

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

**Medical Services Commission
Legal Counsel:**

Ms.Sharna Kraitberg

Beneficiaries:

s.22

**On behalf of the
Medical Services Plan:**

Ms.Stephanie Power
Ms. Virginia McIntyre
Ms. Monica Uribe (via teleconference)

INTRODUCTION:

This hearing was convened in Victoria, British Columbia at the request of the beneficiary, ^{s.22} pursuant to section 11(4) of the *Medicare Protection Act* ("the Act"). to determine if ^{s.22} ^{s.22} for the purposes of the Act, and to determine if the enrollment of ^{s.22} in the Medical Services Plan ("the Plan") should be cancelled pursuant to Section 1(1)(b) of the Act.

s.22

I heard this matter as a delegate of the Medical Services Commission (the "Commission") under Section 6 of the Act.

BACKGROUND:

The Plan provided the summary of information obtained by them as follows:

s.22

RELEVANT LEGISLATION:

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia;

DOCUMENTATION:

The documentation provided on behalf of the Plan is included in the MSP File Brief. At the hearing, the Plan provided further documentation relating to the question of whether

s.22

EVIDENCE AND SUBMISSIONS:

The Plan reviewed the evidence noted above regarding the arrivals and departures of
s.22

FINDINGS:

For ease of reference, I will again set out the definition of "resident" under section 1 of the *Medicare Protection Act*:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,


and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia;

Given the evidence provided in this case, and particularly the acknowledgment by
s.22
s.22 not residents of BC during
that period of time.

CONCLUSION:

As the result of my findings I have concluded that the Medical Services Plan enrolment
of s.22
s.22 should be cancelled retroactively from

s.22
Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
s.22 for the purposes of the Act, and to
determine if ^{s.22} enrollment should be cancelled pursuant to section 7(7) (b) of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter and providing supporting documentation. The information regarding ^{s.22}
s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The relevant regulation is the Medical and Health Care Services Regulation, which has specific provisions addressing extended absences from British Columbia by residents. Pursuant to section 4 of the Regulation, a resident is entitled to be absent from British Columbia for up to twenty-four months for work or vacation purposes, if the person meets certain criteria:

4 (1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purpose of the definition for up to the initial 24 consecutive months of absence if the person

- (a) obtains prior approval from the commission for status as resident during the absence,
- (b) does not establish residency outside British Columbia,
- (c) has not been granted approval under this subsection during the preceding 60 months, and
- (d) at the time of leaving, meets the criteria under
 - (i) paragraphs (a) to (c) of the definition, or
 - (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

Pursuant to section 5 of the Regulation, a resident is entitled to a further absence from British Columbia of up to twelve months (in addition to the initial twenty-four month absence) if there are extenuating health circumstances which preclude return to British Columbia at the end of the initial period of absence, and if the Commission is satisfied that the person would have returned to British Columbia had it not been for the extenuating circumstances:

5 (1) For a resident who is temporarily absent from British Columbia or a person who is deemed to be a resident under section 3 or 4, the commission may approve continued status as a resident for one further period if

(a) there are extenuating health circumstance which preclude return to British Columbia at that time, and

(b) the commission is satisfied that the person would have returned to British Columbia was it not for the extenuating circumstances.

(2) The further period referred to in subsection (1) must not exceed 12 months.

(3) This section applies to a spouse or a child of the resident if the spouse or child

(a) is with the resident who is temporarily absent from British Columbia, and

(b) is also a resident or a deemed resident.

SUBMISSIONS:

Medical Services Plan:

The Medical Services Plan takes the position that, having qualified as a resident within the meaning of the Act prior to ^{s.22}

s.22

FINDINGS:

I have considered all of the information submitted for my review.

There is agreement on the dates of absence and return of ^{s.22}

Pursuant to section 4 of the Regulation ^{s.22}
s.22

CONCLUSION:

In summary, my decision is as follows.

The enrolment of ^{s.22} in the Medical Services Plan of British Columbia
should be cancelled as ^{s.22}

The enrolment of ^{s.22} in the Medical Services Plan of British Columbia should be
cancelled as ^{s.22}

s.22

Dated at Victoria, British Columbia this



Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
s.22 for the purposes of the Act,
and to determine if ^{s.22} enrollment should be cancelled pursuant to section 7(7) (b) of
the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I
considered the written materials provided by the Medical Services Plan ("the Plan") on
s.22 and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation. This material was provided to the beneficiaries and no additional material was provided by ^{s.22}

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

SUBMISSIONS:

Medical Services Plan:

The Medical Services Plan takes the position that ^{s.22}
s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review.

There appears to be little disagreement on the dates of arrival and departure and the evidence confirm this.

s.22

CONCLUSION:

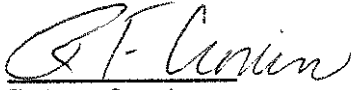
In summary, my decision is as follows:

s.22

were not residents of British Columbia for the purposes of the *Medicare Protection Act* for that period.

s.22

Dated at Victoria, British Columbia this

A handwritten signature in cursive script, appearing to read "R. Cronin", written in dark ink.

Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

MSC Legal Counsel:

Ms. Sharna Kraitberg

Beneficiaries:

s.22

**On behalf of the
Medical Services Plan:**

Ms. Stephanie Power
Ms. Margaret Sznolynansky
Ms. Monica Uribe (via teleconference)
Mr. Ray Abbott (via teleconference)

INTRODUCTION:

This hearing was convened in Victoria British Columbia on ^{s.22} at the
request of the beneficiary, ^{s.22} pursuant to section 11(4) of the *Medicare
Protection Act* ("the Act"). to determine if ^{s.22}
^{s.22}

I heard this matter as a delegate of the Medical Services Commission ("the
Commission") under Section 6 of the Act.

s.22

BACKGROUND:

The Plan provided the details of its residency investigation in the form of a binder entitled
"MSP File Brief". In summary, the conclusion of the investigation by the Plan was that
^{s.22} had not been residents of British
Columbia, as defined in the Act, for the period in question based on the following
information:

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia;

Section 7 of the Act requires enrollment of residents in the Plan, and allows the Commission to cancel the enrollment of non-residents:

7(1) A resident must apply to the commission in the manner required by the commission

(a) for enrollment as a beneficiary if not already enrolled,

.....
(7) The Commission may cancel the enrollment of a beneficiary effective

- (a) on application by the beneficiary, effective on a date subsequent to the date of the application,
- (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or
- (c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

EVIDENCE AND SUBMISSIONS:

The Medical Services Plan

Stephanie Power, Director of Medical Services Operations and Policy of the Medical Services Division, Ministry of Health Services, provided the details of the investigation on behalf of the Plan. Monica Uribe and Ray Abbott of the Investigations Unit of the Ministry of Health Services attended by telephone.

A residency investigation was undertaken by the Investigations Unit in ^{s.22} resulting in the material presented in the binder. The investigation concluded in ^{s.22}

Page 16 redacted for the following reason:

s.22

CONCLUSION:

As the result of my findings I have concluded that ^{s.22}
^{s.22} ineligible for enrollment and coverage under the Medical Services Plan
between ^{s.22} enrollment should therefore be
cancelled for that period.

s.22

Dated at Victoria, British Columbia this



Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

MSC Legal Counsel:

Ms. Sharna Kraitberg

Beneficiaries:

s.22

**On behalf of the
Medical Services Plan:**

Ms. Stephanie Power
Ms. Margaret Sznolynansky
Ms. Monica Uribe (via teleconference)
Ms. Eleanor Ramsdale (via teleconference)
(Now known as Eleanor Beckett)

INTRODUCTION:

This hearing was convened in Victoria, British Columbia on ^{s.22} at the
request of the beneficiary, ^{s.22} pursuant to
section 11(4) of the *Medicare Protection Act* ("the Act"), to determine if ^{s.22}
^{s.22}

I heard this matter as a delegate of the Medical Services Commission ("the
Commission") under Section 6 of the Act.

s.22

BACKGROUND:

The residency issue arose when the Medical Services Plan Investigations Unit became
aware that ^{s.22}
^{s.22}

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,

- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia;

Section 7 of the Act requires enrollment of residents in the Plan, and allows the Commission to cancel the enrollment of non-residents:

7(1) A resident must apply to the commission in the manner required by the commission

- (a) for enrollment as a beneficiary if not already enrolled,

.....
(7) The Commission may cancel the enrollment of a beneficiary effective

- (a) on application by the beneficiary, effective on a date subsequent to the date of the application,
- (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or
- (c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

In holding this hearing, I, on behalf of the Commission, am exercising the power of the Commission under section 5(1)(f) of the Act to determine whether the individuals in question are residents within the meaning of the Act. Section 5(1)(f) of the Act states:

5.(1) The commission may do one or more of the following:

- (f) investigate and determine whether a person is a resident and, for this purpose, require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established,

EVIDENCE AND SUBMISSIONS AT THE HEARING:

The Medical Services Plan

Stephanie Power, Director of Medical Services Operations and Policy of the Medical Services Division, Ministry of Health Services, provided the details of the investigation on behalf of the Plan. Monica Uribe and Eleanor Beckett of the Investigations Unit of the Ministry of Health Services participated by telephone.

Pages 21 through 24 redacted for the following reasons:

s.22

FINDINGS:

I have considered the submissions of both the Plan and ^{s.22} As noted above, a person is eligible for enrollment in the Medical Services Plan only if he or she meets the definition of "resident". If there is not sufficient evidence that the person meets that definition, then he cannot be considered eligible for enrollment.

Burden of Proof

s.22

As noted above, section 5(1)(f) of the *Medicare Protection Act* states that the commission may "require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established". This means that the burden of proof lies on the individual claiming residency. The standard of proof is on a balance of probabilities; that is, ^{s.22} must provide evidence to satisfy me that it is more likely than not that ^{s.22} have met the residency requirements of the Act.

Review of Evidence

The Investigations Unit of the Medical Services Plan followed their normal procedures in trying to confirm ^{s.22} residence in British Columbia for the periods of time in question. Despite requests by the Investigations Unit, ^{s.22}
^{s.22}

Page 26 redacted for the following reason:

s.22

s.22

CONCLUSION:

As the result of my findings I have concluded the following:

s.22

was ineligible for enrolment and coverage under the
Medical Services Plan effective ^{s.22} coverage should be cancelled
retroactively to that date.

s.22

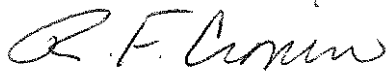
was ineligible for enrolment and coverage under the Medical Services
Plan effective ^{s.22} coverage should be cancelled retroactively to
that date.

s.22

s.22

s.22

Dated at Victoria, British Columbia this

A handwritten signature in cursive script, appearing to read "R. F. Cronin".

Robert Cronin



s.22

Re: Medical Services Commission Residency Hearing

I am legal counsel to the Medical Services Commission.

Enclosed please find the decision of the Medical Services Commission in relation to the written Residency Hearing held ^{s.22}

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

cc: Stephanie Power, Medical Services Division, Ministry of Health Services
Lee Peacock, Medical Services Commission Secretariat

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 were residents for the purposes of the Act,
and to determine if the enrollment of s.22 should be cancelled
pursuant to section 7(7) (b) of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by s.22 and I reached the decision set out below.

BACKGROUND:

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

Minute of the Commission Number 08-025 (dated March 14, 2008)

The Commission expanded on the rules for coverage under the Plan in Minute Number 08-025, which provides, in part, as follows:

....New and returning residents to British Columbia must apply for coverage and meet the definition of resident in the *Medicare Protection Act*. As a general rule, coverage under the Medical services Plan will be effective for those arriving:

- From outside of Canada:

After a wait period consisting of the balance of the month in which residence was established, plus two months (the "wait period"). If the applicant is absent from Canada for more than 30 days during the wait period and does not make his or her home in British Columbia during that absence, coverage will not be available until the applicant returns to the province, becomes resident and completes a new wait period.

SUBMISSIONS:

Medical Services Plan:

The Medical Services Plan's position is that ^{s.22} did not establish residence and did not make their home in British Columbia from ^{s.22}
^{s.22}

As a result, the Medical Services Plan intends to cancel medical coverage for ^{s.22}
^{s.22}

FINDINGS:

I have considered all of the information submitted for my review.

Section 1 of the *Medicare Protection Act* specifically defines "resident" as including a requirement that an individual be physically present in British Columbia at least six months of every calendar year, and make British Columbia his home.

In this case, I am not satisfied that^{s.22}
s.22

Furthermore, Minute of the Commission 08-025 states that if an applicant for coverage is absent from Canada for more than thirty days during the initial wait period (the balance of the month in which residence was established, plus the next two months) and does not make his home in British Columbia during that absence, coverage is not available until the applicant returns to British Columbia, becomes resident and completes a new wait period.

s.22

the wait period and places the onus on the applicant to notify the Plan of absences during this period

Given the evidence, the coverage under the Medical Services Plan for ^{s.22}
^{s.22} is cancelled for the period between ^{s.22}

CONCLUSION:

In summary, my decision is as follows:

1. The medical coverage for ^{s.22}
period from ^{s.22} is cancelled retroactively for the
2. The medical coverage for ^{s.22}
period from ^{s.22} is cancelled retroactively for the

^{s.22}
Dated at Victoria, British Columbia this


Robert Cronin



s.22

Re: Medical Services Commission Residency Hearing

I am legal counsel to the Medical Services Commission.

