

HEALTH SERVICES APPEAL AND REVIEW BOARD

PRESENT:

Thomas Kelly, Vice-Chair, Presiding
Stephen Kovanchak, Board Member
Gabrielle St-Hilaire, Board Member

Heard on April 29, 2013 in Ontario (by written hearing)

IN THE MATTER OF AN APPEAL UNDER SECTION 20(1) of the *Health Insurance Act*,
Revised Statutes of Ontario, 1990, Chapter H.6, as amended

B E T W E E N:

D. C.

and

K. W.

Appellants

and

**THE GENERAL MANAGER,
THE ONTARIO HEALTH INSURANCE PLAN**

Respondent

DECISION AND REASONS

I. DECISION

1. It is the decision of the Health Services Appeal and Review Board to allow the appeal.

2. This decision arises from an appeal by D. C. and K. W. (the Appellants) from a decision of the General Manager, the Ontario Health Insurance Plan (the Respondent) respecting the eligibility of the Appellants for health insurance coverage. The Respondent agreed to the Appellants' request for a written hearing and thus this decision was made on the basis of the written submissions by the parties.
3. For the reasons that follow, the Health Services Appeal and Review Board (the Appeal Board) finds that the Appellants meet the definition of "resident" in Regulation 552 and continue to be eligible for health insurance coverage.

II. BACKGROUND

4. The Appellants are participants in the Seasonal Agricultural Worker Program (SAWP). According to the Human Resources and Skills Development Canada website information submitted by the Appellants, the SAWP "allows employers to hire temporary foreign workers (TFW) when Canadian citizens and permanent residents are not available." The Respondent submitted affidavit evidence containing the same information.
5. As required under the SAWP, the Appellants signed a standard contract entitled "Agreement for the Employment in Canada of Commonwealth Caribbean Seasonal Agricultural Workers – 2012" (the Agreement) to work with a specific employer, Chary Produce Ltd. This is a tripartite agreement signed by the employer, the worker and an agent for the government of the worker's country of origin.
6. Both from Jamaica, Mr. C. and Mr. W. first came to Ontario under the SAWP in 2006 and 2009 respectively and have come annually since then. The Appellants arrived in Ontario on August 2, 2012 with over 100 other SAWP participants. Upon their arrival at the airport they each received a work permit from the Jamaican Liaison. The Appellants began working for Chary Produce Ltd. on August 3, 2012.
7. The Appellants' work permits were issued by Citizenship and Immigration Canada and contain two dates: the date of signature, August 2, 2012, and the date of expiration,

December 15, 2012. Although the Agreement speaks to other dates on which the work permit might expire, the parties agree that since clause 2 of Part I of the contract was not completed, the expiration date is the default date of December 15, 2012.

8. On August 9, 2012, the Appellants were involved in a serious motor vehicle accident while being transported to work in their employer's van with other co-workers, one of whom died. The Appellants were unable to work after the accident. Mr. W. suffered from injuries to his neck, chest and lower back and a mild traumatic brain injury. Mr. C. suffered from whiplash and an injury to his spine. Both Appellants received workers' compensation benefits from the Workplace Safety and Insurance Board (WSIB), as well as medical care funded by the WSIB. The Board notes that, beginning in September 2012, Mr. C. encountered other health issues unrelated to the accident.
9. The Appellants did not return to Jamaica on December 15, 2012. Both Appellants continue to receive treatment for their work-related injuries. The parties agree that, as holders of a work permit issued under the SAWP, the Appellants were entitled to health insurance coverage from August 2, 2012 through to December 15, 2012. The parties disagree on the Appellants' continued eligibility for health insurance coverage after December 15, 2012.

Application

10. On December 4, 2012, the Appellants submitted applications to the Eligibility Review Committee for a review of their eligibility for Ontario Health Insurance Plan (OHIP) coverage.

Denial

11. By letters dated December 18, 2012, the Respondent denied the Appellants' respective applications for eligibility for health insurance coverage because they did not hold a valid

OHIP-eligible immigration status, as required by Section 1.5 of the Regulation, and therefore did not meet the definition of resident.

