Date: 20071031

Docket: T-2177-06

Citation: 2007 FC 1127

Ottawa, Ontario, October 31, 2007

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

ARTHUR MOORE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR ORDER AND ORDER

[1] Veterans Affairs Canada (the Department) provides an array of benefits to veterans. The Applicant challenges the legality of a decision made on November 8, 2006 (the impugned decision) by R. Herbert, Director General of the National Operations Division of the Department (the Official) which upheld the previous refusal of two other officials of the Department to reimburse travel and related expenses in relation to medical treatment received in Montreal.

[2] The impugned decision has been rendered under the authority of the *Veterans Health Care Regulations*, SOR/90-594, as amended (the Regulations) which provide for the reimbursement of certain travel and related expenses incurred by an eligible veteran (designated as a "client" in the Regulations).

[3] Subparagraph 7(1)(a)(i), section 35.1 and section 36 of the Regulations, which are particularly relevant in the case at bar, read as follows:

7. (1) Subject to subsections (2), (2.1), (2.2) and (3), the costs of travel referred to in paragraphs 6(a) and (b) are payable in respect of a client who receives treatment benefits in Canada in respect of	7. (1) Sous réserve des paragraphes (2), (2.1), (2.2) et (3), les frais de déplacement visés aux alinéas 6a) et b) sont payables à l'égard du client qui reçoit des avantages médicaux au Canada relativement :
(a) transportation by the most convenient and economical means of transportation appropriate to the condition of the client	a) au transport par le moyen le plus pratique et économique eu égard à son état :
(i) where the client is resident in Canada, between the client's residence and the appropriate treatment centre nearest to that residence, and	(i) dans le cas où le client réside au Canada, entre son lieu de résidence et le centre de traitement adéquat le plus proche,
[…]	[…]
35.1 The Minister shall notify a client or the client's representative of any decision relating to the award, increase, decrease, suspension or cancellation of any benefit under these Regulations concerning or affecting the client.	35.1 Le ministre avise le client ou son représentant de toute décision concernant l'attribution, l'augmentation, la diminution, la suspension ou l'annulation d'un avantage mentionné au présent règlement qui vise le client.
(…)	
36. (1) A person who is dissatisfied with any decision made under these Regulations may, within 60 days after receiving notice of the decision or, where circumstances beyond the control of the person necessitate a longer	[…] 36. (1) La personne qui conteste une décision prise aux termes du présent règlement peut, dans les 60 jours suivant la réception de l'avis

period, within that longer period, apply in writing to the Minister for a review of that decision by an official of the Department of Veterans Affairs other than the official who made the original decision.

(2) Where a person is dissatisfied with the results of a review referred to in subsection (1), the person may, within a period of 60 days after receiving notice of the decision on the review, apply in writing to the Minister for a final decision to be rendered by an official of the Department of Veterans Affairs other than the official who made the original decision or who reviewed it.

(My underlining)

de la décision ou, lorsque des circonstances indépendantes de sa volonté nécessitent un délai plus long, dans ce délai, présenter une demande par écrit au ministre en vue de la révision de la décision par un fonctionnaire du ministère des Anciens combattants autre que celui qui a rendu la décision originale.

(2) La personne qui conteste les résultats de la révision visée au paragraphe (1) peut, dans les 60 jours suivant la réception de l'avis de la décision découlant de la révision, présenter une demande par écrit au ministre en vue de la prise d'une décision définitive par un fonctionnaire du ministère des Anciens combattants autre que celui qui a rendu la décision originale ou qui l'a révisée.

[4] The Applicant has been claiming travel costs, escorts, parking and lunches in relation to medical appointments at St-Mary's Hospital in Montreal from October 17, 1997 to March 22, 2006. An initial decision denying the reimbursement of same for future claims was rendered by an official on March 23, 2006, after it was noticed that the total paid claims for travel expenses to the Applicant between April 2003 and February 2006 were in the amount of $10,768.10. In the opinion of this official, the reimbursement of the claimed expenses could no longer be justified under the Regulations because the medical services received by the Applicant in Montreal were also available at the Foundation du Centre hospitalier regional de Lanaudière (the CHRDL), a hospital that is closer to the Applicant's residence. This initial decision was later reviewed by two other officials of the Department. After careful consideration of the relevant facts and applicable regulatory provisions, these officials upheld the initial decision. The Applicant asks for the review of the final decision made in this regard on November 8, 2006.

[5] The Department recognizes that the most convenient and economical means of transportation appropriate to the condition of the Applicant, who is a 76 year old veteran residing in Rawdon, is transportation by car with the assistance of an escort. At issue in this case is the Department's final decision to limit the car allowance for medical appointments to the equivalent of 80 kilometres per visit, which corresponds to the travel distance (return trip included) between the Applicant's residence and the closest hospital, in this case the CHRDL.

