

Appeal Number: 07-2024

PUBLIC HEALTH APPEAL BOARD

**IN THE MATTER OF THE PUBLIC HEALTH ACT
R.S.A. 2000 c. P-37 AND THE REGULATIONS**

**AND IN THE MATTER OF AN APPLICATION TO EXTEND
THE TIME PERMITTED TO SUBMIT A NOTICE OF APPEAL**

PANEL: Paul M. Bourassa, Chair
David Rolfe, Member
Dr. Theresa A. Chika-James, Member
Vicki Wearmouth, Member

BETWEEN:)	
)	
)	
Matthew Peter	(Appellant)	Self-represented
)	
- and -)	
)	
ALBERTA HEALTH SERVICES)	
)	
	(Respondent)	Ashley Groenewegen, Alberta Health Services, for the Respondent
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DECISION WITH REASONS

The Application

[1] On October 31, 2024, at the continuation of the Public Health Appeal Board (the “Board” or “PHAB”) Hearing for Appeals 07-2024, 09-2024 and 10-2024, the Board and Alberta Health Services Counsel for the Respondent (“AHS Counsel”), understood that the hearing was to begin with AHS Counsel calling its evidence. However, at the start, Mr. Matthew Peter, the Appellant in Appeal 07-2024, made an application to extend the 10-day period within which to submit a notice of appeal of an order of an Alberta Health Services

(“AHS”) Executive Officer (“Application for Extension”).

[2] The Application for Extension related to two new orders of an AHS Executive Officer (EO) dated October 4, 2024, concerning the house located on the property in Sturgeon County, Alberta and municipally described as: 25103 Township 552, Lot 2 Block 1 Plan 1722925 (the “Premises”):

- a. Order of an Executive Officer – Unfit for Tenant Accommodation – October 4, 2024; and,
- b. Order of an Executive Officer – Work Order – October 4, 2024.

(Collectively referred to as the “New House Orders”)

[3] At 1:57AM on October 31, 2024, the day of the continuation for the hearing of Appeals 07-2024, 09-2024, and 10-2024, Mr. Peter notified the Board via email that he did not receive the New House Orders that were based on the re-inspection conducted October 1, 2024. He reported he was not aware that two new orders had been delivered by email on October 4, 2024, and indicated that he wanted to appeal the New House Orders once he had the opportunity to review them.

Board Decision

[4] The Board heard submissions from Mr. Peter and AHS Counsel following which the Board adjourned briefly to consider the Application for Extension.

[5] Following the adjournment, the Board returned and indicated that it was prepared to grant the Application for Extension. However, AHS Counsel submitted to the Board that it did not have all the information necessary to grant the Application for Extension.

[6] AHS Counsel opposed the Application for Extension indicating that evidence relating to the House Order, which could influence the Board’s decision for the Application for Extension, had not yet been presented. AHS Counsel submitted to the Board to reconsider its decision to grant the extension.

[7] The Board reversed its oral decision to grant the Application for Extension and directed the Appellant, Mr. Peter, and AHS Counsel to provide written submissions on whether to grant the Application for Extension to the Board by 4:00PM on November 7, 2024.

[8] On November 15, 2024, the Board sent a letter to the parties stating that it was denying the Application for Extension and that a written decision with reasons would follow in due course.

[9] These are the Board’s reasons for denying the Application for Extension.

Background

[10] The Application for Extension relates to the two previous orders of an AHS EO dated July 12, 2024, concerning certain areas on the Premises used for accommodation purposes: the

house, and the campground area containing recreational vehicles, a truck and outside metal shed all located on the Premises:

- a. The house – Order of an Executive Officer - Unfit for Tenant Accommodation – July 12, 2024 (the “House Order”); and,
- b. The campground area containing recreational vehicles, truck and outside metal shed – Order of an Executive Officer - Unfit for Tenant Accommodation – July 12, 2024 (the “Campground Order”).

