

Migrant Workers Centre: Position Paper Restoration of MSP Coverage for Workers on Implied Status

Migrant Workers Centre (MWC) is a non-profit organization that provides free legal education and assistance to migrant workers in British Columbia. MWC works to advance fair immigration policy and improved labour standards for migrant workers through law and policy reform, and test case litigation.

In light of the COVID-19 pandemic, the BC government restored eligibility for MSP coverage on a temporary basis to migrant workers on “implied status,” meaning workers who have applied to extend their work permits and are waiting for a decision while maintaining their legal entitlement to live and work in Canada pursuant to Immigration and Refugee Protection Regulations, s 186 (u). **MWC submits that MSP coverage should be permanently reinstated for migrant workers with “implied status.”** The BC government’s policy to deny coverage to workers with implied status has a disproportionate negative impact on migrant workers, including pregnant women and those who experience accidents or an unexpected onset of a medical condition. While the BC government acknowledges the vital role played by immigrants in the economic well-being of the province, the policy regarding MSP coverage unfairly restricts access to healthcare services for these workers by denying care despite having full legal authorization to work.

On July 1, 2017, the Ministry of Health and Health Insurance BC (HIBC) stopped extending healthcare coverage to individuals without a valid immigration permit from Immigration, Refugees and Citizenship Canada (IRCC). According to HIBC’s new policy, an extension of coverage for up to nine months for a person whose immigration document has expired can no longer be granted in good faith, which was the established practice before this policy change.¹ Instead, the new policy indicates that individuals may be reimbursed for medical expenses incurred retroactively if their status is “maintained,” meaning that the permit dates are consecutive and there is not a lapse in the individual’s immigration status. This is an inadequate solution for various reasons, including the increased likelihood of delaying care or incurring debt as a result of seeking care without coverage. In many cases, postponing care or testing can lead to increased cost of care later down the line, further burdening the public health system when preventative measures could and should have been taken to mitigate these costs.

Legislative Framework

There is a discrepancy between those considered to be eligible to work in Canada as defined by the Immigration and Refugee Protection Regulations and those deemed to be eligible for coverage under the Medical and Health Care Services Regulation. It is MWC’s position that the Medical and Health Care Services Regulation should be interpreted so as to encompass workers with implied status, and in the alternative, that the regulation be amended

¹ From a document acquired by FOI request.

to expressly include workers with implied status. It is imperative that these two regulations be interpreted together to ensure that individuals who are legally entitled to work in Canada are not deprived of access to healthcare.

The legislative authority for implied status comes from the Immigration and Refugee Protection Regulations, subsection 186 (u) which states that “A foreign national may work in Canada without a work permit... until a decision is made on an application made by them under subsection 201(1), if they have remained in Canada after the expiry of their work permit and they have continued to comply with the conditions set out on the expired work permit, other than the expiry date”. This clearly qualifies those with implied status as legally entitled to work in Canada while they await a renewal or decision from IRCC. Subsection 201(1) states that “a foreign national may apply for the renewal of their work permit if (a) the application is made before their work permit expires; and (b) they have complied with all conditions imposed on their entry into Canada.” Since workers with implied status fit the definition above and are therefore legally entitled to work, it is prudent to include them under the definition of those eligible for healthcare coverage under MSP. This can be done by interpreting the Medical and Health Care Services Regulation to include individuals with implied status, or alternatively, amending the regulation so as to include clear language that extends coverage to those with implied status.

The definition of “resident” in section 1 of the Medicare Protection Act “includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia”. Under the Medical and Health Care Services Regulation, s 2, ss (b) reads: “a person admitted to Canada to work who, (i) possesses a valid work permit issued under the Immigration and Refugee Protection Act (Canada) for a period of 6 or more months, (ii) continues to retain such valid authorization, and (iii) meets the criteria under paragraphs (b) and (c) of the definition” Criteria (b) and (c) require that a person “makes his or her home in British Columbia, and is physically present in British Columbia”. The phrase “valid authorization” in s 2, ss (b) (ii) should be interpreted to include workers with implied status, as according to the Immigration and Refugee Protection Regulations, subsection 186 (u) these workers do in fact have valid authorization to work. The issue is that s 2, ss (b) (i) uses the word “valid” to modify “work permit” which could be understood to only mean an unexpired work permit. However, it is the position of MWC that the word “valid” should be understood to also encompass individuals with implied status.

Additionally, denying these workers coverage under “implied status” may violate the universality clause under the Canada Health Act (CHA).² Chen (2015) argues that “despite the distinction in the immigration context between temporary and permanent migrants, anyone including foreign nationals whose presence in Canada is lawful and non-transient is presumptively eligible for Medicare pursuant to the universality principle in the CHA.”³ HIBC should take measures to ensure that their healthcare policy is not in contradiction of federal legislation like the CHA.