The Appeal

12. By letters dated January 4, 2013, the Appellants appealed this decision on the basis that they are residents and are thus eligible for OHIP coverage.

Respondent's Response

13. On February 11 and 15, 2013, the Respondent filed Grounds of Response setting out its reasons for denial in each case including that the Appellants were not residents of Ontario after December 15, 2012, the date their work permit expired.

III. LAW

14. Health insurance in Ontario is governed by the provisions of the *Health Insurance Act*, R.S.O. 1990, c. H.6 (the *Act*), and any regulations made pursuant to the *Act*. The *Act* and the regulations made under the *Act* constitute a comprehensive legislative and regulatory scheme setting out the circumstances in which health care is to be paid for under the Ontario Health Insurance Plan (OHIP). Regulation 552 (the Regulation) is the current governing regulation.
15. Section 10 of the *Act* states that the purpose of OHIP is to provide “insurance against the costs of insured services on a non-profit basis on uniform terms and conditions available to all residents of Ontario.”
16. Section 12 of the *Act* provides that every insured person is entitled to payment for insured services. The term “insured services” is defined in section 11.2 of the *Act*.
17. Section 11(1) of the *Act* provides that every person who is a “resident” of Ontario is entitled to become an insured person upon application to the General Manager in

accordance with the *Act* and regulations. Section 1 of the *Act* provides that “resident” means a resident as defined in the regulations.

18. In sections 1.2 to 1.14 of the Regulation, the term “resident” is defined for the purposes of the *Act*. Generally, a “resident” must hold either citizenship status, permanent residence status or landed immigrant status, make Ontario his or her primary place of residence and must be physically present in Ontario for a required period. In order to qualify for health insurance, persons applying must meet this definition of resident and apply for OHIP coverage from within the province. There is a three-month waiting period from the day an applicant becomes a resident, mandated by section 3(3) of the Regulation.
19. However, pursuant to section 1.3(2) of the Regulation, certain persons are residents even if they do not meet the other requirements of the Regulation other than the requirements of sections 3 and 4. Section 3 of the Regulation states that the onus for demonstrating that a person is resident is on the person making the assertion that he or she is resident and section 4 provides the rules for submitting an application. Sections 3 and 4 of the *Act* are not in issue in this appeal.
20. The jurisdiction of the Appeal Board is set out in section 21 of the *Act*. The Appeal Board is limited to ordering the General Manager to do that which the General Manager is authorized to do under the *Act* or the regulations. The Appeal Board has no jurisdiction to order the General Manager, for any reason, to do something that is not permitted under the *Act* or the regulations.
21. Neither the *Act* nor the Regulation includes a provision that would permit the General Manager to declare a person to be resident or declare a resident to be eligible for health insurance coverage on the basis of compassion or financial hardship.

IV. ISSUE

22. The issue before the Appeal Board is the eligibility of the Appellants for health insurance coverage after December 15, 2012.
23. Specifically, the issue before the Appeal Board is whether the Appellants continue to be residents of Ontario as defined in the *Act* and the *Regulation* after December 15, 2012.

V. REASONS

24. The Appeal Board finds that the Appellants continue to be residents of Ontario as provided for by the relevant legislation for the reasons that follow.
25. As described earlier, the Appellants came to Ontario as temporary workers under the federally administered SAWP and Citizenship and Immigration Canada issued work permits, valid from August 2, 2012 to December 15, 2012. Within a few days of starting to work for Chary Produce Ltd., the Appellants suffered injuries in a motor vehicle accident while being transported to their employer's place of work. They were unable to return to work after the accident and received WSIB benefits and WSIB funded health care thereafter. The Appellants did not leave Canada by December 15, 2012, as initially contemplated by the SAWP and by the Agreement.
26. According to affidavits filed in this appeal, in November 2012, both Appellants applied to Citizenship and Immigration Canada to extend their stay in Canada as visitors. The Appellants submit that they applied for an extension so that they could continue to receive "WSIB-sponsored treatment" for the injuries suffered in the motor vehicle accident. The Appellants did not provide further information on the status of their visitor permit application.
27. On December 4, 2012, the Appellants wrote to the OHIP Eligibility Review Committee to request that their OHIP coverage be extended during the time they were in Ontario undergoing medical care funded by the WSIB.