[11] The hearing for the House and Campground Orders began with a stay hearing on August 15, 2024, and continued on September 5, 2024, September 26, 2024, and October 31, 2024.¹

August 15, 2024 – Stay Hearing

[12] On August 15, 2024, a preliminary stay hearing for the Appeals 07, 09, 10-2024 was heard by the Board Chair, Kevin Kelly.

[13] Based on the oral submissions made by the Appellants and Ms. Ashley Groenewegen, Counsel for the Respondent (“AHS Counsel”), it was determined that the three-part test for granting a stay of the orders was not met. The applications for a stay of the orders were denied.

[14] The Chair also directed that the appeals of Mr. Peter, Mr. Lubyk and Ms. Baldwin be heard together.

September 5, 2024 – Hearing

[15] On September 3, 2024, AHS Counsel sent correspondence to the Board indicating that on the day of the scheduled hearing, AHS Counsel would be making a preliminary application to narrow the legal issues.

[16] On the day of the hearing, AHS Counsel sent an email to the Board indicating that AHS would be making a preliminary application for an adjournment to confirm the current state of the Premises, as Mr. Peter had provided information to the public health inspector indicating that improvements had been made since the last inspection.

[17] At the hearing, the Board heard submissions from all the parties on the application for adjournment. The Board found that the disclosure from AHS Counsel, which was voluminous in nature, and from Mr. Peter, which contained details about recent work he had done to the Premises, continued to arrive after the deadline imposed by the Board, which was 4:00PM, September 3, 2024.

[18] The Board granted the application for an adjournment in order to permit the Board to properly review the disclosures, as well as permit AHS to return to the Premises for an inspection, which could potentially narrow the legal issues. Given the potential for the legal issues to be narrowed *res ipso facto*, the Board did not need to consider the pre-hearing application to narrow the legal issues at this time.

¹ PHAB Appeal 07-2024, 09-2024 and 10-2024 Decision on House and Campground Orders – February 3, 2025.

[19] The Board directed that:

- a. The parties provide all disclosure and written submissions 10 days in advance of the start of the hearing, as required by the PHAB Rules of Procedure;
- b. Pursuant to section 5(5) and (6) of the PHA, these matters be referred back to AHS for further consideration and redetermination, which AHS Counsel indicated was for AHS to undertake a further inspection of the house scheduled for September 9, 2024, following which, as soon as practical provide to the Board and the Appellants further detailed information resulting from said inspection; and,
- c. Following said inspection and prior to date on which the hearing was next scheduled to continue, should AHS Counsel determine that the scope of the legal issues continue to be narrowed, the notice of such application be made as soon as possible

September 26, 2024 – Hearing

[20] The parties attended for a hearing continuation for another half-day on September 26, 2024. Mr. Peter called his case and AHS Counsel cross-examined his witnesses.

[21] There was no time left for AHS Counsel to call its case, requiring a further adjournment. At the conclusion of this day's hearing, the Board again directed AHS to return to the Premises for further re-inspection prior to the next scheduled hearing date.

[22] AHS Counsel advised that their client would be rescinding the House Order and issuing a new order based on re-inspection. Mr. Peter agreed to accept service of the order via email.

[23] The Board clarified that the appeals concerning the House Order (even when rescinded by AHS) and the Campground Order would remain active.

[24] The Appellants were notified that they may appeal the new order should they wish, and if so, the Board would join any new appeals with the current appeal. The PHAB Secretariat confirmed this direction in writing to the parties by email on September 30, 2024.

[25] Directly following the hearing on September 26, 2024, multiple emails were exchanged between Mr. Peter, the PHAB Secretariat and AHS, specifically regarding AHS' re-inspection of the Premises, which was scheduled for and completed on October 1, 2024.

October 31, 2024 - Hearing

[26] At 1:57AM on October 31, 2024, the day of the hearing continuation, Mr. Peter notified the Board via email that he did not receive any new orders that were based on the re-inspection conducted October 1, 2024. He reported he was not aware that two new orders had been delivered by email on October 4, 2024, and further indicated that he wanted to appeal the New House Orders once he had the opportunity to review them.

[27] An application was made by Mr. Peter for the Board to extend the time for production of a notice of appeal for the New House Orders (“Application for Extension”).