Enclosed please find the decision of the Medical Services Commission in relation to the written Residency Hearing held ^{s.22}

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

cc: Stephanie Power, Medical Services Division, Ministry of Health Services
Lee Peacock, Medical Services Commission Secretariat

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if^{s.22} and^{s.22} are residents for the purposes of the Act, and to determine if the enrollment of^{s.22} should be cancelled pursuant to section 7(7) (b) of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by^{s.22} and I reached the decision set out below.

BACKGROUND:

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

SUBMISSIONS:

Medical Services Plan:

The staff of the Medical Services Plan take the position ^{s.22}
s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review.

The facts relating to the arrival and departure dates are not in question, specifically:

s.22

Section 1 of the *Medicare Protection Act* specifically defines "resident" as including a requirement that an individual be physically present in British Columbia at least six months of every calendar year, and make British Columbia her home. I find that s.22

s.22

CONCLUSION:

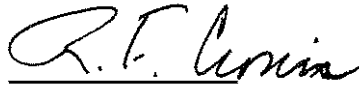
In summary, my decision is as follows:

1. The medical coverage for s.22 is cancelled retroactive to s.22
2. The medical coverage for s.22 is cancelled retroactive to s.22

s.22

s.22

Dated at Victoria, British Columbia this

A handwritten signature in cursive script, appearing to read "R. F. Cronin".

Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiary:

s.22

BACKGROUND:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
^{s.22} is a resident for the purposes of the Act, and to determine if the enrollment of ^{s.22}
should be cancelled pursuant to section 7(7) (b) of the Act.

s.22

s.22

On behalf of the Medical Services Plan ("the Plan"), Stephanie Power and Margaret Szolnyanszky attended, with Lena Ngai and Monica Uribe from the Ministry of Health Services Investigation Unit participating by telephone.

At the hearing, I reached the decision set out below. I advised the parties of my decision at the end of the hearing, and indicated that I would provide written confirmation of that decision.

DECISION:

The evidence provided at the hearing was as set out in the materials provided by the Plan, in the binder entitled "MSP File Brief". ^{s.22} had also provided information in support of ^{s.22} position in a letter addressed to Ms. Lee Peacock, dated ^{s.22}
^{s.22}

s.22

s.22

I am satisfied that, under the circumstances, the Plan is estopped from taking the position that s.22 was not a resident from s.22 onward. As the contracted service provider of the Ministry of Health Services, HIBC was acting on behalf of the Ministry, and therefore the Plan, in leading s.22 had valid coverage under the Plan. Acting in reliance on that advice, s.22 continued to seek medical treatment in British Columbia. The Ministry cannot now deny s.22 s.22 coverage for that treatment.

I reject the recommendation of the Plan to cancel s.22 coverage under the Medical Services Plan retroactive to s.22 is entitled to coverage under the Plan until the end of

Dated at Victoria, British Columbia this s.22


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing**

Reasons for Decision

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
s.22 were residents
for the purposes of the Act, and to determine if the enrollment of ^{s.22}
s.22 should be cancelled pursuant to section 7(7) (b)
of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by the ^{s.22} and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief Binder 1" ("MSP File Brief") outlining the factual background of this matter, and providing supporting documentation of the investigative process. I was also provided with a second binder ("Binder #2") which contained a submission and supporting documentation from a lawyer named ^{s.22} who had been retained to act for
s.22

Pages 42 through 43 redacted for the following reasons:

s.22

reinstate ^{s.22} coverage effective ^{s.22} was withdrawn and the Plan advised of
an intention to cancel ^{s.22} coverage effective ^{s.22}
s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of an individual in the Plan is set out in section 7(7) of the Act:

- (7) The commission may cancel the enrollment of a beneficiary effective
 - (a) on application by the beneficiary, effective on a date subsequent to the date of the application,
 - (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or
 - (c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

Medical and Health Care Services Regulation

A person may be deemed to be a resident for the purposes of the Act if they are absent from British Columbia and in attendance at an educational institution:

3(1) Subject to subsection (3), a person who is absent from British Columbia to attend a university, college or other educational institution is deemed to be a resident for the purposes of the definition if

(a) the university, college or other educational institution is recognized by the commission,

(b) the person is in attendance at that educational institution on a basis recognized by the commission as full time, and

(c) at the time of leaving, the person meets the criteria under

(i) paragraphs (a) to (c) of the definition, or

(ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

.....

(4) A spouse or child of a deemed resident under subsection (1) who accompanies that deemed resident is also deemed to be a resident for the purposes of the definition if, at the time of leaving British Columbia, the spouse or child meets the criteria under subsection (1)(c) or section 2(d) to (g).

Minute of the Commission Number 08-025^{s.22}

The Commission expanded on the calculation of the effective date of coverage in Minute Number 08-025, which provides, in part, as follows:

....New and returning residents to British Columbia must apply for coverage and meet the definition of resident in the *Medicare Protection Act*. As a general rule, coverage under the Medical services Plan will be effective for those arriving:

- From outside of Canada:

After a wait period consisting of the balance of the month in which residence was established, plus two months (the "wait period").

...Under the authority of the Commission, the Coverage Wait Period Review Committee was struck to provide a formal administrative process for reviewing individual requests for a waiver of the wait period. ...

SUBMISSIONS:

Medical Services Plan:

The Medical Services Plan's position is that, for the purposes of the Act,^{s.22}
s.22 has not been resident in British Columbia since^{s.22}
s.22 has not been resident since^{s.22} enrollment in the Plan on^{s.22}
s.22 and, because neither of^{s.22} were residents^{s.22}
s.22 is not a resident.
s.22

Pages 47 through 52 redacted for the following reasons:

s.22

s.22 cannot be deemed a resident for the purposes of the Act pursuant to section 3 of the Regulation.

DECISION

The Medical Services Plan coverage for s.22 is cancelled retroactive to s.22
s.22 The Medical Services Plan coverage for s.22 is cancelled retroactive to s.22
s.22 is also not eligible for coverage, and the Medical Services Plan coverage for s.22 is cancelled retroactive to s.22

s.22
Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

s.22

Date of Hearing:

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
s.22 were residents for the purposes of the Act, and to
determine if the enrollment of ^{s.22} should be cancelled pursuant to
section 7(7) (b) of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation. ^{s.22}
s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and

(c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

SUBMISSIONS:

Medical Services Plan:

s.22

Given the evidence, MSP seeks to cancel medical coverage for s.22
effective s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review.

As noted above, to be considered a "resident" of British Columbia for the purposes of the *Medicare Protection Act*, an individual must be a citizen of Canada (or lawfully admitted for residence) and must make his or her home in British Columbia and be physically present in British Columbia for at least six months in a calendar year.

s.22

DECISION

The Medical Services Plan coverage for ^{s.22}
^{s.22} is cancelled as of ^{s.22}

s.22

Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing: s.22

Delegate of the Medical Services Commission: Robert Cronin

Beneficiaries: s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 were residents for the purposes of the Act, and to determine if the enrollment of s.22 and s.22 should be cancelled pursuant to section 7(7)(b) of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by s.22 and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation. s.22 submitted an undated written submission for consideration.
s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if s.22 meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and

- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

Medical and Health Care Services Regulation

As contemplated in the statutory definition, the *Medical and Health Care Services Regulation* provides for a number of categories of individuals who might not otherwise meet the criteria of residency in the Act to be deemed a resident. Relevant to this particular case is section 4 of the Regulation, which allows for residents, in certain situations, to be absent from British Columbia for vacation or work and still maintain their residency status:

4(1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purposes of the definition for up to the initial 24 consecutive months of absence if the person

(a) obtains prior approval from the commission for status as a resident during the absence,

(b) does not establish residency outside of British Columbia,

(c) has not been granted approval under this subsection during the preceding 60 months, and

(d) at the time of leaving, meets the criteria under

(i) paragraphs (a) to (c) of the definition, or

(ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

SUBMISSIONS:

Medical Services Plan:

The Medical Services Plan's position is that ^{s.22} is not entitled to coverage under the Plan as of ^{s.22} not a resident within the meaning of the *Medicare Protection Act*. ^{s.22}

Pages 59 through 60 redacted for the following reasons:

s.22

DECISION

To summarize my decision:

1. Medical Services Plan coverage for ^{s.22} was effective for the following periods:
 - (a) from ^{s.22}
 - (b) from
 - (c) from

Therefore, coverage for^{s.22}
following periods:

should be retroactively cancelled for the

- (a) from^{s.22}
- (b) from
- (c) as of

2. Medical Services Plan coverage for^{s.22}
following periods:

was effective for the

- (a) from^{s.22}
- (b) from
- (c) from

Therefore, coverage for^{s.22}
following periods:

should be retroactively cancelled for the

- (a) from^{s.22}
- (b) from
- (c) as of

3. Medical Services Plan coverage for^{s.22}
following periods:

was effective for the

- (a) from^{s.22}
- (b) from

Therefore, coverage for^{s.22}
following periods:

should be retroactively cancelled for the

- (a) from^{s.22}
- (b) as of

s.22

Dated at Victoria, British Columbia this



Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
^{s.22} is a resident for the purposes of the Act, and to determine if the
enrollment of ^{s.22} should be cancelled pursuant to section 7(7)(b) of the
Act.

By agreement of the parties, the hearing proceeded by way of written submission. I
considered the written materials provided by the Medical Services Plan ("the Plan") and
by ^{s.22} and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File
Brief" outlining the factual background of this matter, and providing supporting
documentation. In addition to the material in the MSP File Brief, ^{s.22}
exchanged e-mail correspondence with Lee Peacock, administrator of the Medical
Services Commission, which was also provided to me.

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

Medical and Healthcare Services Regulation

As noted above, the Medical and Health Care Services Regulation does allow a resident to be absent from British Columbia for an extended period for the purposes of vacation or work. Prior to April 1, 2005, section 4(1) of the Regulation provided for a maximum absence of twelve months:

Absence for vacation or work

4 (1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purpose of the definition for up to the initial 12 consecutive months of absence if the person

- (a) obtains prior approval from the Commission for status as a resident during the absence.
- (b) does not establish residency outside of British Columbia.
- (c) has not been granted approval under this subsection during the preceding 60 months, and
- (d) at the time of leaving, meets the criteria under
 - (i) paragraphs (a) to (c) of the definition, or
 - (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

Effective April 1, 2005, section 4(1) of the Regulation was amended to provide a maximum allowable absence of 24 months.

The maximum absence period can be extended in extenuating circumstances for a further period of twelve months, pursuant to section 5(1) of the Regulation. In March, 2004, section 5 of the Regulation provided:

5(1) For a resident who is temporarily absent from British Columbia or a person who is deemed to be a resident under section 3 and 4, the commission may approve continued status as a resident for one further period if

- (a) there are extenuating health circumstances which preclude return to British Columbia at that time, and
- (b) the commission is satisfied that the person would have returned to British Columbia were it not for the extenuating circumstances.

(2) The further period referred to in subsection (1) must not exceed

- (a) 6 months, if the resident is absent from Canada, and
- (b) 12 months, if the resident is in Canada.

SUBMISSIONS:

Medical Services Plan:

The Medical Services Plan takes the position that ^{s.22} has not been a resident or a deemed resident since ^{s.22} s.22

Page 66 redacted for the following reason:

s.22

FINDINGS:

I have considered all of the information submitted for my review.

Under the regulation that was in effect prior to April 1 2005^{s.22}
s.22

expired, section 5(1) provided:

5(1) For a resident who is temporarily absent from British Columbia or a person who is deemed to be a resident under section 3 and 4, the commission may approve continued status as a resident for one further period if

- (a) there are extenuating health circumstances which preclude return to British Columbia at that time, and
- (b) the commission is satisfied that the person would have returned to British Columbia were it not for the extenuating circumstances.

(2) The further period referred to in subsection (1) must not exceed

- (a) 6 months, if the resident is absent from Canada, and
- (b) 12 months, if the resident is in Canada.

Given the above conclusions, ^{s.22} is not entitled to be granted an extended absence pursuant to section 5(1) of the Regulation.

s.22

CONCLUSION:

The Medical Services Plan coverage for ^{s.22} is cancelled effective ^{s.22}
s.22

^{s.22}
Dated at Victoria, British Columbia this



Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22} were residents for the purposes of the Act, and to determine if their enrollment should be cancelled pursuant to section 7(7) (b) of the Act.

By agreement of the parties, the hearing proceeded by way of written submission. I considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation. ^{s.22} in addition to the material included in the brief.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and

- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary in the Plan is set out in section 7.2 of the Act:

- 7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

Medical and Health Care Services Regulation

As contemplated in the statutory definition, the *Medical and Health Care Services Regulation* provides for a number of categories of individuals who might not otherwise meet the criteria of residency in the Act to be deemed a resident. Relevant to this particular case is section 4 of the Regulation, which allows for residents, in certain situations, to be absent from British Columbia for vacation or work and still maintain their residency status:

4(1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purposes of the definition for up to the initial 24 consecutive months of absence if the person

- (a) obtains prior approval from the commission for status as a resident during the absence,

- (b) does not establish residency outside of British Columbia,

- (c) has not been granted approval under this subsection during the preceding 60 months, and

- (d) at the time of leaving, meets the criteria under

- (i) paragraphs (a) to (c) of the definition, or
 - (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

BACKGROUND:

s.22

SUBMISSIONS:

Medical Services Plan:

It is the position of the Medical Services Plan that ^{s.22} was not a resident as defined by the *Medicare Protection Act* for the period from ^{s.22} s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review.

s.22

DECISION

1. Medical Services Plan coverage for ^{s.22} _{s.22} remains in effect from ^{s.22}
2. Medical Services Plan coverage for ^{s.22} _{s.22} remains in effect from ^{s.22}
3. Medical Services Plan coverage for ^{s.22} _{s.22} commences after the completion of ^{s.22}

^{s.22}
Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22} _{s.22} are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan should be cancelled pursuant to section 7(7) (b) of the Act.