[6] The Applicant submits that not all of the medical services required for his health condition are available at the CHRDL or that none of those medical services can be guaranteed in English as required by section 16 of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, or sections 21, 24 and 25 of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Suppl.) (the OLA). Accordingly, it is stated that the impugned decision is contrary to the constitutional or quasi-constitutional language rights of the Applicant, or that it is otherwise unreasonable in the circumstances.

[7] The Respondent states that before rendering the impugned decision, the Official verified that all the necessary medical services required by the Applicant are not only available at the CHRDL, but are also available in French or English to the choice of the patient. The Respondent states that the burden of proof is on the Applicant to provide evidence to support his position that the impugned decision was unreasonable or contrary to the law. Indeed, the Applicant's own affidavit undermines his application for judicial review, as it demonstrates the Applicant was adequately

treated at the CHRDL on June 12, 2006, during which time he was seen by an English-speaking doctor.

[8] Having considered all four factors directed by the pragmatic and functional approach, I agree with counsel that the standard of reasonableness *simpliciter* applies to the review of the impugned decision which must be based on the evidence, must not be contrary to the law and must be able to stand up a somewhat probing examination.

[9] Contrary to what the Applicant alleges in this proceeding, there is ample evidence on record to sustain the Official's finding that appropriate medical services in French or English to the choice of the patient are available at the CHRDL. Moreover, there is no evidence on record allowing this Court to infer that medical services provided at St-Mary's Hospital or at the CHRDL are being made available to veterans by these provincial institutions on behalf of the Government of Canada, as suggested by the Applicant. Accordingly, the allegations made by the Applicant that his language rights under the Charter or the OLA are engaged or are violated by the Department are not supported by the evidence on record and are unfounded in law.

[10] At the hearing of this application, counsel for the Applicant further submitted to the Court that the impugned decision is otherwise unreasonable on the grounds that the Official has not given proper weight to the fact that the Applicant, an English-speaking veteran of the Korean War, has been treated at St-Mary's Hospital for a great number of years by health specialists already familiar with his health condition.

[11] This new argument must also fail. It is apparent from a review of the documentation on file that the Official was well aware of the medical history of the Applicant, including the fact that he has been seeing his General Practioner, Dr. Miriam Boillat, at St-Mary's Hospital for over 30 years, and that he has been treated there by various health specialists, i.e. a cardiologist; a vascular surgeon; a urologist; an ophthalmologist; and an ear, nose and throat specialist. That being said, before rendering his decision, the Official verified that all the necessary medical services required by the Applicant were available in French or in English at the CHRDL. It appears that the Applicant has simply failed to convince the Official that the CHRDL is unable to provide medical treatment in English that is appropriate to his particular health condition. Moreover, I note that there is no convincing evidence on record that the CHRDL provides a lesser quality of medical services which would justify the reimbursement of the extra mileage in the event the Applicant chooses to continue to be treated at St-Mary's Hospital.

[12] Overall, I find the impugned decision to be reasonable and to resist a probing examination. In administering the benefits' programs under the Regulations, the Department leaves the choice of the health professional or service provider to the veteran. However, travel fees will be reimbursed only insofar as they relate to transportation by the most convenient and economical means appropriate to the condition of the client and only for travel equivalent to the distance between the client's residence and the nearest appropriate treatment centre where the treatment is available.

[13] I am also satisfied that the Official has not fettered the exercise of the Minister's residual discretion to authorize transportation costs incurred by a client to receive medical treatment at a

centre which is not the nearest appropriate centre in special or exceptional cases. In this case, the Official determined that there was insufficient medical documentation provided at the time by the Applicant which would warrant approval of the Applicant's request for reimbursement of travel costs resulting from his medical appointments in Montreal on an exceptional basis. It is to be noted that on January 10, 2007, that is after the impugned decision was made, the Department, upon receiving a letter from Dr. Louise Gagnon which exposed exceptional circumstances which warrant the Applicant to go to Montreal to receive his psychotherapy treatments for post traumatic stress disorder with Dr. Lise Bourgeois, approved the Applicant's travel costs to Montreal in order for the Applicant to continue these treatments. This new medical evidence, which was not before the Official who made the impugned decision, clearly shows in my opinion that the Department is willing in the future to reconsider the impugned decision in light of new medical evidence exposing why it is more appropriate for the Applicant to receive a particular medical treatment in Montreal and not in Joliette. Indeed, the Applicant is not barred in the future from asserting that the transfer of his medical file or that a change of physicians from St-Mary's Hospital to the CHRDL is not feasible in practice or will cause him undue hardship in the case of a particular medical treatment he is presently receiving at St-Mary's Hospital.

[14] For these reasons, the present application must fail. Considering the nature of this case, the particular situation of the Applicant and all other relevant factors, an award of costs in favour the Respondent is not warranted in the circumstances.

ORDER

THIS COURT ORDERS that the application for judicial review be dismissed. Each party bear their own costs.

"Luc Martineau"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2177-06
STYLE OF CAUSE:	Arthur Moore v. Attorney General of Canada
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	October 25, 2007
REASONS FOR ORDER AND ORDER:	**MARTINEAU J.**
DATED:	October 31, 2007

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