[28] The Board heard initial submissions from Mr. Peter and AHS Counsel, following which the Board adjourned briefly to consider Mr. Peter’s Application for Extension. Following the adjournment, the Board returned and indicated that it was prepared to grant the extension.

[29] However, AHS Counsel made the Board aware that evidence relating to the House Order, which could influence the Board’s decision for the Application for Extension, had not yet been presented. AHS Counsel submitted to the Board to reconsider its decision to grant the Application for Extension.

[30] The Board reversed its oral decision to grant the Application for Extension and directed the Appellant, Mr. Peter, and AHS Counsel to provide written submissions on whether to grant the Application for Extension to the Board by 4:00PM on November 7, 2024.

Grounds of the Application

[31] Mr. Peter presented the argument that important documents, such as orders of EOs, should always be served either in person or via registered mail.

[32] Mr. Peter insisted that he did not receive the New House Orders so he could not serve the notice of appeal within the 10 days as required by the *Public Health Act* (PHA) section 5(3).

Legal Issues

[33] The legal issue for consideration by the Board is:

- a. Should the Board extend the time for the Mr. Peter to file an appeal for the New House Orders?

Jurisdiction

[34] The same members of the Board (the “Panel”) who heard the Appeals for the House and Campground Orders, participated in the decision-making for the Application for Extension.

[35] There were no objections to the composition of the panel for the Board and the Panel’s jurisdiction to decide on the application.

Documents

[36] Written submissions provided to the Board include:

- a. “Written Submissions of the Respondent AHS to Public Health Appeal Board (PHAB)” received via email November 7, 2024 at 3:52pm.

b. Email from Appellant, Mr. Peter, received November 7, 2024 at 3:59pm.

Submissions of the Appellant

[37] Mr. Peter argued that he cannot appeal an order he did not receive. If AHS wanted to consider it a new matter, then it would be a commencement document that should be served not by email but rather in person or via registered mail.

[38] He was expecting an email from Executive Officer (“EO”) Ravinder Thind, who had conducted previous inspections, not the EO who had conducted the inspection on October 1, 2024 - Koreen Anderson.

[39] Even though he had exchanged emails with EO Anderson prior to the inspection on October 1, 2024, Mr. Peter suggested it was “sneaky” for the New House Orders issued as a result of that inspection to come from someone other than the initial EO assigned - EO Thind.

[40] EO Anderson should have included a “read receipt” for the emails that the New House Orders were attached in. That way there would be evidence that he had not received them.

[41] Mr. Peter admits that although the New House Orders reflect outstanding issues which he can easily rectify, he would still like to appeal as it keeps AHS accountable to the Board.

Submissions of the Respondent

[42] AHS Counsel provided the Board extensive written submissions. AHS’ primary submission was that Mr. Peter’s claim, that he did not receive an email on October 4, 2024 attaching the New House Orders, is not credible based on the evidence and Mr. Peter’s own submissions. Mr. Peter had notice of the New House Orders on October 4, 2024, and the appeal period expired on October 14, 2024.

[43] At the hearing continuation on September 26, 2024, the Board directed AHS to conduct another inspection of the house.

[44] AHS advised that a new order(s) in respect of the house based on re-inspection would be issued rendering House Order moot. In response, the Board directed that Mr. Peter would need to file an appeal of any new order(s) issued by AHS. This direction was reiterated in the letter from the Board to the parties emailed on September 30, 2024.

[45] Mr. Peter is recorded, in the transcripts from the hearing on September 26, 2024, as agreeing to the service of any new orders via email.

[46] Mr. Peter confirmed that he had received and responded to email correspondence with EO Anderson prior to the re-inspection scheduled for October 1, 2024.

[47] There is evidence that the New House Orders, issued based on the re-inspection conducted October 1, 2024, by EO Anderson, were served via email by EO Anderson on

October 4, 2024. No notification of failure to send or receive the email was received.

[48] It is standard practice for orders to be served (via email, registered mail or in-person) by the EO who conducted the inspection.