The appeal proceeded by way of written submission as ^{s.22} despite requesting a hearing, did not respond to repeated contacts by Lee Peacock, the Administrator of the Commission, to schedule an in-person hearing.

I proceeded with the written hearing after assuring myself that the conditions established under Section 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation including the material provided by ^{s.22}

I requested that Ms. Peacock provide me with a summary of her attempts to contact ^{s.22} _{s.22} and received an e-mail from Ms. Peacock dated November 23, 2011 outlining those attempts.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

(2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(7), 7.2 and 11 of the Act:

7(7) The commission may cancel the enrolment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7 (7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

Medical and Health Care Services Regulation

As contemplated in the statutory definition, the *Medical and Health Care Services Regulation* provides for a number of categories of individuals who might not otherwise meet the criteria of residency in the Act to be deemed a resident. Relevant to this particular case is section 4 of the Regulation, which allows for residents, in certain situations, to be absent from British Columbia for vacation or work and still maintain their residency status:

4(1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purposes of the definition for up to the initial 24 consecutive months of absence if the person

- (a) obtains prior approval from the commission for status as a resident during the absence,

- (b) does not establish residency outside of British Columbia,

- (c) has not been granted approval under this subsection during the preceding 60 months, and

- (d) at the time of leaving, meets the criteria under

- (i) paragraphs (a) to (c) of the definition, or

- (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

BACKGROUND:

s.22

s.22

SUBMISSIONS:

Medical Services Plan:

It is the position of the Medical Services Plan that ^{s.22} was not eligible for coverage effective ^{s.22}
s.22

The Medical Services Plan cites Health Insurance BC (HIBC) Policy Manual Section 6.3.1 "Temporary Absence from the Province", which states:

If the waiting period has been completed, enrollment is available during a temporary absence of up to 6 months, whether in another part of Canada or outside Canada, regardless of where the beneficiary lived before moving to BC.

The Medical Services Plan submits that to be eligible for an extended temporary absence, the wait period must have been completed before the person's departure from British Columbia. ^{s.22}
s.22

In addition, Section 6.3.2.7 of the same HIBC policy manual states:

Canadian citizens or permanent residents who are leaving the province temporarily to go outside of Canada for over 6 months before they have resided in BC for 6 months, do not meet the definition of a resident, and are therefore ineligible for extended absence benefits.

s.22

The Medical Services Plan position is that ^{s.22} has not met the definition of resident as outlined in Section 1 of the *Medicare Protection Act* and ^{s.22} has failed to provide satisfactory evidence that residency had been established

s.22

FINDINGS:

I have considered all of the information submitted for my review.

There is no disagreement on the dates of ^{s.22} arrivals in and departures from British Columbia.

s.22

s.22

DECISION

Medical Services Plan coverage for ^{s.22} is cancelled as of ^{s.22}
^{s.22} is a resident, Medical Services Plan coverage for ^{s.22}
^{s.22} is cancelled effective ^{s.22}

Dated at Victoria, British Columbia this ^{s.22}



Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22} are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan should be cancelled pursuant to section 7(7) (b) of the Act.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Section 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} and I reached the decision set out below.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation including the material provided by ^{s.22} to the Plan.

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,

- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

5(1) The commission may do one or more of the following:

-
- (f) investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established ;
-

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(7), 7.2 and 11 of the Act:

7(7) The commission may cancel the enrolment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7 (7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and
- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

BACKGROUND:

s.22

SUBMISSIONS:

Medical Services Plan:

It is the position of the Medical Services Plan that ^{s.22} was not a resident as defined by the *Medicare Protection Act* for the period from ^{s.22} s.22

Page 83 redacted for the following reason:

s.22

FINDINGS:

I have considered all of the information submitted for my review.

As noted previously, under the Act, a beneficiary must be a resident, defined as a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

The *Medicare Protection Act* is clear that it is the beneficiary who has the burden of proving that he has fulfilled the residency requirements in the Act. Specifically, section 5(1)(f) of the Act states that the commission may investigate and determine whether a person is a resident, and for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established.

DECISION

The Medical Services Plan coverage for^{s.22}
s.22 is cancelled effective^{s.22}
s.22

s.22

Dated at Victoria, British Columbia this


Robert Cronin



s.22

RE: Medical Services Commission Residency Hearing

I am legal counsel to the Medical Services Commission.

Enclosed please find the decision of the Medical Services Commission in relation to the enrolment of s.22

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

Encl.

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22} are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan should be cancelled pursuant to section 7(7)(b) of the Act.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Section 11 (4)(a), (b), (c), (d) of the Act had been satisfied.

I considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} and I reached the decision set out below.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The responsibilities and powers of the Commission with regard to determining whether a person is a resident are found in section 5 of the Act:

5(1) The commission may do one or more of the following:

(f) investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

7 (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(7), 7.2 and 11 of the Act:

7(7) The commission may cancel the enrolment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7 (7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

BACKGROUND:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the background of this matter, and providing supporting documentation including the material provided to the Plan by ^{s.22} provided a written submission, with attachments, dated ^{s.22}

s.22

Pages 91 through 92 redacted for the following reasons:

s.22

FINDINGS:

I have considered all of the information submitted for my review.

As noted previously, under the Act, a beneficiary must be a resident, defined as a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

The *Medicare Protection Act* is clear that it is the beneficiary who has the burden of proving that he has fulfilled the residency requirements in the Act. Specifically, section

5(1)(f) of the Act states that the commission may investigate and determine whether a person is a resident, and for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established.

s.22

I interpret section (b) of the definition of resident (the requirement that a beneficiary make his or her home in British Columbia) to mean that British Columbia must be the sole, or at least the primary, home of a beneficiary. I am not satisfied that^{s.22}

s.22

As noted above, section 5(1)(f) of the Act requires the beneficiary to provide the commission with evidence, satisfactory to the commission, that residency has been established. I interpret the burden of proof in a residency matter to be on the balance of probabilities; in other words, I need to be satisfied that it is more likely than not that^{s.22}

s.22

meet the residency requirements.

Based on the evidence before me, for the following reasons I am not satisfied that it is more likely than not that^{s.22} were physically present in BC at least six months of each calendar year between^{s.22}

s.22

Page 95 redacted for the following reason:

s.22

s.22

DECISION

Medical Services Plan coverage for^{s.22}
cancelled from^{s.22}

is

s.22

Dated at Victoria, British Columbia this

R. F. Cronin
Robert Cronin



Province of
British Columbia

Ministry of Health and
Ministry Responsible for Seniors

Mailing Address:
Medical Services Plan
PO Box 1600
Victoria, British Columbia
V8W 2X9

Enquiries:
Vancouver 688-8358
Victoria 386-8381
Other Areas
Within BC 1-800-663-7100

MEDICAL SERVICES PLAN OF BRITISH COLUMBIA APPLICATION FOR COVERAGE

OFFICE USE ONLY

1 APPLICANT INFORMATION

LEGAL NAME	FIRST	MIDDLE	FAMILY
BIRTHDATE MONTH DAY YEAR	SEX <input type="checkbox"/> M <input type="checkbox"/> F	SOCIAL INSURANCE NUMBER	HOME PHONE NUMBER
RESIDENTIAL ADDRESS		MAILING ADDRESS (if different from residential address)	
POSTAL CODE		POSTAL CODE	

2 RESIDENCE INFORMATION AND CITIZENSHIP/IMMIGRATION STATUS – see reverse

"RESIDENT" means a person who is a citizen of Canada or is lawfully admitted to Canada for permanent residence, who makes his or her home in British Columbia, and is physically present in British Columbia at least 6 months in a calendar year. This includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

A	DOCUMENTS MUST BE SENT. CHECK THE BOX WHICH APPLIES TO YOU AND ATTACH A COPY OF THE REQUIRED DOCUMENT. <input type="checkbox"/> CANADIAN CITIZEN (Canadian birth, citizenship, baptismal certificate or Cdn. passport) <input type="checkbox"/> LANDED IMMIGRANT (Record of Landing) <input type="checkbox"/> OTHER (Employment, Student, Minister's permit)			
B	DID YOU HAVE MSP COVERAGE PREVIOUSLY? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, WHAT WAS YOUR PERSONAL HEALTH NUMBER? 9	WHEN DID YOUR PREVIOUS MSP COVERAGE END? MONTH DAY YEAR	DO YOU WANT COVERAGE FROM THAT DATE? <input type="checkbox"/> YES <input type="checkbox"/> NO
C	HAVE YOU ALWAYS LIVED IN BC? <input type="checkbox"/> YES <input type="checkbox"/> NO	WHEN DID YOU MOVE TO BC? MONTH DAY YEAR	IS THIS A PERMANENT MOVE TO BC? <input type="checkbox"/> YES <input type="checkbox"/> NO	
D	WHERE DID YOU MOVE FROM?	WHAT WAS YOUR HEALTH NUMBER?	E	WILL YOU BE ATTENDING SCHOOL OR UNIVERSITY IN BC? <input type="checkbox"/> YES <input type="checkbox"/> NO
F	IF RECENTLY RELEASED FROM THE ARMED FORCES, RCMP OR AN INSTITUTION, PROVIDE THE DATE OF DISCHARGE/RELEASE MONTH DAY YEAR		PROVINCE OF DISCHARGE/RELEASE	

3 PREMIUM PAYMENT – see reverse FOR RATES

Unless you qualify for 100% Premium Assistance (please read the Premium Information brochure), a payment is required with your application. For coverage that will begin more than one month in the future **A MINIMUM OF ONE MONTH'S PREMIUM** is required. **PLEASE ENCLOSE PAYMENT** in full for any back-dated coverage for which you are eligible, plus premiums for the next calendar month. **MAKE PAYMENT PAYABLE TO MSP OF B.C.**

I WISH TO BE BILLED EVERY: ☐ YEAR ☐ 6 MONTHS ☐ 3 MONTHS ☐ MONTH

AMOUNT
ENCLOSED

\$

AUTHORIZATION – MUST BE SIGNED

UNSIGNED APPLICATIONS WILL BE RETURNED.

- I have received information about the Medical Services Plan and agree to abide by the terms and conditions of the Plan.
- I understand the information provided may be used to assess eligibility for other Ministry of Health programs.
- I authorize practitioners who provide service(s) to me to release information relative to these services to the Medical Services Plan.
- I declare that all information provided on this application is true and I authorize the Ministry to verify this information with immigration authorities, law enforcement authorities and other public authorities, agencies and persons as appropriate.

SIGNATURE OF APPLICANT

DATE SIGNED

SIGNATURE OF SPOUSE (MARRIED OR COMMON-LAW)

DATE SIGNED

IS THIS APPLICATION ALSO FOR A SPOUSE OR DEPENDENT CHILD?

☐ YES

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6 DEPENDENT INFORMATION

"DEPENDENT" means a spouse (married or common-law) or child who is a resident of BC. "CHILD" means any financially supported child who is your legal ward, unemployed, unmarried and age 18 or younger, or age 19 to 24 and in full-time attendance at an educational facility.

PHOTOCOPIES OF CURRENT CITIZENSHIP/IMMIGRATION DOCUMENTS MUST BE ENCLOSED FOR ALL DEPENDENTS.

USE LEGAL NAMES ONLY WHEN COMPLETING THIS FORM

SPOUSE'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	SOCIAL INSURANCE NUMBER
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
1st CHILD'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	SOCIAL INSURANCE NUMBER
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
2nd CHILD'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	SOCIAL INSURANCE NUMBER
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
3rd CHILD'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	SOCIAL INSURANCE NUMBER
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9

IF ANY OF THE CHILDREN LISTED ARE 19 TO 24 YEARS OF AGE, PLEASE COMPLETE THE FOLLOWING.
(IF THE SCHOOL IS OUTSIDE CANADA, ATTACH CURRENT PROOF OF SCHOOL REGISTRATION.)

CHILD'S NAME	NAME OF SCHOOL
SCHOOL ADDRESS	
IF ATTENDING SCHOOL OUTSIDE BC, PROVIDE DATE OF DEPARTURE	MONTH DAY YEAR

IMPORTANT INFORMATION ABOUT THIS APPLICATION

Your eligibility for Provincial health care benefits, when coverage can begin, and the amount of your premium payment is determined by the information you include on this application. It is important that your application is accurately and fully completed so that we can provide you with all the benefits for which you are eligible.

NEW RESIDENTS – COVERAGE EFFECTIVE DATE

New residents must complete a waiting period before coverage begins. This waiting period consists of the balance of the month of arrival in BC, plus two months. For example, a person arriving in January may qualify for coverage as early as April 1st. Applications should be submitted immediately on arrival in BC rather than at the end of the waiting period. This will ensure that your CareCard will be mailed prior to your effective date of coverage.