28. By letter dated December 18, 2012, Brad Murphy, the Program Manager for the OHIP Eligibility Programs wrote to the Appellants' representatives on behalf of the OHIP Eligibility Review Committee (ERC) to advise them that their request was denied and that they were not eligible for health insurance coverage. In each case, Mr. Murphy wrote:

A review of [the Appellant's] file indicates that he is enrolled as a migrant worker under the Seasonal Agricultural Worker's Program from August 2, 2012 to December 15, 2012. You have advised that an application for a visitor permit has been submitted to Citizenship and immigration Canada (CIC).

Although he is receiving medical treatment funded by the Workplace Safety and Insurance Board, the ministry can only insure individuals who hold a valid OHIP-eligible immigration status outlined in Regulation 552 of the Health Insurance Act. A visitor permit is not an OHIP-eligible immigration document.

There is no authority in the regulation to allow the minister or any other person to use discretion to provide health insurance coverage to an individual who does not meet the definition of a resident. As [the Appellant] does not hold an OHIP-eligible status, his health insurance coverage cannot be renewed at this time.

29. In support of its position, the ERC relied on section 1.5 of the Regulation, which provides that to be continued to be recognized as a resident, a person must meet certain requirements, in particular, the requirements that a person hold an eligible status, make Ontario his or her primary residence and be physically present in Ontario for 153 days in any given 12-month period.
30. In their respective appeals, the Appellants argued that section 1.5 of the Regulation did not apply to them. They submitted that, as persons who came to Ontario under the SAWP, they were required to meet the conditions set out in section 1.3(2) of the Regulation and were exempt from the requirements of section 1.5 of the Regulation. They argued that they were present in Ontario under a work permit as required by the relevant provisions even if the work permit had expired.

31. The Respondent submits that the Appellants were entitled to OHIP coverage up to December 15, 2012, the date their work permits expired. In the Respondent's view, the workers who come to Ontario under the SAWP are entitled to OHIP coverage only until their work permit expires. Since the Appellants' work permits expired on December 15, 2012, they lost their residency status and were no longer entitled to OHIP coverage. In the Respondent's view, it could no longer be asserted that the Appellants were in Ontario because they *have* a SAWP work permit. The Appeal Board observes that the Respondent provided support for its position by quoting from Section 9.2.2 entitled "Migrant Farm Workers" of the OHIP Eligibility Policy Manual which provides:

OHIP Eligibility Requirements

To be eligible for Ontario health insurance coverage, migrant farm workers must meet the eligibility requirements in accordance with Regulation 552 such that they:

- Hold a work permit issued under the Seasonal Agricultural Worker Program (SAWP).

Document Requirements

...

Eligibility Effective Date

The effective date for health insurance coverage is the later of:

- Effective date of the work permit; or
- Date of arrival in Ontario to take up employment

Eligibility End Date

The end date for health insurance coverage is the earlier of:

- The end date on the Work Permit
- Date of departure from Ontario
- The termination of employment
- The date reported absent without leave (AWOL)

32. In the Appeal Board's view, the Appellants' entitlement to OHIP coverage depends on their residency status, how it was acquired and how it can be lost.

33. Section 1.3(1) of the Regulation specifies that, upon application to be an insured person, a person must meet certain requirements in order to be considered a resident. Those requirements include possessing an eligible status set out in section 1.4 and having Ontario as their primary place of residence. However, section 1.3(2) of the Regulation provides:

1.3 (2) The following persons are residents, even if they do not meet the other requirements in this Regulation, and they are not affected by any of the other rules in this Regulation regarding recognition as a resident, other than the requirements under sections 3 and 4:

1. Inmates at a correctional institution that is established or designated under Part II of the *Ministry of Correctional Services Act*.
2. Children who are in the care of a children's aid society under the *Child and Family Services Act*.
3. Young persons who are detained in a place of temporary detention or committed to a place of secure or open custody under Part IV of the *Child and Family Services Act*.
4. People who are 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". O. Reg. 133/09, s. 2; O. Reg. 253/09, s. 1.

