

## Case In Point

# Tribunal Finds that Denial of Coverage for Medical Cannabis under Employer's Benefit Plan is not Discriminatory

**Date:** December 19, 2018

The Ontario Human Rights Tribunal (the Tribunal) recently held that the decision to deny coverage for medical cannabis coverage under an employer's benefit plan is not discrimination under the Ontario *Human Rights Code* (Code) when the decision to deny coverage is unrelated to an applicant's disability or another protected ground.

In [\*Rivard v. Essex \(County\)\*, 2018 HRTO 1535](#), the applicant was a dependent of an employee of the Corporation of the County of Essex (the Employer). The applicant had been authorized to obtain medical cannabis by a health professional and sought reimbursement for the cost of this treatment through the Employer's health and benefits plan (the Plan). The Plan was administered by a third-party insurer, Green Shield Canada Inc. (the Administrator).

The Plan limited reimbursements to treatments with a Drug Identification Number (DIN) issued by Health Canada. Medical cannabis does not have a DIN. On that basis, the Administrator denied the applicant's reimbursement request.

The applicant alleged that the denial was discrimination in the provision of services by the Administrator on the basis of her disability, contrary to the Code. Although the applicant initially only named the Administrator as a respondent, the Tribunal added the Employer. At issue was whether the applicant had any prospect of success in her claim against either the Administrator or the Employer.

In respect of the claim against the Administrator, the Tribunal found that while it is possible for a third party benefits administrator to act in a discriminatory manner in the provision of services, the Administrator did not act in a discriminatory manner when it denied the applicant's coverage request in this particular case. The Administrator was found to be administering the Plan pursuant to its terms. The Plan conditions limiting coverage for treatments that did not possess a DIN were established by the Employer.

The Employer submitted that the applicant's claim was denied solely on the basis of the fact that medical cannabis does not possess a DIN, and that restriction was not related to the applicant's disability. The Employer referred to a recent decision in which the Nova Scotia Court of Appeal found that the denial of coverage under a benefits plan for medical cannabis did not, on its own, amount to discrimination. The relevant determination is whether the decision to deny coverage is

based on the appellant's disability. See our earlier summary regarding [Canadian Elevator Industry Welfare Trust Fund v. Skinner](#).

The Tribunal agreed with the Employer and held that the applicant had not provided sufficient evidence indicating that the decision to deny coverage for medical cannabis was connected to her disability. The Tribunal also noted that the existence of a bias against cannabis use, which the applicant alleged was present in the decision to deny her coverage request, would not amount to a breach of the Code. The Tribunal stated:

*The fact a person who has been prescribed medical cannabis also has a disability does not establish the connection between the decision to deny the coverage and that person's disability. The connection in that instance is between the type of drug and the decision.*

In addition, the Tribunal noted that the existence of benefit plans that do cover medical cannabis does not establish a connection between an applicant's disability and the decision to deny coverage in individual cases. In this regard, the Tribunal referred to a prior decision in which it had held that "the purpose of the Code is not to define the appropriate scope of a benefit plan without regard to the underlying purpose of the plan or to require that benefits be made available to individuals simply because they identify with a Code-related factor."

On the basis that the application had no reasonable prospect of success, the claim against both the Employer and the Administrator was dismissed, providing some comfort to employers in Ontario that valid exclusions in benefits plans can continue to apply to medical cannabis.