MAILING AND RESIDENTIAL ADDRESS

Eligibility for Provincial Health Care benefits is based on residency in B.C., therefore you must provide your current residential address. An application received with only a PO Box address will be returned.

CITIZENSHIP/IMMIGRATION STATUS

You have been asked to send, with your application, copies of documents to support Canadian citizenship or the immigration status for all persons listed. Eligibility for Provincial health care benefits is based on residency in British Columbia. Canadian citizens and landed immigrants returning to B.C. from the U.S.A. must also provide a Canada customs/immigration document indicating "returning resident" or show abandonment of their U.S. status.

RATES – PREMIUMS/PREMIUM ASSISTANCE

Detailed information regarding premiums is outlined in our brochure entitled **Premium Information and Premium Assistance Application**. The current monthly premium rate is \$36 for one person, \$64 for two and \$72 for a family of three or more.

GOVERNMENT AGENTS/B.C. ACCESS CENTRES

Government agents/B.C. Access Centres can assist you with Medical Services Plan queries and accept your application and premium payments. Offices are listed in the blue pages of your telephone directory.





Province of
British Columbia

Ministry of Health and
Ministry Responsible for Seniors

Mailing Address:
Medical Services Plan
PO Box 1600
Victoria, British Columbia
V8W 2X9

Enquiries:
Vancouver 683-7151
Victoria 386-7171
Other Areas
Within BC 1-800-663-7100

MEDICAL SERVICES PLAN OF BRITISH COLUMBIA APPLICATION FOR COVERAGE

All personal information collected by the Medical Services Plan is protected under the Freedom of Information and Protection of Privacy Act and is treated with the utmost confidentiality.

DOCUMENT NUMBER

1 APPLICANT INFORMATION

LEGAL NAME	FIRST	MIDDLE	FAMILY
BIRTHDATE MONTH DAY YEAR	SEX <input type="checkbox"/> M <input type="checkbox"/> F	SOCIAL INSURANCE NUMBER	HOME PHONE NUMBER WORK PHONE NUMBER
RESIDENTIAL ADDRESS		MAILING ADDRESS (if different from residential address)	
POSTAL CODE		POSTAL CODE	

2 RESIDENCE INFORMATION AND CITIZENSHIP/IMMIGRATION STATUS - see reverse

"RESIDENT" means a person who is a citizen of Canada or is lawfully admitted to Canada for permanent residence, who makes his or her home in British Columbia, and is physically present in British Columbia at least 6 months in a calendar year. This includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

CHECK THE BOX WHICH APPLIES TO YOU AND ATTACH A PHOTOCOPY OF THE REQUIRED DOCUMENT. DOCUMENTS MUST BE SENT.			
<input type="checkbox"/> CANADIAN CITIZEN (Canadian birth, citizenship, baptismal certificate or Cdn. passport) <input type="checkbox"/> LANDED IMMIGRANT (Record of Landing) <input type="checkbox"/> OTHER (Employment, Student, Minister's permit)			
DID YOU HAVE MSP COVERAGE PREVIOUSLY? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, WHAT WAS YOUR PERSONAL HEALTH NUMBER? 9	WHEN DID YOUR PREVIOUS MSP COVERAGE END? MONTH DAY YEAR	DO YOU WANT COVERAGE FROM THAT DATE? <input type="checkbox"/> YES <input type="checkbox"/> NO
HAVE YOU ALWAYS LIVED IN BC? <input type="checkbox"/> YES <input type="checkbox"/> NO	MOST RECENT MOVE TO BC? MONTH DAY YEAR	IS THIS A PERMANENT MOVE? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YOU ARE A STUDENT, WILL YOU RESIDE IN BC AFTER COMPLETION OF YOUR STUDIES? <input type="checkbox"/> YES <input type="checkbox"/> NO
WHERE DID YOU MOVE FROM?	WHAT WAS YOUR HEALTH NUMBER?	DO YOU OR ANY FAMILY MEMBER PLAN TO BE AWAY FROM BC FOR MORE THAN 30 DAYS DURING THE NEXT 8 MONTHS? <input type="checkbox"/> YES <input type="checkbox"/> NO	
D IF RECENTLY RELEASED FROM THE ARMED FORCES, RCMP OR AN INSTITUTION, PROVIDE THE DATE OF DISCHARGE/RELEASE MONTH DAY YEAR		PROVINCE OF DISCHARGE/RELEASE	

3 PREMIUM PAYMENT - see reverse FOR RATES

A payment is required with your application unless you qualify for 100% Premium Assistance (please read the Premium Information pamphlet). PLEASE ENCLOSE PAYMENT in full for any back-dated coverage for which you are eligible, plus premiums for the next calendar month. MAKE PAYMENT PAYABLE TO MSP OF B.C.

I WISH TO BE BILLED EVERY: ☐ YEAR ☐ 6 MONTHS ☐ 3 MONTHS ☐ MONTH

AMOUNT ENCLOSED \$

4 AUTHORIZATION - MUST BE SIGNED

UNSIGNED OR INCOMPLETE APPLICATIONS WILL BE RETURNED.

- I have received information about the Medical Services Plan and agree to abide by the terms and conditions of the Plan.
- I declare that all persons listed on this application are residents as defined above.
- I understand the information provided may be used to assess eligibility for other Ministry of Health programs and is collected under the authority of the MEDICAL AND HEALTH CARE SERVICES ACT.
- I authorize practitioners who provide service(s) to me to release information relative to these services to the Medical Services Plan.
- I declare that all information provided on this application is true and I authorize the Ministry to verify this information with immigration authorities, law enforcement authorities and other public authorities, agencies and persons as appropriate.

SIGNATURE OF APPLICANT

DATE SIGNED

SIGNATURE OF SPOUSE

DATE SIGNED

IS THIS APPLICATION ALSO FOR A SPOUSE OR DEPENDENT CHILD?

☐ YES

IF YES, SEE REVERSE

1111-2014-00265

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6 DEPENDENT INFORMATION

"DEPENDENT" means a spouse (married or common-law) or a child who is a resident of BC. "CHILD" means any child who is your legal ward, supported by the beneficiary, unemployed, unmarried, age 18 or younger or age 19 to 24 and in full-time attendance at an educational facility.

PHOTOCOPIES OF CURRENT CITIZENSHIP/IMMIGRATION DOCUMENTS MUST BE ENCLOSED FOR ALL DEPENDENTS.

USE LEGAL NAMES ONLY WHEN COMPLETING THIS FORM

SPOUSE'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	SOCIAL INSURANCE NUMBER
1st CHILD'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	
2nd CHILD'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	
3rd CHILD'S NAME (FIRST/MIDDLE/FAMILY)	SEX <input type="checkbox"/> M <input type="checkbox"/> F	BIRTHDATE MONTH DAY YEAR	PERSONAL HEALTH NUMBER (see carecard) 9
CITIZENSHIP/IMMIGRATION STATUS		DATE OF ARRIVAL IN BC MONTH DAY YEAR	

**IF ANY OF THE CHILDREN LISTED ARE 19 TO 24 YEARS OF AGE, PLEASE COMPLETE THE FOLLOWING.
(IF THE SCHOOL IS OUTSIDE CANADA, ATTACH CURRENT PROOF OF SCHOOL REGISTRATION.)**

CHILD'S NAME	CHILD'S NAME
SCHOOL NAME AND ADDRESS	SCHOOL NAME AND ADDRESS
IF ATTENDING SCHOOL OUTSIDE BC, PROVIDE DATE OF DEPARTURE MONTH DAY YEAR	IF ATTENDING SCHOOL OUTSIDE BC, PROVIDE DATE OF DEPARTURE MONTH DAY YEAR

IMPORTANT INFORMATION ABOUT THIS APPLICATION

ELIGIBILITY FOR PROVINCIAL HEALTH CARE BENEFITS, WHEN COVERAGE BEGINS AND THE AMOUNT OF PREMIUM PAYMENT ARE DETERMINED BY THE INFORMATION ON THIS APPLICATION. IT IS IMPORTANT TO YOU THAT YOUR APPLICATION IS ACCURATE AND COMPLETED IN FULL.

• CITIZENSHIP/IMMIGRATION STATUS

You have been asked to send, with your application, copies of documents to support Canadian citizenship or the immigration status for all persons listed. Eligibility cannot be determined without this documentation.

Canadian citizens and landed immigrants returning to B.C. from the U.S.A. must also provide a Canada customs/immigration document indicating "returning resident" or show abandonment of their U.S. status.

• COVERAGE EFFECTIVE DATE

A waiting period must be completed before health care benefits will be effective. Generally, for new or returning residents, this waiting period consists of the balance of the month of arrival in B.C., plus two months. Applications should be submitted immediately on arrival in B.C. rather than at the end of the waiting period. This will ensure that your CareCard will be mailed prior to your effective date of benefits.

• ABSENCES FROM BRITISH COLUMBIA

Eligibility for provincial health care benefits is based on residency in B.C. Therefore, if you expect to leave the province for more than 30 days during your first 6 months in B.C., a letter outlining your planned date of departure, where you will be, the reason for the absence and your expected date of return must be sent with this application. Failure to do so could result in loss of eligibility for benefits.

• MAILING AND RESIDENTIAL ADDRESS

Your current residential address must be provided. An application received with only a PO Box address will be returned.

• RATES - PREMIUMS/PREMIUM ASSISTANCE

The current monthly premium rate is \$36.00 for one person, \$64.00 for two and \$72.00 for a family of three or more.

Detailed information regarding premiums is outlined in our pamphlet entitled **Premium Information and Premium Assistance Application**.

• GOVERNMENT AGENTS/B.C. ACCESS CENTRES

Listed in the Blue Pages of your telephone directory. These offices can assist you with Medical Services Plan queries and accept your application and premium payments.

PLEASE COMPLETE AND SIGN THE REVERSE SIDE OF THIS FORM

HTH-2014-00265





s.22

RE: Medical Services Commission Residency Hearing

I am legal counsel to the Medical Services Commission.

Enclosed please find the decision of the Medical Services Commission in relation to the enrolment of you, ^{s.22} in the Medical Services Plan.

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

Encl.

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

s.22

Date of Hearing:

**Delegate of the Medical
Services Commission:**

Robert Cronin

s.22

Beneficiaries:

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
s.22

are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from ^{s.22} any amounts paid under the Act by the Commission for medical services. If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, ^{s.22}
s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by ^{s.22} and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter and the information provided by ^{s.22}
s.22 to MSD. In addition, ^{s.22} sent written material to the Commission on ^{s.22}

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

7(2) The commission may cancel the enrollment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

Pages 106 through 107 redacted for the following reasons:

s.22

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of s.22 in the Medical Services Plan is to be cancelled due to lack of residency. If I conclude that s.22 enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

There is no evidence to establish that the beneficiaries make s.22 current home in British Columbia. s.22 statements and the patterns of travel suggested by the facts presented also lead me to conclude that s.22 have not been physically present in B.C. for the required six months of each calendar year since August 31, 2005.

It is important to note that, under section 5(1)(f) of the *Medicare Protection Act*, the burden of proof is on the beneficiaries to establish that they meet the definition of resident in the Act – that provision requires a person to provide evidence, satisfactory to the Commission, that residency has been established.

s.22

s.22 all lead me to conclude that s.22 have not met the definition of resident in the Act since 2005.

s.22

s.22 enrollment in the Medical Services Plan should be cancelled effective
s.22 (the effective date of s.22 current enrollment).

s.22 enrollment in the Medical Services Plan should be cancelled effective
s.22

The enrollment of s.22 in the Medical Services Plan should be cancelled from s.22
s.22

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 that was untrue, s.22 s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for the beneficiaries; once s.22 enrollment and that of s.22 is cancelled, s.22 will be required to repay any hospital services paid for during the cancellation periods, pursuant to the *Hospital Insurance Act*. The repayment for hospital services is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22 for medical services paid on s.22 behalf and that of s.22 pursuant to the *Medicare Protection Act*.

s.22

To summarize, I am not persuaded that s.22 made a misrepresentation of fact to the Commission. Under the circumstances, the Commission cannot seek reimbursement from s.22 for the medical services paid for on s.22 behalf pursuant to the *Medicare Protection Act*.

Similarly, there is no evidence on the file persuading me that s.22 a misrepresentation of fact to the Commission. The MSP File Brief does not contain an Application for Enrollment s.22 so I cannot say what information s.22 did or did not provide to the Commission at the time of s.22 enrollment. Under the circumstances, the Commission cannot seek reimbursement from s.22 for the medical services paid for on s.22 behalf pursuant to the *Medicare Protection Act*.

Finally, there is no evidence of a misrepresentation being made in relation to the s.22 s.22. Therefore, the Commission cannot seek reimbursement for medical services paid for s.22 pursuant to the *Medicare Protection Act*.

DECISION

The enrollment of s.22 in the Medical Services Plan is cancelled as of s.22

The enrollment of s.22 in the Medical Services Plan is cancelled as of August s.22

The enrollment of ^{s.22} in the Medical Services Plan is cancelled as of ^{s.22}
s.22

Dated at Victoria, British Columbia this ^{s.22}


Robert Cronin



s.22

Dear ^{s.22}

RE: Medical Services Commission Residency Hearing

I am legal counsel to the Medical Services Commission.