34. All parties agree that the Appellants acquired their residency status pursuant to section 1.3(2) 4 of the Regulation. There is no dispute that the Appellants came to Ontario in August 2012 under the SAWP and that they were both issued a work permit under that program. In addition, there is no dispute that the Appellants were considered residents and received OHIP coverage from the time of their entrance into Ontario, without having to undergo the customary three month waiting period.
35. In the Appeal Board's view, the issue then becomes whether the Appellants ceased to be residents at some later date and thus lost their OHIP eligibility status. In its written argument, the Respondent acknowledged that persons who are present in Ontario because they have a work permit issued under the SAWP are entitled to OHIP coverage under

section 1.3(2) even if they do not meet the other requirements of the Regulation.

However, the Respondent submits that the Appellants lost their OHIP eligibility status under 1.3(2) of the Regulation on December 15, 2012.

36. It is worth repeating the preamble of section 1.3(2) of the Regulation, which provides that persons who are present in Ontario because they have a work permit issued under the SAWP **“are residents, even if they do not meet the other requirements in this Regulation, and they are not affected by any of the other rules in this Regulation regarding recognition as a resident, other than the requirements under sections 3 and 4.”** It is agreed that sections 3 and 4 are not relevant to the issue in this appeal. Hence, the other requirements of Regulation 552 do not apply to persons who are residents under section 1.3(2) of the Regulation. This begs the question as to how and when do SAWP participants cease to be residents in Ontario.
37. As temporary workers under the SAWP, the Appellants’ employment in Canada, and more specifically, in Ontario, was governed by the Agreement signed by the employer, the workers and an agent for the government of the worker’s country of origin, i.e. Jamaica. In the Appeal Board’s view, in the normal course of events, the Agreement provides that SAWP participants leave Canada and return to their country of origin on a date specified in their contract, or by no later than December 15, 2012. As discussed earlier, it is agreed that in the Appellants’ case, the December 15, 2012 date applied. Hence, in the normal course of events, SAWP participants leave Canada and their residency status ends. Had the Appellants left Canada by December 15, 2012, they would no longer be “*present in Ontario* because they have a work permit” under SAWP and their residency status would have ended. It could of course be reacquired if the Appellants returned to Ontario under a new work permit issued under the SAWP, as appears to have been the case in the past in light of the Appellants’ repeated participation in the program.
38. In this case, the Appeal Board is faced with a situation where the Appellants did not leave Canada in December 2012 and continue to be present in Ontario. The Appeal Board finds that the Appellants are residents in Ontario and that there is nothing in the Regulation that

provides for the cessation of their residency status. According to the provisions that generally apply to persons seeking OHIP coverage, to be continued to be a resident, a person must meet the requirements of section 1.5 of the Regulation. In its decision letter to the Appellants, the Respondent listed the requirements of section 1.5 “to maintain eligibility” and relied on this provision to find that the Appellants were not entitled to OHIP coverage.

39. In the Appeal Board’s view, section 1.5 of the Regulation, which addresses the requirements for a person to continue to be recognized as a resident, does not address the Appellants’ situation. The Respondent submitted that the Appellants did not meet the requirements of section 1.5 of the Regulation, in particular, the requirement that they have a citizenship/immigration status that confers eligible status for Ontario health insurance coverage, as listed in the Regulations. The Appeal Board observes that section 1.5 of the Regulation requires that a person “continue to hold an eligible status as listed in section 1.4”, a section that did not apply to the Appellants. The Appellants’ eligibility status is determined by section 1.3(2) and not section 1.4 of the Regulation.
40. It is appropriate at this point to address the Respondent’s reliance on the Appeal Board’s decision in *M.F.D.S. v. Ontario (Health Insurance Plan)*, 2011 CanLII 21 (ON HSARB) (*MFDS*). The Appellant in *MFDS* was a temporary worker who was issued two work permits by Citizenship and Immigration Canada. He was injured in a work-related accident and was granted WSIB benefits. His second work permit expired in December 2009 and he was granted a “Visitor’s Record” for February to June 2010. In March 2010, he requested a renewal of his health insurance coverage. The Appeal Board denied his appeal on the basis that he did not hold an eligibility status under section 1.4 of the Regulation. The Appeal Board finds that the decision in *MFDS* does not assist in the determination of the issue in this appeal, as section 1.4 of the Regulation, which applied to the Appellant in *MFDS*, does not apply to the Appellants.
41. The Appeal Board observes that the Agreement contemplated the possibility that SAWP participants might not leave the country at the predetermined date. Although the Respondent takes the position that the Agreement has no bearing on this matter because