Why reimbursement is not an adequate solution

The current policy of HIBC is to allow individuals to apply for reimbursement of medical fees incurred while on implied status if their status was in fact “maintained” and not “restored”. It appears that if the worker pays for

² Chen, Y. Y. B. (2015). Extending health care entitlement to lawful non-transient international migrants: Untapped potential of the universality principle in the Canada Health Act. *University of British Columbia Law Review*, 48(1), 79+. Retrieved from <https://link.gale.com/apps/doc/A403916552/CPI?u=unorthbc&sid=CPI&xid=2b7d8ec2>

³ Ibid.

medical care while on implied status but then has a permit refused by IRCC, these costs would not be reimbursed. This practice is unjust because, regardless of whether the work permit is ultimately issued, these workers are residents who pay taxes and have legal authorization to work, and thus should have continued health care coverage. Reimbursement in general is an inadequate solution as it unfairly burdens workers by requiring them to pay out-of-pocket for medical services despite having legal authorization to work and remain in Canada. This disregards the burden placed on workers at the time of care to spend large amounts of money in the hopes of possibly being reimbursed after a lengthy application process. The reimbursement policy provides further incentive to delay care and creates situations where workers might be vulnerable to abuse or exploitation for need of funds to pay expensive medical bills. The delay in seeking care burdens the healthcare system with hospital care instead of preventative care.

Many migrant workers already face multiple social and economic barriers when coming to Canada. An unexpected medical bill can deplete any remaining resources and exacerbate financial and emotional hardship, particularly for migrant workers in low-wage, low-skilled jobs, such as in-home caregivers, agricultural workers and workers in the restaurant, retail and hospitality sectors. The purchasing of private insurance or paying out-of-pocket for care adds an additional economic burden to these workers in Canada and the process can be difficult to navigate, particularly for those with a native language other than English or French.

Employer-specific work permits already render migrant workers dependent on their employers for the right to live and work in Canada. This minimizes their bargaining power to advocate for better employment conditions and leaves them vulnerable to exploitation. Denying workers access to healthcare in turn denies them the ability to appropriately respond to workplace injuries or medical complications that develop or worsen as a result of their working conditions.⁴ Those without coverage either have to pay out of pocket and hope for future reimbursement, which is uncertain and could involve going into debt or choosing between food and healthcare, or, they delay seeking care and treatment, which can lead to exacerbating injuries and in many cases higher healthcare costs down the line.

Since IRCC cannot guarantee processing times, not having medical coverage during periods of implied status can cause great uncertainty for individuals while they wait to hear back about their application. During this period, migrants are unable to access care and left without medical coverage if they have any health complications, accidents, or experience the sudden onset of a medical condition.

Consequences for pregnant women and babies

The lack of MSP coverage for workers with implied status also significantly negatively impacts pregnant women. It means that pregnant mothers in need of medical care may be unable to access the healthcare services they need while pregnant, putting their health and the health of their unborn children at risk during what is already a vulnerable time for mother and child. MWC has assisted clients with implied status who have had to give birth without MSP coverage despite diligently applying for new work permits before the expiry of their previous work permits and being legally entitled to live and work in Canada. The Canadian-born children of our clients also did not have access to MSP benefits despite being Canadian citizens due to their mothers' lack of MSP coverage

⁴ Caxaj, S. C., & Cohen, A. (2019). "I will not leave my body here": Migrant farmworkers' health and safety amidst a climate of coercion. *International Journal of Environmental Research and Public Health*, 16(15). doi:10.3390/ijerph16152643

during the three month waiting period. To prevent similar situations in the future, MSP coverage should be reinstated for workers with implied status to ensure that workers are not arbitrarily deprived of ongoing access to necessary health services.

Waiting to access care, especially during pregnancy, can have negative health consequences for both the mother and baby. While there is currently a waiver system in place that allows individuals to apply for particularly financially debilitating medical costs, it notably excludes healthcare costs associated with childbirth. According to the BC Government website: “Routine prenatal care and the routine birth of a baby do not generally qualify a person for a waiver.”⁵ Additionally, the BC Ministry of Health has acknowledged that “private insurance companies have an almost universal policy of not covering pre-existing conditions, including pregnancy.”⁶ This policy shows a disregard for the health of women and babies who require care, and creates a vacuum of coverage for pregnant women with implied status since they do not have the option of seeking private insurance.

International Law

In 1990, Canada signed onto the UN Convention on the Rights of the Child, which states that no child shall be discriminated against for any reason or based on any status of their parents. The inability to access healthcare coverage while on “implied status” has profound negative consequences for women who give birth while being ineligible for MSP coverage as their children are subject to the waiting period, unlike the children of parents who are enrolled in MSP. This can be particularly financially debilitating if newborns suffer from medical ailments. The three-month wait period for newborn babies of unenrolled parents directly contradicts the section of the UN Convention, as it unfairly restricts access to public healthcare for children whose parents have precarious immigration status and are therefore ineligible for MSP coverage.

According to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), policies such as the MSP wait period and inability to access care while on implied status can produce conditions for workers to be exploited, by denying them their basic right to healthcare. Without timely access to healthcare services and preventative care, migrant workers are at risk for serious and debilitating health conditions that affect their capacity to work.

Conclusion

In conclusion, we submit that the BC government should revert to its practice prior to July 1, 2017 of granting MSP coverage in good faith for up to 9 months for individuals with an expired work permit that have a pending IRCC application. Alternatively, the BC Government should amend the regulation to include workers with implied status under the definition of residency to be in line with the Immigration and Refugee Protection Regulations, s 186 (u).

⁵ *Ibid.*

⁶ Government of BC. (n.d.-b). Coverage wait period. Retrieved from <https://www2.gov.bc.ca/gov/content/health/health-drug-coverage/msp/bc-residents/eligibility-and-enrolment/how-to-enrol/coverage-wait-period>