Enclosed please find the decision of the Medical Services Commission in relation to the
enrolment of ^{s.22} in the Medical
Services Plan.

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

Encl.

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

s.22

Date of Hearing:

**Delegate of the Medical
Services Commission:**

Robert Cronin

s.22

Beneficiaries:

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine s.22
s.22

residents for the purposes of the Act, and to determine if s.22 enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services. If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22
s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter and the information provided by s.22
s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in MSP if she meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in MSP is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

- 7(7) The commission may cancel the enrollment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

Medical and Health Care Services Regulation:

As contemplated in the statutory definition, the *Medical and Health Care Services Regulation* provides for a number of categories of individuals who might not otherwise meet the criteria of residency in the Act to be deemed a resident. Relevant to this particular case is section 4 of the Regulation which allows for residents, in certain situations, to be absent from British Columbia for vacation or work and still maintain their residency status.

4(1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purposes of the definition for up to the initial 24 consecutive months of absence if the person

(a) obtains prior approval from the commission for status as a resident during the absence,

- (b) has not been granted approval under this subsection during the preceding 60 months, and
- (c) at the time of leaving, meets the criteria under
 - (i) paragraphs (a) to (c) of the definition, or
 - (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.

BACKGROUND:

s.22

SUBMISSIONS:

Medical Services Division:

It is the position of MSD that:

1. s.22
- 2.
- 3.

s.22

s.22 however MSD is not recommending an extended absence as s.22 would have exceeded s.22 maximum allowable absence before she returned to B.C. and therefore would have to re-enroll with MSP and serve the mandatory wait period. s.22 would not have been eligible for a further absence of more than six months.

On this basis, MSD is recommending the cancellation of MSP enrollment s.22
s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of s.22 in the Medical Services Plan is to be cancelled due to lack of residency. If I conclude that s.22 enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

s.22

In order to be eligible for enrollment in MSP s.22 must meet the definition of resident in the Act. Specifically, s.22 must establish that, for each of the years in question s.22 was physically present in British Columbia for at least six months, and that s.22 made British Columbia s.22 home.

s.22

s.22

could not be

considered a resident during those years.

s.22

s.22

can be considered to have met the definition of resident in the year s.22 so s.22 is eligible for MSP enrolment during that year.

According to the list of departures and arrivals that s.22 provided to investigator Mike Kastelein (MSP File Brief Tab 9), s.22 s.22

Because s.22 was not physically present in B.C. for at least six months in any calendar year after s.22 cannot be considered a resident for the purposes of the Act for those years. Section 4 of the Medical and Health Care Services Regulation does allow someone who is otherwise a resident to be absent from B.C. for up to twenty-four months, however s.22 s.22

s.22

To summarize, I have determined that s.22 was not a resident of British Columbia within the meaning of the *Medicare Protection Act* between s.22
s.22

s.22

s.22 enrollment in the Medical Services Plan should be cancelled for the period between s.22 enrollment should also be cancelled effective s.22

The enrollment of s.22 in the Medical Services Plan should be cancelled from s.22

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 that was untrue, s.22 I will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for I s.22
s.22 will be required to repay any hospital services paid for during the cancellation periods, pursuant to the *Hospital Insurance Act*. The repayment for hospital services is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22
s.22

In reviewing the Application for Group Enrollment completed by s.22 December 22, 2006 (MSP File Brief, Tab 5), I note that s.22 did not answer the questions regarding whether s.22 planned to live in B.C. permanently or whether s.22 or a family member planned to be away for more than 30 days in the next six months. s.22 should have done so, since that information was a required part of the application form. However, a failure to provide information in relation to those questions cannot be said to be a misrepresentation of fact – a misrepresentation requires a statement to have been made, and omitting to provide information does not qualify as a misrepresentation.

s.22

s.22

DECISION

s.22 enrollment in the Medical Services Plan should be cancelled for the
period between s.22 and for the period effective s.22
s.22

The enrollment of s.22 in the Medical Services Plan should
be cancelled s.22

The Commission has paid for services after relying on representations of fact that were
untrue, and made by s.22 Application for Group Enrollment, dated
s.22

Dated at Victoria, British Columbia this s.22


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing: s.22

Delegate of the Medical Services Commission: Robert Cronin

Beneficiaries: s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 are residents for the purposes of the Act, and to determine if s.22 enrollment in the Medical Services Plan ("the Plan") should be cancelled pursuant to section 7.2 of the Act. Minute 13-058 of the Medical Service Commission further delegates to me, pursuant to section 30(2) of the Act, the power to determine whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services for s.22 or for s.22. If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation including the material provided by s.22 to MSD and additional material sent to the Commission by s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

....

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

7(7) The commission may cancel the enrolment of a beneficiary effective

.....

- (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action,
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and
- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

and applied
for Medical Services Plan coverage on that date (MSP File Brief, Tab 2, Appendix 6).

s.22

A review by the Ministry of Health Investigations Unit in 2010 found there had been no claims to the Plan for s.22 and an investigation was commenced as a result.

s.22

s.22 had not been a resident of the province of British Columbia as defined in the *Medicare Protection Act* since January 2009 (MSP File Brief, Tab 2 Appendix 10).

SUBMISSIONS:

Medical Services Division:

It is the position of MSD that s.22 has not been physically present in British Columbia at least six months in each calendar year s.22

s.22 signed a Declaration of Non-Residence s.22

s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of | s.22 n the Medical Services Plan is to be cancelled due to lack of residency. If I conclude that their enrollment should be cancelled, then I must

consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

The dates and facts in this situation are not in dispute. s.22
s.22

To be considered a resident within the meaning of the Act, an individual must have spent at least six months of each calendar year in question physically present in British Columbia, and s.22 must have made British Columbia s.22 was not physically present in B.C. for six months of any calendar year, and s.22 did not make B.C. s.22 home.

s.22

s.22 enrollment in the Medical Services Plan should be cancelled effective
s.22 (the effective date of her current enrollment).

The enrollment of s.22 in the Medical Services Plan should be cancelled from s.22
s.22

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 that was untrue, s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 enrollment and that of s.22 is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for beneficiaries. Once s.22 enrollment is cancelled, s.22 will be required to reimburse any hospital services or PharmaCare claims paid for during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that

decision only affects the Commission's ability to seek repayment from ^{s.22} for medical services paid ^{s.22} pursuant to the *Medicare Protection Act*.

s.22

After submitting the Application for Enrollment containing the two misrepresentations, ^{s.22} was enrolled as a beneficiary in the Plan ^{s.22} was enrolled as a beneficiary in the Plan. ^{s.22} received benefits under the Act paid for by the Commission. I am therefore satisfied that the Commission has paid an amount after relying on a representation of fact that was untrue. Pursuant to section 30(2) of the Act, the Commission may require ^{s.22} to repay all amounts paid under the Act for benefits ^{s.22}

DECISION

The Medical Services Plan coverage for ^{s.22} is cancelled as of ^{s.22}
^{s.22} The Medical Services Plan coverage for ^{s.22} is cancelled as of

I have made a determination, pursuant to section 30(2) of the Act, that the Commission paid for benefits for ^{s.22} after relying on a representation of fact that was untrue. The Commission may require ^{s.22} all amounts paid under the Act for benefits for ^{s.22}

s.22

Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22

s.22 are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services for s.22 If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4) (a), (b), (c), and (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter. s.22 provided information and documentation in support of s.22 position that the enrollment should not be cancelled.

RELEVANT LEGISLATION:

Medicare Protection Act

s.22

Pursuant to the Act, a person is eligible for enrollment in the Plan if meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

- 7(2) The commission may cancel the enrollment of a beneficiary effective

.....

- (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action,
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and
- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act.

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

SUBMISSIONS:

Medical Services Division:

It is the position of MSD that ^{s.22} was not a resident of British Columbia
as defined by Section 1 of the *Medicare Protection Act* for the period from ^{s.22}
^{s.22} ^{s.22}

it is the position of MSD that ^{s.22} was not entitled to coverage
under the Plan and was not a resident from ^{s.22}

MSD bases its position on the following information:

1. ^{s.22}
- 2.
- 3.
4. The list of absences is supported by the Canadian Border Services Agency ("CBSA")
report and the absence of medical claims (MSP File Brief Tab 11).
^{s.22}

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of ^{s.22}

^{s.22} in the Medical Services Plan is to be cancelled due to lack of residency. If I conclude that their enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

In order to be considered eligible for enrollment in the Plan, ^{s.22} and their children must meet the definition of "resident" in the Act. This requires them to be physically present in BC for at least six months of each calendar year, and it requires them to make BC their home.

s.22

Under section 5(1)(f) of the *Medicare Protection Act*, the burden of proof to establish residency lies on s.22 must provide enough evidence to satisfy me that residency was established. I acknowledge that s.22 did
s.22 s.22

s.22

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 that was untrue, s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which the s.22 enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for beneficiaries. Once the enrollment of s.22 is cancelled, s.22 will be required to repay any hospital services or PharmaCare claims paid for during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22 for medical services paid on s.22 behalf and that of s.22 pursuant to the *Medicare Protection Act*.

As the original application for coverage under the Medical Services Plan was not included in the MSP File Brief, I have no way of knowing what information was provided to MSD by s.22 at the time of their enrollment. Therefore, I am unable to find any evidence of misrepresentation.

Under the circumstances, the Commission cannot seek reimbursement from s.22 for the medical services paid for s.22 pursuant to the *Medicare Protection Act*.

DECISION

The Medical Services Plan coverage for s.22 is cancelled s.22
s.22

The Medical Services Plan coverage for s.22 is cancelled from
s.22

The Medical Services Plan coverage for ^{s.22}
s.22

is cancelled as of ^{s.22}

Dated at Victoria, British Columbia this ^{s.22}


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

s.22

Date of Hearing:

**Delegate of the Medical
Services Commission:**

Robert Cronin

s.22

Beneficiaries:

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}
s.22

are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("the Plan") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from ^{s.22} any amounts paid under the Act by the Commission for medical services for ^{s.22} If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, ^{s.22} will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act* for any of the family members.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by ^{s.22} and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter and providing relevant supporting documentation. ^{s.22} submitted a letter and certain other documentation in support of his case. I reviewed all of the submitted materials.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

....

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

7(7) The commission may cancel the enrolment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

Medical and Health Care Services Regulation:

As contemplated in the statutory definition, the *Medical and Health Care Services Regulation* provides for a number of categories of individuals who might not otherwise meet the criteria of residency in the Act to be deemed a resident. Relevant to this particular case is section 4(3) of the Regulation which allows for residents, in certain situations, to be absent from British Columbia for work and still maintain their residency status.

4(3) A person who is engaged in an occupation that requires the person to routinely travel outside British Columbia for more than 6 months in a calendar year is deemed to be a resident for the purposes of the definition if the person

- (a) obtains approval from the commission for status as a resident for the period specified by the commission prior to leaving British Columbia,
- (b) does not establish residency outside of British Columbia,
- (c) continues to have British Columbia as his or her primary base for occupational purposes,
- (d) meets the criteria under paragraphs (a) and (b) of the definition, and
- (e) is physically present in British Columbia at least once a month or on a sufficient number of occasions to satisfy the commission that the person continues to reside in British Columbia.

BACKGROUND:

The background information that I will summarize below has been taken from the information provided in the MSP File Brief.

s.22

As a result of an irregular claims pattern for medical services, an investigation was commenced by the Ministry of Health Investigations Unit. During the course of the investigation in s.22

s.22

s.22

SUBMISSIONS:

Medical Services Division:

It is the position of MSD that:

1. s.22

2.

3.

4.

These contentions are supported by the list of absences provided by s.22 (MSP File Brief, Tab 7). The information provided by s.22 employer s.22 (MSP File Brief, Tab 8) indicates that s.22

s.22 There is also an absence of medical claims s.22
s.22

The position of MSD is that s.22 did not sufficient provide evidence of s.22
s.22 residency as required by Section 5(1)(f) of the *Medicare Protection Act* and
Section 5(4)(b) of the *Hospital Insurance Act*.

s.22

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of s.22 in the Medical Services Plan is to be cancelled due to lack of residency. If I conclude that s.22 enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

I read and noted s.22 concerns regarding the investigative process. s.22
s.22

I do not feel that these factual errors are material to my decision. The information provided by all parties confirms the basic facts about s.22 residency during the time periods in question

I have determined s.22 are not residents of B.C. within the meaning of the *Medicare Protection Act*. They do not make s.22 home in British Columbia – s.22
s.22

s.22 points to the fact that the federal government deemed s.22 to be factual
s.22 of Canada for the purposes of receiving Child and Family benefits as evidence that they are residents of B.C. Federal and provincial programs are governed by different legislation, and the residency eligibility requirements are different. Whether or not an individual is considered a resident of B.C. for the purposes of the *Medicare Protection Act* is determined by reference to the definition of “resident” in the Act, not by reference to a residency determination made by another government pursuant to legislation other than the *Medicare Protection Act*.

Section 4(3) of the *Medical and Health Care Services Regulation* allows an individual who does not otherwise meet the definition of “resident” in the Act to be deemed a resident in cases of extended absences for the purpose of work. However, s.22 does not meet the criteria set out in section 4(3) and so cannot be deemed a resident.