[49] Copies of the New House Orders were also included in the disclosure package prepared by AHS Counsel in preparation for the hearing continuation on October 31, 2024. Mr. Peter was notified by AHS Counsel that the disclosure package was saved to a USB stick which Mr. Peter was to, but did not, pick up from the AHS Office.

[50] The test for exercising discretion to extend the time to appeal, as cited by the Alberta Court of Appeal in *Dureab v Ben-Harhara*², have not been met.

[51] AHS Counsel submitted that it is not in the interests of justice that the Board grant Mr. Peter's Application for Extension for the New House Orders.

Analysis and Reasons

Applicable Legislation, Case Law and Rules

[52] The PHA section 5(9) permits the Board to extend the time within which an appeal must be taken under subsection 5(3), which states that a person, who is directly affected by a decision of a regional health authority and feels aggrieved by the decision, must commence an appeal by serving a notice of appeal within 10 days after receiving the decision being complained of.

[53] The PHAB Rules of Procedure permit the Board all the powers necessary to conduct a fair, expeditious and impartial hearing of an appeal.

[54] The Rules of Procedure permit the Board to hear all types of Preliminary Applications (section 2.2.1.a.) brought forward by any Party (section 3.4.1).

[55] Examples of Preliminary Applications include: determining if the Board should accept an appeal that appears to have been filed out of time (section 3.4.1.c.), and extending the time for production of documents (section 3.4.1.h.).

[56] Section 3.4.4.a. of the Rules of Procedure permits, at the discretion of the Presiding Board Member, for Preliminary Applications to be addressed by Written Submissions only.

[57] Section 3.4.5 of the Rules of Procedure gives authority to the Presiding Board Member to decide Preliminary Applications without requiring the full Board or a quorum of the Board when the decision does not affect the entire appeal process or render an appeal dismissed.

[58] The Board reviewed Mr. Peter's Application for Extension and applied the factors outlined by the Alberta Court of Appeal in *Dureab*³ including:

² [“*Dureab*”] 2021 ABCA 128 at para 6. [Tab 3].

³ *Dureab* at para 6.

- a. a *bona fide* intention to appeal held while the right to appeal existed;
- b. an explanation for the failure to appeal in time that services to excuse or justify lateness;
- c. an absence of serious prejudice such that it would not be unjust to disturb the judgement;
- d. the applicant must not have taken the benefits of the judgement under appeal; and
- e. a reasonable chance of success on the appeal, which might better be described as a reasonably arguable appeal.

[59] The Alberta Court of Appeal also noted that in addition to the above factors, it may consider “whether the proposed appeal is ‘likely to settle the law’ or whether it is of interest only to the parties: *Simbajohn v Leduc*, 2015 ABCA 321 at para 14.”⁴

Findings and Conclusion

[60] The Board is satisfied from its review of the evidence that Mr. Peter had notice, or ought to have known, of the New House Orders on October 4, 2024. The Board finds that by not attending to emails received after the re-inspection on October 1, 2024, when there was reasonable expectation that the orders would be served, Mr. Peter did not demonstrate a *bona fide* intention to appeal while the right to appeal existed.

Explanation for the failure to appeal in time

[61] Regarding the factors to be considered on application to extend time to appeal, the Board finds that Mr. Peter did not provide an explanation for his failure to appeal the New House Orders within the legislated 10-day period that would serve to excuse or justify the lateness. Mr. Peter has corresponded extensively via email with both the PHAB Secretariat and AHS public health inspectors and legal counsel in this matter with no apparent confusion or lost emails, aside from the October 4, 2024 email attaching the New House Orders.

[62] It was quite uncharacteristic, and the Board finds it rather convenient, that Mr. Peter did not engage in this matter between October 1, 2024 and October 30, 2024, and he provided no reasonable explanation for his lack of attention to the hearing continuation scheduled for October 31, 2024. This is especially so given that Mr. Peter had re-occupied the house during this period and no longer claimed to be homeless because of the July 12 Unfit for Human Habitation Order, which had been rescinded.