the Respondent is not a party to the Agreement, the Appeal Board finds that the Agreement is relevant to the issue. Clause 1 in Part I of the Agreement provides:

The EMPLOYER will employ the WORKER assigned to him by the GOVERNMENT AGENT as approved by HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA (HRSDC), clearance order and the WORKER will serve the EMPLOYER at the place of employment subject to the terms and conditions herein mentioned provided, however, that such period of seasonal employment be not longer than eight (8) months nor less than 240 hours in a time of six (6) weeks or less unless HRSDC has agreed that an emergency situation exists, in which case the PARTIES agree that the minimum period of employment shall be not less than a term of 160 hours. The EMPLOYER shall respect the duration of the employment agreement signed with the WORKER(S) and their return to the country of origin by no later than December 15th with the exception of extraordinary circumstances (e.g. medical emergencies).

42. It appears that the drafters of the Agreement turned their minds to the possibility that extraordinary circumstances such as medical emergencies could prevent SAWP participants from returning to their country of origin at the predetermined date. That is what occurred in this matter, as both Appellants were involved in a motor vehicle accident and continue to receive medical treatment in Ontario. The Appeal Board finds that in such circumstances, there is nothing in the relevant Regulation to support a finding that the Appellants do not continue to be residents of Ontario under the Act. Although the Appeal Board acknowledges that there might be situations where SAWP participants lose their residency status, the Appellants' circumstances are not such a situation.

VI. DECISION

43. The Appeal Board finds that the Appellants continue to be residents of Ontario and are eligible for health insurance coverage.

44. The appeal is allowed.

ISSUED August 16, 2013

Thomas Kelly

Stephen Kovanchak

Gabrielle St-Hilaire

Appendix to Decision

Health Insurance Act

Definitions

1. In this Act,

...

“resident” means a resident as defined in the regulations and the verb “reside” has a corresponding meaning; (“résident”)

...

Ontario Health Insurance Plan continued

10. The Ontario Health Insurance Plan is continued for the purpose of providing for insurance against the costs of insured services on a non-profit basis on uniform terms and conditions available to all residents of Ontario, in accordance with this Act, and providing other health benefits related thereto. R.S.O. 1990, c. H.6, s. 10.

Right to insurance

11. (1) Every person who is a resident of Ontario is entitled to become an insured person upon application therefor to the General Manager in accordance with this Act and the regulations. R.S.O. 1990, c. H.6, s. 11 (1).

Establishing entitlement

(2) It is the responsibility of every person to establish his or her entitlement to be, or to continue to be, an insured person. 1994, c. 17, s. 70.

...

Insured services

11.2 (1) The following services are insured services for the purposes of the Act:

1. Prescribed services of hospitals and health facilities rendered under such conditions and limitations as may be prescribed.
2. Prescribed medically necessary services rendered by physicians under such conditions and limitations as may be prescribed.

3. Prescribed health care services rendered by prescribed practitioners under such conditions and limitations as may be prescribed. 1996, c. 1, Sched. H, s. 8.

Entitlement to insured services

12. (1) Every insured person is entitled to payment to himself or herself or on his or her behalf for, or to be otherwise provided with, insured services in the amounts and subject to such conditions and co-payments, if any, as are prescribed.

Powers of Appeal Board

21. (1) If a person requires a hearing, the Appeal Board shall appoint a time for and hold the hearing and may, by order, direct the General Manager to take such action as the Appeal Board considers the General Manager should take in accordance with this Act and the regulations. 2002, c. 18, Sched. I, s. 8 (12).