In summary, s.22 do not meet the residency requirements under the *Medicare Protection Act* because they have not made

their home in British Columbia, and they have not been physically present in British Columbia for six months every calendar year. The enrollment of s.22 should be cancelled as s.22 the enrollment of s.22 should be cancelled as of s.22 , and the enrollment of s.22 should be cancelled as of the date of his birth, s.22

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 that was untrue, s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for beneficiaries. Once the enrollment of s.22 is cancelled, s.22 s.22 will be required to reimburse any hospital services or PharmaCare claims paid for during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22 s.22 for medical services paid s.22 pursuant to the *Medicare Protection Act*.

The evidence that was provided to me does not demonstrate that there was any misrepresentation of fact made by s.22 in order to receive benefits under the Act. Under the circumstances, the Commission cannot seek reimbursement from s.22 s.22 for the medical services paid for on s.22 behalf or on s.22 pursuant to the *Medicare Protection Act*.

DECISION

The Medical Services Plan coverage for s.22 is cancelled as of s.22

The Medical Services Plan coverage for s.22 is cancelled as of s.22

The Medical Services Plan coverage for s.22 is cancelled as of s.22

Dated at Victoria, British Columbia this s.22


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing: s.22

Delegate of the Medical Services Commission: Robert Cronin

Beneficiary: s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 is a resident for the purposes of the Act, and to determine if his enrollment in the Medical Services Plan ("the Plan") should be cancelled pursuant to section 7.2 of the Act. If I determine that s.22 enrollment should be cancelled, the Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services. If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4)(a), (b), (c), and (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter. s.22 submitted a letter, dated June 28, 2013, for consideration.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

- 7(7) The commission may cancel the enrollment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

Medical and Health Care Services Regulation:

The Medical and Health Care Services Regulation includes certain provisions allowing the Commission to deem a person a resident for the purposes of the Act, even when that person does not otherwise meet the criteria set out in the definition of "resident" in section 1 of the Act. The relevant provision in this case is section 3:

Absence for study

3 (1) Subject to subsection (3), a person who is absent from British Columbia to attend a university, college or other educational institution is deemed to be a resident for the purposes of the definition if

- (a) the university, college or other educational institution is recognized by the commission,
 - (b) the person is in attendance at that educational institution on a basis recognized by the commission as full time, and
 - (c) at the time of leaving, the person meets the criteria under
 - (i) paragraphs (a) to (c) of the definition, or
 - (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.
- (2) Repealed. [B.C. Reg.111/2005, s2.]
- (3) A person who is deemed to be a resident under subsection (1) is no longer deemed to be a resident within one month of the last day of the month in which the person ceased to be in full time attendance at the university, college or other educational institution.

BACKGROUND:

s.22

s.22

was eligible for and received premium assistance.

s.22

SUBMISSIONS:

Medical Services Division:

The Medical Services Division deemed ^{s.22} to be a resident under section 3(1) of the Medical and Health Care Services Regulation (absence for study) for the period from ^{s.22}
s.22

It is the position of MSD that pursuant to Section 3 (3) of the Medical and Health Care Services Regulation, ^{s.22}
s.22

It is the position of MSD that the Ministry of Health website clearly advises beneficiaries to contact MSD to discuss their individual circumstances to determine eligibility for continued enrollment in the Plan.

s.22

It is the position of s.22 that the previous wording of the website led s.22 to believe that s.22 did not have to contact MSD to discuss s.22 circumstances, and that in any event s.22 did return to British Columbia approximately six weeks after what MSD now states was the deadline for s.22 return. Under the circumstances, s.22 asks that his enrollment in the Plan not be cancelled.

FINDINGS:

I have considered all of the information submitted for my review.

I agree with the position of MSD that section 3 of the Medical and Health Care Services Regulation would ordinarily only permit s.22 to be deemed a resident until s.22 s.22

However, I do find that the previous information on the Ministry of Health website was potentially confusing. The fact that the Ministry subsequently changed the wording of the provision in question supports s.22 argument that the previous wording was misleading. It appears that s.22 made an attempt at finding out the rules and was misled by the information on the website. Given that more and more of the information required by the public to understand rules and conditions applying to government programs is now accessed via the internet, the government should ensure that the applicable rules and conditions are described on government websites as clearly and accurately as possible.

Finally, s.22 did not remain outside of British Columbia for an unreasonable amount of time after s.22

Under the circumstances, I cannot agree with the recommendation to cancel s.22 s.22 enrollment in the Medical Services Plan.

DECISION

The Medical Services Plan coverage for s.22 for the period of s.22 s.22 is not cancelled.

Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

s.22

Date of Hearing:

**Delegate of the Medical
Services Commission:**

Robert Cronin

s.22

Beneficiaries:

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22

are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services. If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4)(a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and by s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter and the information provided by s.22 to the Medical Services Branch. In addition, s.22 sent written material to the Commission dated s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

7(2) The commission may cancel the enrollment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7)(b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

SUBMISSIONS:

Medical Services Division:

It is the position of MSD that s.22 was not a resident of B.C. as defined by

s.22

MSD recommends that the enrollment of s.22 in MSP be cancelled effective
s.22 with reenrollment effective s.22
s.22 MSD recommends that the enrollment of s.22 in MSP be
cancelled effective s.22 with reenrollment effective s.22
on a s.22

s.22

s.22

FINDINGS:

s.22

s.22
information provided by MSD s.22

There is no conflict in the factual

s.22

The enrollment of s.22 in MSP should be cancelled retroactively for the period from
s.22 and the enrollment of s.22 in MSP should be
cancelled retroactively for the period from s.22

(b) Misrepresentation of Fact:

As noted above, if I determine that ^{s.22} made a misrepresentation of fact in their enrollment applications, ^{s.22} will be required to pay back to the Commission any amounts paid for medical services during the period for which their enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for the beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with repayment of PharmaCare benefits paid for the beneficiaries; once their enrollment is cancelled, ^{s.22} will be required to repay any hospital services or PharmaCare benefits paid for during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from ^{s.22} ^{s.22} for medical services paid on their behalf under the *Medicare Protection Act*.

s.22

Given all of the circumstances, I am not prepared to accept that, when ^{s.22} ^{s.22} completed the MSP application forms in ^{s.22} they actually were permanently moving to B.C. I also am not prepared to accept that they did not know at that time that they would, in fact, be spending more than 30 days within the next six months outside of B.C.

As a result of ^{s.22} indicating on the application forms that they were permanently moving to B.C. and not intending to leave B.C. for more than 30 days within

the next six months, they were both enrolled in MSP. As a result of their enrollment in MSP, they received medical services which were paid for by the Commission.

To summarize, I find that s.22 did make misrepresentations of fact to the Commission in their MSP application forms, and that the Commission paid amounts for their medical care in reliance on these misrepresentations. Under these circumstances, the Commission can seek reimbursement from s.22 for medical services paid for them pursuant to the *Medicare Protection Act*.

DECISION

The enrollment of s.22 in the Medical Services Plan is cancelled as s.22 with reenrollment as of s.22 based on s.22 establishing residence in B.C. on s.22

The enrollment of s.22 is cancelled as s.22 with reenrollment as of s.22, based on s.22 establishing residence on s.22

s.22 made misrepresentations in s.22 applications for MSP enrollment, and therefore the Commission may seek repayment from s.22 on any amounts paid for medical services for s.22 during the cancellation period.

Dated at Victoria, British Columbia this s.22


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

s.22

Beneficiaries:

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22
s.22 any amounts paid under the Act by the Commission for medical services for s.22
s.22 If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4)(a), (b), (c), and (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter. s.22 did not submit any additional information.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

- 7(2) The commission may cancel the enrollment of a beneficiary effective

.....

- (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action,
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and
- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

Medical and Health Care Services Regulation:

As contemplated in the statutory definition, the *Medical and Health Care Services Regulation* provides for a number of categories of individuals who might not otherwise meet the criteria of residency in the Act to be deemed a resident. Relevant to this particular case is section 4 of the Regulation which allows for residents, in certain situations, to be absent from British Columbia for vacation or work and still maintain their residency status:

4(1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purposes of the definition for up to the initial 24 consecutive months of absence if the person

- (a) obtains prior approval from the commission for status as a resident during the absence,
- (b) has not been granted approval under this subsection during the preceding 60 months, and
- (c) at the time of leaving, meets the criteria under

- (i) paragraphs (a) to (c) of the definition, or
 - (ii) paragraphs (a) and (b) of the definition and was physically present in Canada for 6 of the 12 months immediately preceding departure.
- 2. A spouse or child of a deemed resident under subsection (1) who accompanies that deemed resident is also deemed to be a resident for the purposes of the definition if, at the time of leaving British Columbia, the spouse or child meets the criteria under section 2(d) to (g).

BACKGROUND:

s.22

As a result of a 2008 review of the s.22 claims list it was noted that s.22 and s.22 had irregular MSP claims patterns and an investigation was initiated.

SUBMISSIONS:

Medical Services Division:

It is the position of MSD that s.22 was not a resident of British Columbia as defined by Section 1 of the *Medicare Protection Act* for the period from s.22 and that s.22 was not a resident as defined by the *Medicare Protection Act* from s.22

MSD bases its position on the following information:

1. s.22

2.

Page 159 redacted for the following reason:

s.22

Other than requesting an appeal of the MSD recommendation, ^{s.22} has not provided any additional information other than what was included in the MSP File Brief.

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of ^{s.22} in the Medical Services Plan is to be cancelled over the period of time indicated due to lack of residency. If I conclude that their enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

In order to be considered eligible for enrollment in the Plan over the specified time periods, ^{s.22} must meet the definition of "resident" in the Act. This requires them to be physically present in B.C. for at least six months of each calendar year, and it requires them to make B.C. their home.

Although I do not find that the absence of medical claims in and of itself is conclusive proof of absence from B.C., this together with the information gathered by MSD and the absence of information from ^{s.22} supporting a claim to residence leads me to conclude that ^{s.22} was not a resident of British Columbia as defined by Section 1 of the *Medicare Protection Act* for the period from November 30, 2007 to June, 2010.
^{s.22}

Pursuant to section 5(1)(f) of the Act, ^{s.22} has the burden of proof to satisfy the Commission that ^{s.22} met the definition of "resident" in the Act. ^{s.22} has not satisfied me of that fact.

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 that was untrue, s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for beneficiaries. Once the enrollment of s.22 is cancelled, s.22 s.22 will be required to repay any hospital services or PharmaCare claims paid for during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22 s.22 pursuant to the *Medicare Protection Act*.

s.22

To summarize, I find that s.22 did make misrepresentations of fact to the Commission in s.22 MSP application form, and that the Commission paid amounts for s.22 medical care s.22 in reliance on these misrepresentations. Under these circumstances, the Commission can seek reimbursement from s.22 for medical services paid for s.22 pursuant to the *Medicare Protection Act*.


DECISION

The Medical Services Plan coverage for ^{s.22} is cancelled from
s.22

The Medical Services Plan coverage for ^{s.22} is cancelled from ^{s.22}
date of birth on s.22

I have made a determination, pursuant to section 30(2) of the Act, that the Commission paid for benefits for ^{s.22} after relying on a representation of fact that was untrue. The Commission may seek repayment from ^{s.22} of any amounts paid for medical services for ^{s.22} during the cancellation period.

^{s.22}
Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22

s.22 for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7(7) of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact by s.22 that was untrue, any amounts paid under the Act by the Commission for medical services may be recovered from s.22
s.22 If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4)(a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Division ("MSD") s.22
s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSD provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter and the information provided by s.22

s.22

during the course of the investigation. s.22

s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in MSP if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(2), 7.2 and 11 of the Act:

7(2) The commission may cancel the enrollment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

s.22

SUBMISSIONS:

Medical Services Division:

s.22

FINDINGS:

While s.22 indicates that s.22 did not understand the residency requirements, the information on the application s.22 signed (MSP File Brief, Tab 2, Appendix 5), the notes of the HIBC staff person who verbally explained the rules (MSP File Brief, Tab 2, Appendix 8) and the subsequent letter of s.22 (MSP File Brief, Tab 2, Appendix 5), lead me to believe that a reasonable effort was made by MSD and HIBC to communicate this information.

Section 7(7)(c) of the *Medicare Protection Act* gives the Commission the authority to cancel a beneficiary's enrollment effective on the date of enrollment if the commission determines the beneficiary was not eligible for enrollment on that date. Eligibility for

enrollment is based on an individual meeting the definition of "resident" in section 1 of the Act – specifically, that individual must be a citizen of Canada or lawfully admitted to Canada for permanent residence, make his or her home in B.C. and be physically present in B.C. for at least six months in a calendar year.

When an individual has just moved to B.C., it obviously cannot be stated that the person has been physically present in B.C. for at least six months in that calendar year. On the other hand, the Commission cannot wait until the newly-arrived person has been physically present for six months in a calendar year before enrolling him in MSP; B.C. is subject to the *Canada Health Act*, which prohibits the health insurance plan of a province from imposing a minimum period of residence in the province in excess of three months before residents of the province may receive insured health services.

