

MANITOBA) Order No. 165/06
)
THE PUBLIC UTILITIES BOARD ACT) December 5, 2006

BEFORE: Graham F. J. Lane, C.A., Chairman
Leonard Evans, LL.D. (Hon.), Member
Eric Jorgensen, Member

**MANITOBA CHIROPRACTORS ASSOCIATION:
APPLICATION FOR AN AWARD OF COSTS - MANITOBA
PUBLIC INSURANCE CORPORATION APPLICATION FOR
APPROVAL OF 2007/08 INSURANCE RATES**

Summary

The Manitoba Chiropractors Association (MCA) participated as an intervener in the 2007-08 rate application hearing for Manitoba Public Insurance (MPI). Subsequent to the hearing, MCA applied to the Board for an award of costs.

By this Order, the Board denies the application as MCA has not satisfied the Board's **criteria for financial need.**

Introduction

The Board directed a public proceeding related to an application by MPI for approval of driver and motor vehicle insurance rates, effective March 1, 2007. The proceedings concluded with a hearing held at the Board's offices in October 2006.

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding. The Board's Rules of Practice and Procedure (Rules) indicate four main criteria by which the Board determines whether costs should be awarded to an Intervener. The Notice of Public Hearing relative to MPI's application advised as to the Board's guidelines.

MCA was granted Intervener status by the Board following a pre-Hearing conference, and submitted a draft budget. Following the hearing, MCA applied to the Board for an award of costs, comprised of:

Legal:	
Fees (including PST and GST)	\$16,611.00
Disbursements (including GST)	<u>265.00</u>
	<u>\$16,876.00</u>

MCA's Application

MCA asserted that the issues it focused on through its intervention were relevant, in that they were within the context of assuring MPI was providing adequate service to claimants and appropriate cost management with respect to appeal expenses. MCA suggested that its exploration of these matters raised relevant questions related to the cost and service effectiveness of MPI.

MCA advised it had consulted with other Interveners to avoid duplication in its interrogatories and cross-examination.

As to the Board's criteria for cost awards with respect to interest and means, MCA advised it represents chiropractors treating patients injured in motor vehicle accidents.

MCA advised that fee arrangement it enters into with MPI on behalf of its members had neither prejudiced MCA nor precluded it from advancing issues on behalf of all MPI claimants.

MCA advised that its members treat 150,000 Manitobans each year, with approximately 7,000 MCA clients also being claimants of MPI.

MCA submits that the issues it advanced during the proceedings were relevant to all MPI policyholders, and that it does not have the financial resources to pay its legal counsel with respect to the intervention on its behalf.

MPI's Perspective

MPI suggested that MCA does not meet the criteria set out in Section 43 of the Rules, and the Board should not grant an award to MCA.

With respect to the Board's other criteria for making a cost award, MPI questioned MCA's view that it had made a significant contribution to the proceedings. From MPI's perspective, MCA focused on statistical information relating to MPI claimants that was regularly provided to MCA by MPI outside of the proceedings.

MPI also opined that there was no evidence to indicate that MCA, as both a professional association and a regulatory body, was incapable of paying its counsel.

For MPI, MCA also failed to demonstrate it had a substantial interest in the outcome of the proceeding. According to MPI, the fact that chiropractors provide treatment to a segment of the Manitoba population does ensure MCA meets the test of having a substantial interest in the outcome of a proceeding focused on the appropriateness of rates.

Furthermore, MPI opined there was no evidence that the MCA represents the interests of a substantial number of MPI's policyholders. In MPI's view, the participation of MCA failed to identify any significant segment of policyholders whose interests required MCA's participation.

Finally, MPI asserted that MCA's final submission focused on issues outside the control of MPI, issues without relevance to its rate application.

Board Findings

By Order 103/06, in approving MCA's status as an intervener, the

Board advised:

"While the Board will grant Intervener status to MCA, it respectfully reminds MCA, a new intervener, of the Board's expectation that interveners work co-operatively with each other. Furthermore, the Board encourages MCA to review the Board's Rules of Practice and Procedure, specifically Section 43 respecting the awarding of costs. Awards of costs are entirely at the discretion of the Board and the Board has had a practice of not awarding costs to interveners representing a party with commercial interests and means."

Further, in order 156/06, the Board stated:

"Cost awards are not generally made to parties deemed capable of funding participation, particularly not to commercial interests. The members of MCA are service providers to MPI, and the payments by MPI to MCA members each year are material. The Board made its criteria clear at the outset of the proceedings, and the criteria are available from the Board's Office and through access to its web site."

The members of MCA are professionals with the financial means to bear their own costs of intervention. The Board is not satisfied MCA meets the criteria of financial need.

The Board takes no issue with the contributions of MCA and its counsel through the proceedings. The Board also acknowledges and appreciates the co-operation displayed by MCA's counsel through the proceedings.

While the Board has no jurisdiction over MCA's engagement practices, it suggests that MCA's counsel participation on behalf of MCA merits payment by MCA.

IT IS THEREFORE ORDERED THAT:

1. The Application of the Manitoba Chiropractors Association for an award of costs in making its intervention at the Manitoba Public Insurance Corporation's 2007 Insurance Rates Hearing BE AND IS HEREBY DENIED.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J LANE, C.A."
Chairman

"G. GAUDREAU, C.M.A."
Secretary

Certified a true copy of
Order No. 165/06 issued
by The Public Utilities
Board

Secretary