Regulation 552 under the *Health Insurance Act*

- 1.2 For the purposes of the Act and any regulation made under the Act, and despite any other meaning of the term “resident”, resident means a person described in sections 1.3 to 1.14 who meets the requirements set out in this Regulation to be recognized as a resident, and for greater certainty, a person whose primary place of residence ceases to be Ontario ceases to be a resident, unless subsection 1.3 (2) applies. O. Reg. 133/09, s. 2.

- 1.3 (1) Upon application to be an insured person, a person must meet the following requirements in order to be considered a resident, unless subsection (2) or another provision of this Regulation provides otherwise:

1. The person must possess an eligible status set out in section 1.4. A person who has an eligible status, then loses it, is no longer a resident, but may regain resident status at a later date by meeting the necessary requirements at that time.
2. The person’s primary place of residence must be in Ontario. For this purpose, the General Manager will consider a child under 16 years old to have the primary place of residence of a person who has lawful custody of the child unless the General Manager has information to the contrary. O. Reg. 133/09, s. 2.

(2) The following persons are residents, even if they do not meet the other requirements in this Regulation, and they are not affected by any of the other rules in this Regulation regarding recognition as a resident, other than the requirements under sections 3 and 4:

1. Inmates at a correctional institution that is established or designated under Part II of the *Ministry of Correctional Services Act*.

2. Children who are in the care of a children's aid society under the *Child and Family Services Act*.
 3. Young persons who are detained in a place of temporary detention or committed to a place of secure or open custody under Part IV of the *Child and Family Services Act*.
 4. People who are 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". O. Reg. 133/09, s. 2; O. Reg. 253/09, s. 1.
- 1.4 A person cannot be recognized as a resident, unless the person has one of the following eligible statuses:
1. Being a Canadian citizen.
 2. Being a landed immigrant under the former *Immigration Act* (Canada), or a permanent resident under the *Immigration and Refugee Protection Act* (Canada).
 3. Being registered as an Indian under the *Indian Act* (Canada).
 4. Being a "protected person", as that term is used in the *Immigration and Refugee Protection Act* (Canada).
 5. Being a person who has submitted an application for permanent residence in Canada to the proper federal government authority, even if the application has not yet been approved, as long as Citizenship and Immigration Canada has confirmed that the person meets the eligibility requirements to apply for permanent residency in Canada, and the application has not yet been denied.
 6. Being a person who holds a valid work permit or other document issued under the *Immigration and Refugee Protection Act* (Canada) that permits the person to work in Canada, if the person also has a formal agreement in place to work full-time for an employer in Ontario and is working under that agreement, and if the work permit or other document issued under that Act or a letter provided by the employer or other document provided by the employer,
 - i. sets out the employer's name,
 - ii. states the person's occupation with the employer, and
 - iii. states that the person will be working for the employer for no less than six consecutive months.
 7. Being a person who holds a valid work permit or other document issued under the *Immigration and Refugee Protection Act* (Canada) that permits the person to work at an occupation in Canada while self-employed, if the person is self-employed full-time in that occupation in Ontario and will continue to be so for no less than six consecutive months.