In order for a newly-arrived individual to be provided with insured health services within three months of ^{s.22} arrival, ^{s.22} is required to sign a declaration on the Application for Enrollment form (MSP File Brief, Tab 2, Appendix 5) which confirms that all persons listed on the form are residents of B.C. within the meaning of the Act. Furthermore, the applicant is asked the question, at Part E of the form, "Do you, or any family member listed, plan to be away from B.C. for more than 30 days in total during the next 6 months?" If the applicant answers "no" to this question, ^{s.22} and the dependents listed on the form are *presumed* to be eligible for enrollment. It is only by applying this presumption that the Commission can enroll newly-arrived applicants before they have actually been physically present in B.C. for six months in a calendar year. However, if the applicant ends up not actually being physically present in B.C. for 6 months of the calendar year (or not making ^{s.22} home in B.C.), then ^{s.22} cannot be considered a resident within the meaning of the Act, the presumption of residency is rebutted, and the enrollment may be cancelled by the Commission as of the date of enrollment.

s.22

The enrollment of ^{s.22}
is cancelled effective ^{s.22}
cancelled as of ^{s.22}

The enrollment of ^{s.22}

is

The enrollment of ^{s.22} is to be reinstated as of ^{s.22}

(b) Misrepresentation of Fact:

As noted above, if I determine that ^{s.22} made a misrepresentation of fact in ^{s.22} application, ^{s.22} will be required to pay back to the Commission any amounts paid under the Act for medical services during the period for which the enrollment of ^{s.22} is now being cancelled.

It should be noted that the ^{s.22} are separate statutes dealing with the repayment of hospital services and PharmaCare benefits paid for beneficiaries; once ^{s.22} enrollment is cancelled, ^{s.22} ^{s.22} will be required to repay any hospital services or PharmaCare benefits paid for the ^{s.22} during the cancellation period. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from ^{s.22} for medical services paid on the ^{s.22} behalf under the *Medicare Protection Act*.

^{s.22}

^{s.22} On this basis, I find that ^{s.22} did not make a misrepresentation of fact on the Application for Enrollment form. Therefore, the Commission may not seek reimbursement from ^{s.22} for payments made under the *Medicare Protection Act* for medical services during the cancellation period.

DECISION

The MSP enrollment of ^{s.22} ^{s.22} with subsequent reenrollment effective ^{s.22} and completion of the mandatory wait period. The MSP enrollment of ^{s.22} ^{s.22} is cancelled as of ^{s.22} ^{s.22}

s.22

and completion of the mandatory wait period, ^{s.22}
also be reenrolled effective ^{s.22}

will

Dated at Victoria, British Columbia this ^{s.22}

A handwritten signature in cursive script, appearing to read "R. F. Cronin".

Robert Cronin



s.22

s.22

Re: Medical Services Commission Residency Hearing

Enclosed please find the decision of the Medical Services Commission in relation to the Residency Hearing held ^{s.22}

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

cc: Stephanie Power, Medical Beneficiary and Pharmaceutical Services Division,
Ministry of Health
Lee Peacock, Medical Services Commission Secretariat

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22

s.22

for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.4 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services for s.22

If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4)(a), (b), (c), and (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Branch ("MSB") and s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSB provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter. s.22 submitted an additional letter dated s.22

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in MSP if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

.... (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in MSP is set out in section 7.2 of the Act:

7.2(1) After confirming the identity and determining the residency of

- (a) an applicant under section 7(1) or (2), and
- (b) each of the applicant's children named in the application,

the commission must enroll as beneficiaries those covered by the application who are residents.

...

(3) Enrollment is effective on the date stated by the commission, that date being

- (a) on or before the date on which the application under section 7(1) or (2) was made, or
- (b) not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7.4 and 11 of the Act:

7.4 (1) The commission may cancel the enrollment of a beneficiary effective

- (a) on application by an adult beneficiary, effective on a date subsequent to the date of the application as determined by the commission;
- (b) if the commission believes the beneficiary has ceased to be a resident, effective on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or
- (c) if the commission determines that the beneficiary was not eligible for enrollment, effective on the date of enrollment as a beneficiary.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action,
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and
- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

As a result of a ^{s.22} claims review by the Ministry of Health Investigations
Unit it was revealed that ^{s.22} had an irregular MSP claims pattern and an
investigation was initiated.

SUBMISSIONS:

Medical Services Branch:

Based on the information gathered in the investigation and the information provided by
^{s.22} arrivals in and departures from BC (MSP File Brief,
Tab. 7), it is the position of the MSB that ^{s.22} do not
make their home in BC.

s.22

The pattern of MSP claims (MSP File Brief, Tab 2, Appendix 7) also supports these dates.

s.22

s.22
Both
medical benefits.
s.22

presented themselves as residents when obtaining

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of ^{s.22} in the Medical Services Plan is to be cancelled over the period of time indicated due to lack of residency. If I conclude that their enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

In order to be considered eligible for enrollment in the Plan over the specified time periods, ^{s.22} must meet the definition of "resident" in the Act. This requires them to be physically present in B.C. for at least six months of each calendar year, and it requires them to make B.C. their home.

Pursuant to Section 5(1) (f) of the Act, ^{s.22} has the burden of proof to satisfy the Commission that ^{s.22} met the definition of "resident" in the Act. ^{s.22} has not satisfied me of that fact.

The information provided by the MSB investigation and ^{s.22} leads me to conclude that ^{s.22} did not make their home in BC. ^{s.22}
^{s.22}

1. The enrollment of ^{s.22} in the Medical Services Plan is cancelled effective ^{s.22}
2. The enrollment of ^{s.22} in the Medical Services Plan is cancelled effective ^{s.22}
3. The enrollment of ^{s.22} in the Medical Services Plan is cancelled effective ^{s.22}

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by ^{s.22} will be required to pay back to the Commission any amounts paid for medical services during the period for which the family's enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for

beneficiaries. Once the enrollment of s.22
s.22 will be required to repay any hospital services or PharmaCare
claims paid for by government during the cancellation periods, pursuant to the *Hospital
Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services
and PharmaCare benefits is not affected by my decision of whether or not a
misrepresentation of fact was made – that decision only affects the Commission's ability
to seek repayment from s.22 for medical services paid on s.22
s.22 pursuant to the *Medicare Protection Act*.

I find that s.22 did make misrepresentations of fact to the
Commission. Specifically:

1. In the Application for Premium Assistance (MSP File Brief, Tab 2, Appendix 5)
s.22

s.22 The MSP claims summary provided in the MSP File Brief outlines the
amounts paid by the Commission for benefits provided to s.22

Given the above, I find that the Commission paid amounts after relying on
misrepresentations by s.22

DECISION

The Medical Services Plan enrollment for ^{s.22} is cancelled from ^{s.22}
s.22

The Medical Services Plan enrollment for is cancelled from
s.22

The Medical Service Plan enrollment for ^{s.22} is cancelled from ^{s.22}
s.22

The Medical Services Commission made payments under the *Medicare Protection Act* after relying on representations of fact that were untrue.

^{s.22}
Dated at Victoria, British Columbia this


Robert Cronin



s.22

RE: Medical Services Commission Residency Hearing

I am legal counsel to the Medical Services Commission.

Enclosed please find the decision of the Medical Services Commission in relation to the enrollment of ^{s.22} in the Medical Services Plan.

Yours truly,

Sharna Kraitberg
Barrister and Solicitor

Encl.

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22

for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7(7) of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22
s.22 any amounts paid under the Act by the Commission for medical services for s.22
s.22

If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11(4)(a), (b), (c), and (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Branch ("MSB") and s.22 and reached the decision set out below.

MATERIALS REVIEWED:

MSB provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter. s.22 submitted a package of additional material dated s.22

RELEVANT LEGISLATION:

Medicare Protection Act

s.22

Pursuant to the Act, a person is eligible for enrollment in the Plan if meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7(7), 7.2 and 11 of the Act:

- 7(2) The commission may cancel the enrollment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrollment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrollment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

As a result of a s.22
it was revealed that s.22
was initiated.

review by the Ministry of Health Investigation Unit
irregular MSP claims pattern and an investigation

SUBMISSIONS:

Medical Services Branch:

It is the position of MSB that ^{s.22} has not been a resident of British Columbia as defined by Section 1 of the *Medicare Protection Act* for the period from ^{s.22}

It is the position of MSB that ^{s.22} has not been a resident of B.C. as defined by Section 1 of the *Medicare Protection Act* from ^{s.22}

It is the position of MSB that ^{s.22} has not been a resident of British Columbia as defined by Section 1 of the *Medicare Protection Act* since ^{s.22}
^{s.22}

^{s.22}

^{s.22}

from the investigators to ^{s.22}
residency were unanswered.

^{s.22}

All requests
to provide documents to determine

Due to the absence of any evidence supporting residency in B.C., MSB concludes that, based primarily on MSP claims history:

Page 185 redacted for the following reason:

s.22

s.22

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. s.22
s.22

s.22

If I conclude that their enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

In order to be considered eligible for enrollment in the Plan over the specified time periods, s.22 must meet the definition of "resident" in the Act. This requires s.22 to be physically present in B.C. for at least six months of each calendar year, and it requires s.22 to make B.C. their home.

Pursuant to Section 5(1)(f) of the Act, s.22 has the burden of proof to satisfy the Commission that s.22 met the definition of "resident" in the Act. s.22 has not satisfied me of that fact.

Although I do not find that the absence of medical claims in and of itself is conclusive proof of absence from B.C., the absence of claims, together with the information gathered by MSB, the absence of specific information from s.22 supporting a claim to residence and s.22 leads me to conclude that s.22 was not a resident of British Columbia as defined by Section 1 of the *Medicare Protection Act* for the period from s.22. Specifically, s.22 has not established that s.22 spent six months of each calendar year between s.22. Therefore, s.22 enrollment in MSP is cancelled effective August 31, 2005.

s.22 and established residence at that time, s.22 entitled to re-enrollment in MSP effective s.22

s.22

s.22

Therefore s.22 medical coverage is cancelled from

s.22

s.22

enrollment in MSP is cancelled s.22

s.22

enrollment in MSP s.22

is entitled to re-

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for beneficiaries. Once the enrollment of s.22 is cancelled, s.22 will be required to repay any hospital services or PharmaCare claims paid for by government during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22 for medical services paid s.22 pursuant to the *Medicare Protection Act*.

The MSP File Brief does not contain an Application for Enrollment for s.22 did (partially) complete an Application for Addition of Family Members form (MSP File Brief, Tab 2, Appendix 4) to add s.22 to her MSP account. On that form, s.22 s.22

s.22 Because I do not have evidence to establish a misrepresentation, I cannot conclude that one was made. Therefore, the Commission may not seek reimbursement from s.22 for payments made under the *Medicare Protection Act* for medical services during the cancellation period.

DECISION

The Medical Services Plan enrollment for s.22 s.22

is cancelled from s.22

The Medical Services Plan enrollment for s.22 s.22


is cancelled from s.22

The Medical Service Plan enrollment for^{s.22}
s.22

is cancelled from^{s.22}

s.22

Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

s.22

Date of Hearing:

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

**Appearing on behalf of the
Medical Services Branch:**

Ms. Stephanie Power
Ms. Beverlee Sealey
Ms. Monica Uribe (via teleconference)
Ms. Anna Aroutiounian (via teleconference)

**Medical Services Commission
Legal Counsel:**

Ms. Sharna Kraitberg

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan ("MSP") should be cancelled pursuant to section 7.2 of the Act. The Commission has also delegated to me the authority to determine, pursuant to section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue. If I determine that the Commission has paid an amount after relying on a representation of fact that was untrue, the Commission may recover directly from s.22 any amounts paid under the Act by the Commission for medical services for s.22 If I do not determine that the Commission has paid an amount after relying on a representation of fact that was untrue, s.22 will still be required to repay any amounts paid by government for hospital services under the *Hospital Insurance Act* or for PharmaCare benefits under the *Pharmaceutical Services Act*.

The hearing proceeded by way of an in-person hearing.

I proceeded with the hearing after assuring myself that the conditions established under Sections 11(4) (a), (b), (c), and (d) of the Act had been satisfied.

I carefully considered the written materials and testimony provided by the Medical Services Branch ("MSB") and ^{s.22} and reached the decision set out below.

MATERIALS REVIEWED:

MSB provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter. ^{s.22}
submitted a package of additional material dated ^{s.22}

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

.... (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

The authority of the Commission to enroll a resident in the Plan is set out in section 7.2 of the Act:

7.2(1) After confirming the identity and determining the residency of

(a) an applicant under section 7(1) or (2), and

(b) each of the applicant's children named in the application,

the commission must enroll as beneficiaries those covered by the application who are residents.

...

(3) Enrollment is effective on the date stated by the commission, that date being

(a) on or before the date on which the application under section 7(1) or (2) was made, or

(b) not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrollment of a beneficiary is set out in sections 7.4 and 11 of the Act:

7.4 (1) The commission may cancel the enrollment of a beneficiary effective

(a) on application by an adult beneficiary, effective on a date subsequent to the date of the application as determined by the commission;

(b) if the commission believes the beneficiary has ceased to be a resident, effective on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) if the commission determines that the beneficiary was not eligible for enrollment, effective on the date of enrollment as a beneficiary.

11(4) Before making an order under subsection (2), or a cancellation under section 7.4(1)(b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

(a) of the commission's intention to proceed,

(b) of the circumstance giving rise to the commission's intended action,

(c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and

(d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

The authority of the Commission to collect money paid under the Act for medical services directly from a person who is found not to have been a resident at the relevant time is found in section 30(2) of the Act:

30(2) If the commission has paid an amount after relying on a representation of fact that was untrue, the person who made the misrepresentation must repay the amount to the commission.