[63] Mr. Peter is an experienced litigant before the Board. (See *Peter v Public Health Appeal Board of Alberta*, 2019 ABQB 989).

[64] He was present for the discussion of further inspection and new orders on September 26, 2024. He agreed to receive service of new orders by email. He was present for the inspection on October 1, 2024. In AHS’ submission, it was incumbent on Mr. Peter to attend to his email to watch for new orders served by email and reasonable to expect he would look for new orders sent by EO Anderson via email as she was the one who arranged the re-inspection for October 1, 2024 with him and attended to complete it.

⁴ *Dureab* at para 7.

[65] Similarly, given his responsiveness to email correspondence for the other appeal hearings relating to the Premises and prior to the re-inspection of October 1, 2024, Mr. Peter's lack of responsiveness to the email correspondence from EO Anderson or AHS Counsel prior to the October 31, 2024 hearing, particularly when he had agreed to have the orders served via email, does not provide reasonable excuse or justification of his lateness.

[66] Mr. Peter acknowledged and agreed during the hearing continuation on September 26, 2024, that he would receive all future orders and correspondence via email.

Intention to appeal during the appeal period

[67] In AHS' submission, Mr. Peter did not demonstrate any bona fide intention to appeal the New House Orders during the appeal period of October 4 to 14, 2024, or at all until October 31, 2024.

Prejudice

[68] AHS has suffered prejudice in cost and resources incurred in this matter, and in presenting its case before the Board due to the appellant not providing notice of his intention to appeal the New House Orders prior to 1:57AM on the morning of the hearing continuation scheduled for October 31, 2024.

[69] The Board is satisfied from the submissions and argument that AHS Counsel was prepared to call its case on each of the hearing dates of September 5, 2024, September 26, 2024, and October 31, 2024. AHS Counsel was required to call its case on October 31, 2024 without knowing whether the Appellant's application to extend the time to appeal the New House Orders would be granted – that is, without knowing whether AHS Counsel should call evidence in respect of the inspection conducted on October 1, 2024, or what evidence it should call, as it had no notice of any grounds of appeal of the New House Orders.

[70] There was considerable confusion at the hearing continuation on October 31, 2024, about the status of the New House Orders in the appeals before the Board, given the Appellant's late notice of his intention to appeal those orders. This would certainly have been mitigated had the Appellant filed notices of appeal within the appeal period or given any reasonable notice of his intention to do so prior to 1:57AM on October 31, 2024.

[71] The hearing continuation scheduled for the full-day of October 31, 2024, was scheduled with the understanding that the full-day would be sufficient to complete the hearing of this matter. The potential appeal of any subsequent orders in respect of the House was included in that estimate and was specifically discussed at the hearing continuation of September 26, 2024, and in the Board's subsequent written email direction on September 30, 2024.

[72] Mr. Peter and AHS Counsel have had to prepare their cases four times.

- a. August 15, 2024 - Stay Hearing;
- b. September 5, 2024 – Merit Hearing #1: Adjourned;
- c. September 26, 2024 – Merit Hearing #2 (for House Order): Continued;
- d. October 31, 2024 – Merit Hearing # 3 (for Campground Order).

To require the parties to prepare for another hearing, particularly when Mr. Peter has reported that the issues remaining on the New House Orders are easy to rectify, places prejudice in cost, resources and time for all parties.

[73] As permitted by the PHA and confirmed by caselaw, the Board can reconsider its oral decision to permit Mr. Peter the time within which to appeal the New House Orders. As such, the Board is denying it.

The Appellant has benefited from the Orders under appeal

[74] Mr. Peter has benefitted from the New House Orders, as they rescind any restrictions for himself and his tenants to re-occupy the upper level of the house, which they have.

[75] Mr. Peter has indicated that the remaining issues are easy to rectify, leaving nothing from the New House Orders for him to appeal.

[76] For the above reasons, the Board denies the Application for Extension.

Paul M
Bourassa

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Paul M. Bourassa, Chair
On behalf of the Panel for the
Public Health Appeal Board

Date: 2/3/25