre physique ou mental et de nature permanente ou vraisemblablement permanente.

Eligibility criteria

2(1) A person may receive supports under the Act if

- (a) they are a Manitoba resident;
- (b) they are 18 years of age or over;
- (c) they meet the financial eligibility requirements set out in subsections (2) and (3);
- (d) they have a severe and prolonged disability; and
- (e) an assessment under this regulation determines that their disability results in the person experiencing significant barriers to the activities of daily living or full participation in society.

Critères d'admissibilité

2(1) Quiconque répond aux critères d'admissibilité qui suivent peut recevoir du soutien sous le régime de la *Loi* :

- a) il est résident du Manitoba;
- b) il est âgé d'au moins 18 ans;
- c) il répond aux critères d'admissibilité financière prévus aux paragraphes (2) et (3);
- d) il a un handicap grave et prolongé;
- e) une évaluation effectuée sous le régime du présent règlement indique qu'il doit, en raison de son handicap, faire face à des obstacles importants qui nuisent aux activités de sa vie quotidienne et à sa pleine

participation à la vie en société.

2(5) A person is not eligible to receive supports under the Act if

...

(b) they are receiving any assistance or other benefits under *The Manitoba Assistance Act*.

Medical assessment

6(1) Subject to subsections (3) and (4), an applicant must submit a medical assessment completed by a physician or by another medical professional approved by the director.

6(3) An applicant is not required to submit a medical assessment if they provide proof that

(a) they are receiving Canada Pension Plan disability benefits;

(b) they are receiving community living disability services; or

(c) they reside in a personal care home.

6(4) The director may waive the requirement for an applicant to provide a medical

2(5) Est inadmissible à du soutien sous le régime de la Loi toute personne qui, selon le cas :

...

b) reçoit de l'aide ou des prestations en vertu de la *Loi sur les allocations d'aide du Manitoba*.

Évaluation médicale

6(1) Sous réserve des paragraphes (3) et (4), l'auteur d'une demande fournit une évaluation médicale effectuée soit par un médecin soit par un autre professionnel de la santé reconnu par le directeur.

6(3) L'auteur d'une demande n'est pas tenu de fournir une évaluation médicale s'il fournit une preuve, selon le cas :

a) qu'il reçoit la prestation d'invalidité du Régime de pensions du Canada;

b) qu'il reçoit des services d'intégration communautaire des personnes handicapées;

c) qu'il réside dans un foyer de soins personnels.

6(4) Le directeur peut dispenser l'auteur d'une demande de l'obligation de

assessment if the director is satisfied that the applicant meets the eligibility criteria set out in subsection 2(1).

Assessment must show severe and prolonged disability

7 If an applicant is required to submit a medical assessment, their application will be rejected if the physician or other medical professional completing the medical assessment does not confirm that the applicant has a severe and prolonged disability.

Functional assessment

8(1) Subject to subsection (2), if a medical assessment indicates that the applicant has a severe and prolonged disability, a functional assessment of the applicant must be conducted to determine the impact of the disability on their activities of daily living and their participation in society.

Decision on application

9 After reviewing the information provided by an applicant as well as any medical assessment and functional assessment, the director may approve an application if they are satisfied that the applicant meets the

fournir une évaluation médicale s'il est convaincu que l'auteur répond aux critères d'admissibilité prévus au paragraphe 2(1).

Confirmation d'un handicap grave et prolongé

7 Les demandes devant être accompagnées d'une évaluation médicale sont rejetées si cette dernière ne confirme pas l'existence d'un handicap grave et prolongé.

Évaluation des capacités fonctionnelles

8(1) Sous réserve du paragraphe (2), si l'évaluation médicale indique que l'auteur de la demande a un handicap grave et prolongé, une évaluation de ses capacités fonctionnelles doit être effectuée pour déterminer l'incidence du handicap sur les activités de sa vie quotidienne et sur sa vie en société.

Décision

9 Après avoir examiné les renseignements fournis par l'auteur d'une demande ainsi que, le cas échéant, l'évaluation médicale et l'évaluation des capacités fonctionnelles, le directeur peut approuver la demande

eligibility criteria set out in subsection 2(1).

s'il est convaincu que l'auteur répond aux critères d'admissibilité prévus au paragraphe 2(1).

Under the *MA Act*:

Income assistance

5(1) The director shall provide income assistance, in accordance with this Act and the regulations, to or in respect of a person who, in the opinion of the director is a person

(a) who, by reason of age or by reason of physical or mental ill health, incapacity or disorder likely to continue for a period of more than one year

(i) is unable to earn an income sufficient to meet the basic necessities of themselves and their dependants, if any; or

(ii) is unable to care for themselves and requires to be cared for by another person or in an institution or home for the aged or the infirm[.]

Aide au revenu

5(1) Le directeur fournit une aide au revenu, conformément à la présente loi et à ses règlements, à une personne ou en sa faveur, si à son avis, cette personne, selon le cas :

a) en raison de son âge, de sa mauvaise santé physique ou mentale, ou d'une incapacité ou affection d'une durée probable de plus d'un an :

(i) était incapable de gagner un revenu suffisant pour subvenir à ses besoins essentiels et à ceux des personnes à sa charge, le cas échéant,

(ii) elle était incapable de subvenir à ses propres besoins et devait obtenir les soins d'une autre personne, d'un établissement ou d'un foyer pour personnes âgées ou infirmes[.]

Under the *Assistance Regulation*:

4(7) A person is not eligible to receive income assistance or general assistance if

(a) they are incarcerated in a penitentiary, custodial facility or other place of detention; or

(b) they are receiving any type of support under *The Disability Support Act*.

4(7) Est inadmissible à de l'aide au revenu ou à de l'aide générale toute personne qui, selon le cas :

a) a été incarcérée dans un pénitencier, dans un établissement de détention ou dans tout autre lieu de détention;

b) reçoit tout type de soutien en vertu de la *Loi sur le soutien pour personne handicapée*.