BACKGROUND:

s.22

As a result of the Ministry conducting a review of the request for a waiver of the wait period, it was noted that all MSP claims for s.22 stopped as of s.22 (MSP File Brief, Tab 9) and a residency investigation was initiated. When notified of the results of the investigation by the letter of s.22 while not disputing the facts, indicated there were extenuating circumstances and requested a hearing.

SUBMISSIONS:

Medical Services Branch:

There is no dispute about the dates of s.22 arrival in and departure from BC, nor is there any dispute about the dates of s.22 and departure from BC.

s.22

It is the position of the MSB that ^{s.22} has not been a resident of British Columbia as defined by section 1 of the *Medicare Protection Act* from ^{s.22}
s.22

While ^{s.22} arrived in BC with permanent resident status on ^{s.22}
s.22 failed to reside in BC for more than six months
prior to leaving the country for more than six months ^{s.22}
s.22 have not been physically present in BC for at least six months in a calendar
year between ^{s.22} and the date the MSP File Brief
was prepared.

s.22

FINDINGS:

I have considered all of the information submitted for my review. As noted above, I must make a decision on two issues. The first issue I must determine is whether the enrollment of s.22 in the Medical Services Plan is to be cancelled due to lack of residency. If I conclude that s.22 enrollment should be cancelled, then I must consider, under section 30(2) of the Act, whether the Commission has paid an amount after relying on a representation of fact that was untrue.

(a) Cancellation of Enrollment:

In order to be considered eligible for enrollment in the Plan over the specified time periods, s.22
s.22

Pursuant to Section 5(1)(f) of the Act, s.22 has the burden of proof to satisfy the Commission that s.22 met the definition of "resident" in the Act. s.22 has not satisfied me of that fact. Specifically, s.22 has not satisfied me that s.22 made their home in BC during the relevant period and s.22 has not satisfied me that s.22 was physically present in BC for six months out of each calendar year between s.22 and the time the investigation report was completed in s.22

It is not being disputed that s.22 had not been living in BC for at least six months of s.22

s.22 I am not prepared to make a decision to allow s.22 to retain their enrollment in the Medical Services Plan when they clearly did not meet the statutory requirements for enrollment.

s.22

During the hearing, a discussion took place between s.22 with regard to current coverage under the Medical Services Plan (coverage from the date s.22 returned to BC in s.22 current enrollment status will be reviewed by the MSB.

(b) Misrepresentation of Fact:

As noted above, if I determine that the Commission has paid an amount after relying on a representation of fact made by s.22 will be required to pay back to the Commission any amounts paid for medical services during the period for which s.22 enrollment is now being cancelled.

It should be noted that the *Hospital Insurance Act* is separate legislation dealing with the repayment of hospital services paid for beneficiaries, and the *Pharmaceutical Services Act* is separate legislation dealing with the repayment of PharmaCare benefits paid for beneficiaries. Once the enrollment of s.22 is cancelled, s.22 will be required to repay any hospital services or PharmaCare claims paid for during the cancellation periods, pursuant to the *Hospital Insurance Act* and the *Pharmaceutical Services Act*. The repayment for hospital services and PharmaCare benefits is not affected by my decision of whether or not a misrepresentation of fact was made – that decision only affects the Commission's ability to seek repayment from s.22 for medical services paid on her behalf and that of her dependents pursuant to the *Medicare Protection Act*.

I have reviewed the Application for Enrolment completed by s.22 at the time s.22 applied for Medical Services Plan coverage (MSP File Brief, Tab 3). On that form, s.22 s.22

s.22

s.22 I have no reason to believe that s.22 made a deliberate misrepresentation of fact on the Application for Enrolment form when s.22 indicated that the move to BC was a permanent one. I accept that when the form was filled out s.22 intention was to make the move to BC a permanent one.

Given the above, there is no evidence that s.22 made a misrepresentation of fact. Therefore, the Commission may not collect monies paid for medical services under the *Medicare Protection Act* s.22 However, as noted above, s.22 s.22 will be required to repay any hospital services paid for under the *Hospital Insurance Act*, and any pharmaceutical benefits paid for under the *Pharmaceutical Services Act*, for the cancellation period.

DECISION

The Medical Services Plan coverage for s.22 is cancelled from September s.22 until s.22 entitled to enrollment in the Medical Services Plan again based on s.22 return to BC s.22

The Medical Services Plan coverage for ^{s.22} is cancelled from ^{s.22}
^{s.22} until ^{s.22} entitled to enrollment in the Medical Services Plan again based on ^{s.22}
return to BC in ^{s.22}

The Medical Service Plan coverage for ^{s.22} is cancelled ^{s.22}
^{s.22} until ^{s.22} entitled to enrollment in the Medical Services Plan again
based on ^{s.22} return to BC ^{s.22}

^{s.22}

Dated at Victoria, British Columbia this


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing:

s.22

**Delegate of the Medical
Services Commission:**

Robert Cronin

Beneficiaries:

s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if ^{s.22}

s.22

are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan should be cancelled pursuant to section 7(7) (b) of the Act.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Plan ("the Plan") and by ^{s.22} and reached the decision set out below.

MATERIALS REVIEWED:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation including the material provided by ^{s.22} to the Plan and the Commission.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if ^{s.22} meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,

- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

.... (f) investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

....

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

(2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(7), 7.2 and 11 of the Act:

7(7) The commission may cancel the enrolment of a beneficiary effective

.....

(b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

(c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7 (7) (b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,
- (b) of the circumstance giving rise to the commission's intended action,
- (c) that the beneficiary has the right to a hearing, to be requested by the beneficiary within 21 days from the date the notice was delivered, and to appear in person or with legal counsel at the hearing, and
- (d) that if the beneficiary does not request a hearing or appear at the hearing, an order may be made in his or her absence.

BACKGROUND:

s.22

SUBMISSIONS:

Medical Services Plan:

s.22

Accordingly, the Plan intends to cancel medical coverage s.22
s.22

FINDINGS:

I have considered all of the information submitted for my review.

As noted previously, under the Act, a beneficiary must be a resident, defined as a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

Given the evidence presented, I do not believe^{s.22}
s.22

s.22 Simply owning a house is in and of itself insufficient evidence of making one's home in British Columbia. Many individuals own more than one house, and an individual might purchase a house in one location with the intention of living in it at a later date.

s.22

s.22

s.22 raises the issue of how the six months of physical presence in BC is to be calculated. Apparently, the Plan requires individuals to establish that they have been physically present in BC for 183 days, while s.22 was advised by the MSP phoneline that the six month requirement is "just six months".

I have concluded that s.22 did not meet the requirement set out in subsection (c) of the definition of "resident" to be physically present in BC for at least six months in a calendar year, however, I am of the view that if the Plan is calculating the period by days, the Plan is mistaken. While it does not change my decision in this case, for the sake of clarity I will set out an explanation of how the six month period should properly be calculated.

In my view, the requirement to be physically present in British Columbia for a six month period should not be interpreted to require a person to be physically present for 183 days. Rather, the calculation of time must be done pursuant to sections 25(4) and 29 of the *Interpretation Act*, which provide as follows:

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

.....

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

29 In an enactment:

"month" means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day;

Applying these provisions to s.22 situation, and to the *Medicare Protection Act* definition of "resident", which requires a beneficiary to be physically present in British Columbia for "at least" six months in a calendar year:

s.22

1.

2.

s.22

s.22

they were not physically present in the province for six months of the calendar year
s.22 Therefore, they did not meet the criteria in subsection (c) of the definition of
"resident".

s.22

DECISION

The Medical Services Plan coverage for s.22
s.22 is cancelled as s.22 Coverage for s.22 is cancelled as of s.22
s.22

Dated at Victoria, British Columbia this s.22


Robert Cronin

**MEDICAL SERVICES COMMISSION
Residency Hearing
Reasons for Decision**

Date of Hearing: s.22

Delegate of the Medical Services Commission: Robert Cronin

Beneficiaries: s.22

INTRODUCTION:

Pursuant to section 6(2) of the *Medicare Protection Act* ("the Act"), the Medical Services Commission ("the Commission") has delegated to me the power to determine if s.22
s.22 are residents for the purposes of the Act, and to determine if their enrollment in the Medical Services Plan should be cancelled pursuant to section 7(7) (b) of the Act.

The hearing proceeded by way of written submission.

I proceeded with the written hearing after assuring myself that the conditions established under Sections 11 (4) (a), (b), (c), (d) of the Act had been satisfied.

I carefully considered the written materials provided by the Medical Services Plan ("the Plan") and by s.22 and reached the decision set out below.

MATERIALS REVIEWED:

The Plan provided a summary of relevant information in a binder entitled "MSP File Brief" outlining the factual background of this matter, and providing supporting documentation including the material provided by s.22 to the Plan.

RELEVANT LEGISLATION:

Medicare Protection Act

Pursuant to the Act, a person is eligible for enrollment in the Plan if s.22 meets the definition of "resident". "Resident" is defined in section 1 of the Act as follows:

"resident" means a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and

- (c) is physically present in British Columbia at least 6 months in a calendar year,

and includes a person who is deemed under the regulations to be a resident but does not include a tourist or visitor to British Columbia.

The Act outlines the responsibilities and powers of the Commission in relation to residency determinations at section 5:

The commission may do one or more of the following:

....

- (f) Investigate and determine whether a person is a resident and, for this purpose require the person to provide the commission with evidence, satisfactory to the commission, that residency has been established;

....

The authority of the Commission to enroll a resident in the Plan is set out in section 7(2) of the Act:

- (2) The commission must, after determining that the applicant, the spouse of the applicant and each of the applicant's children named in the application are residents, enrol as beneficiaries those covered by the application who are residents, effective not more than 3 months after receipt of the application.

The authority of the Commission to cancel the enrolment of a beneficiary is set out in sections 7(7), 7.2 and 11 of the Act:

- 7(7) The commission may cancel the enrolment of a beneficiary effective

.....

- (b) on the date the commission determines to have been the date that the beneficiary ceased to be a resident, or

- (c) on the date of enrolment as a beneficiary, if the commission determines that the beneficiary was not eligible for enrolment on that date.

7.2 The commission may cancel the enrollment of a beneficiary if the commission believes the beneficiary has ceased to be a resident.

11(4) Before making an order under subsection (2), or a cancellation under section 7(7)(b) or (c), the commission must notify the beneficiary in a manner the beneficiary can understand

- (a) of the commission's intention to proceed,

- Medical and Health Care Services Regulation:

4(1) A person who is absent from British Columbia for vacation or work for more than 6 months is deemed to be a resident for the purposes of the definition for up to the initial 24 consecutive months of absence if the person

- BACKGROUND:**

s.22

signed the necessary consents and provided information as requested by the investigators.

SUBMISSIONS:

Medical Services Plan:

s.22

On the basis of the above, the Medical Services Plan intends to cancel coverage for
s.22 retroactive to s.22 Coverage for s.22 would be
cancelled retroactive to s.22
s.22

emphasized that nowhere on the Plan's website was it indicated the residency calculation was made by days, rather than months.

FINDINGS:

I have considered all of the information submitted for my review.

As noted previously, under the Act, a beneficiary must be a resident, defined as a person who

- (a) is a citizen of Canada or is lawfully admitted to Canada for permanent residence,
- (b) makes his or her home in British Columbia, and
- (c) is physically present in British Columbia at least 6 months in a calendar year,

Subsection (b) of the definition of "resident" requires a beneficiary to "make his or her home in British Columbia". There is virtually no evidence that s.22
s.22

I find that s.22 does not qualify as a resident because s.22 did not make s.22 home in British Columbia during the periods that s.22 was in British Columbia. s.22
s.22

Although it does not change my decision, for the sake of clarity I will set out my understanding of how the six month physical presence requirement should be calculated. In my view, the requirement to be physically present in British Columbia for a six month period should not be interpreted to require a person to be physically present for 183 days. Rather, the calculation of time must be done pursuant to sections 25(4) and 29 of the *Interpretation Act*, which provide as follows:

25 (1) This section applies to an enactment and to a deed, conveyance or other legal instrument unless specifically provided otherwise in the deed, conveyance or other legal instrument.

.....

(4) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

29 In an enactment:

"month" means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day;

Applying these provisions to s.22 situation, and to the *Medicare Protection Act* definition of "resident", which requires a beneficiary to be physically present in British Columbia for "at least" six months in a calendar year:

1. s.22

2.

s.22

s.22

s.22 Therefore,
did not meet the criteria in subsection (c) of the definition of "resident".

I have included the discussion above about the appropriate way to calculate the six month period not for the purpose of concluding that s.22 was present in British Columbia for six months in s.22, but to notify the Plan of the appropriate way of calculating the six month period.

To summarize, I find that s.22 did not meet the requirement under section (b) of the definition of "resident", in that s.22 did not make s.22 home in British Columbia, and I find that s.22 did not meet the requirement in section (c) of the definition of "resident", in that s.22 was not physically present in British Columbia for at least six months in the calendar year.

s.22

I accept that Plan's position that

s.22 was eligible for coverage until s.22

DECISION

The Medical Services Plan coverage for s.22 is cancelled as of s.22
The Medical Services Plan coverage for s.22 is cancelled as of s.22

s.22
Dated at Victoria, British Columbia this


Robert Cronin