8. Being a member of the clergy of a religious denomination, if the member has finalized an agreement to minister to a religious congregation or group in Ontario for at least six months, as long as the member is legally entitled to stay in Canada. The main duties of ministering to the congregation or group must be preaching doctrine, performing functions related to gatherings of the congregation or group or providing spiritual counselling.
 9. Being the spouse or a dependant of a person who meets the requirements under paragraph 6 or 7 or of a member of the clergy who meets the requirements provided for in paragraph 8, as long as the spouse or dependant is legally entitled to stay in Canada.
 10. Having a valid “temporary resident permit” under the *Immigration and Refugee Protection Act* (Canada), if the permit is for a member of an “inadmissible class”, with a “case type” of 86, 87, 88, 89, 90, 91, 92, 93, 94 or 95, or, if the permit is issued for the purpose of adoption to a child mentioned in subsection 6 (2), (3) or (4), “case type 80”.
 11. Being a person who has submitted an application for Canadian citizenship under section 5.1 of the *Citizenship Act* (Canada) to the proper federal government authority, even if the application has not yet been approved, as long as Citizenship and Immigration Canada has confirmed that the person meets the eligibility requirements to apply for citizenship under that section and the application has not yet been denied.
 12. Having a valid work permit under the Government of Canada program known as “Live-in Caregiver Program”.
 13. Being a child born out of country to a mother who is receiving insured services referred to in section 1.9, if at the time the mother left Ontario to receive those insured services she was pregnant with that child and if at the time of the child’s birth the mother was receiving the insured services out of country. O. Reg. 133/09, s. 2; O. Reg. 253/09, s. 2.
- 1.5 (1) The following requirements must be met for a person to be continued to be recognized as a resident:
1. The person must be in Ontario for at least 153 of the first 183 days after becoming a resident, except for,
 - i. a person who has moved to Ontario directly from another province or territory of Canada where he or she was insured under a publicly funded health care insurance plan,
 - ii. a mobile student or a mobile worker,
 - iii. a child to whom section 6 applies, or

- iv. a person who is exempt from the waiting period under subsection 11 (2.1) of the Act.
- 2. Except for those persons listed in subsection 1.3 (2), the person must continue to maintain his or her primary place of residence in Ontario.
- 3. Subject to sections 1.6 to 1.14, the person must be physically present in Ontario for at least 153 days in any given 12-month period.
- 4. The person must continue to hold an eligible status as listed in section 1.4. However, in order to maintain their eligible status as a resident, a person referred to in paragraph 13 of section 1.4 must be legally entitled to remain in Canada and will only maintain their eligible status under that paragraph as long as reasonable efforts are being made for the person to obtain one of the other eligible statuses under section 1.4. O. Reg. 133/09, s. 2.

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Establishing status

- 3. (1) Where anyone asserts that he or she is a resident, or is entitled to any exemption from the requirements to be recognized as a resident, or in any other way is entitled to payment from the Plan, it is the obligation of the person making the assertion to prove to the General Manager that he or she meets the requirements to be an insured person. O. Reg. 133/09, s. 3.
- (2) The General Manager may require a person to submit any information, evidence or documents that the General Manager considers necessary to make a decision, whether the person is applying to be an insured person for the first time or seeking to re-establish coverage, and may either require the submission of original material, or permit the submission of copies. O. Reg. 133/09, s. 3.
- 4. (1) An application to be an insured person must be in the form approved by the General Manager. O. Reg. 133/09, s. 3.
- (2) A person must submit his or her application in person, unless subsection (3) applies. O. Reg. 133/09, s. 3.
- (3) The following are the rules about submitting an application on someone else's behalf:
 - 1. If a person is under 16 years old, a parent who has legal custody, a children's aid society, or anyone else who is legally authorized to act for the person may submit an application.
 - 2. If there are reasonable grounds to believe that a person is incapable of consenting to the collection, use and disclosure of personal health information under the *Personal*

Health Information Protection Act, 2004, a person who would be able to act for the person under section 26 of that Act may submit an application, and the rules of that section apply for the purposes of making the application, subject to any necessary modification.

3. In the case of a dead person, the person's estate trustee may submit an application, or, if there is no estate trustee, the person who has assumed the responsibility for looking after the estate may submit the application.
 4. A person who is legally authorized to act for another person for this purpose under a law of Ontario or Canada may submit an application. O. Reg. 133/09, s. 3.
- (4) When a person is applying on someone else's behalf, the General Manager may require them to attend in person to submit that application and to submit anything a person applying on their own behalf would have been required to submit. O. Reg. 133/09, s. 3.

Waiting Periods

5. (1) Subject to subsection (2) and sections 6 to 6.3, and to subsection 11 (2.1) of the Act, a person shall only start receiving insured services once the General Manager is satisfied that he or she has been a resident for three full consecutive months, and has not stopped being a resident since meeting that three-month waiting period requirement. O. Reg. 133/09, s. 3.

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