

Rally for increased hospital and long term care funding in Toronto. October 23



Stewards' Newsletter

Major grievance arbitration win allows grievance that employer must provide long term disability benefits after age 65

CUPE local 6364 and the Ontario Council of Hospital Unions/CUPE have broken new ground in clarifying that ltd benefits continue after age 65

CUPE Local 6364 grieved alleging that Markham Stouffville Hospital violated the collective agreement by failing to continue long term disability (LTD) benefit coverage for employees who work past their 65th birthdays. OCHU took on the case and in an award November 19, 2018, a Board of Arbitration chaired by Laura Trachuk allowed the grievance.

The case turned on the interpretation of Article 13.01 of the agreement: "coverage is for "eligible employees under the long-term disability of the Plan (HOODIP or an equivalent plan as described in the August, 1992 Booklet (Part B))." The Arbitrator noted that it was the eligibility "as it is described in the August 1992 booklet that is relevant." Thus, the arbitrator examined the HOODIP 1992 Part B booklet to determine if it provided for the continuation of LTD benefits past 65. The HOODIP 1992 booklet did not expressly say that LTD coverage continued past age 65, nor did it say that coverage terminated at age 65. The Hospital argued that the language of the booklet would have to be clear and unambiguous in order to support the Union's interpretation.

The arbitrator rejected this argument, holding that the opposite presumption applied: “Arbitrators have rejected the argument that the parties must have intended that the age 65 limit would continue unless they negotiated otherwise, in favour of the assumption that the parties must be presumed not to have intended discriminatory provisions even if they were legal. Clear and unambiguous language has, therefore, been required to support a determination that benefits end at 65.”

The arbitrator’s interpretation of the HOODIP 1992 booklet was supported by the fact that an earlier version of the booklet had included an express limit on coverage post-65. This suggested that by removing that limit, the parties intended to convey that the triggering event for LTD coverage to end is retirement, not turning 65.



CUPE activists brave the rain Oct. 23 to fight for increased hospital and long term care funding

The arbitrator rejected the Hospital’s argument that we should look to the insurance plan itself, not just the booklet, holding that “the plan is not incorporated into the collective agreement through the booklet and cannot be relied upon to reduce the benefit provided in the collective agreement.”

This case confirms that LTD benefits continue past the age of 65 under Article 13.01, and it endorses a presumption of non-discrimination that arguably applies to all forms of benefits.

This case continues in the tradition The Scarborough Hospital and Canadian Union of Public Employees, Local 1487, 2014 CanLII 66059 (ON LA) (Goodfellow), in which the arbitrator applied a similar presumption of non-discrimination to conclude that health and welfare benefits in Article 18.01 continue past the age of 65 (owing to the language of the Blue Cross Semi-Private Plan found to be in effect at that particular hospital of September 28, 1993). It complements the decision of the Ontario Human Rights Tribunal in Wayne (Steve) Talos and Grade Erie District School Board and Ontario Human Rights Commission et al, 2018 HRTO 680 (CanLII), in which it was held that the Ontario Human Rights Code’s exceptions that permit age discrimination in health, dental and life insurance benefit plans violate the equality protections of the Canadian Charter of Rights and Freedoms.