



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2019: No. 41

BETWEEN:

BERMUDA HOSPITALS BOARD (KEMH)

Appellant

- and -

CHRISTINE MULLINGS

Respondent

JUDGMENT

Date of Hearing: 28 April 2022

Date of Ruling: 29 April 2022

Appearances: Christopher Swan, Christopher E. Swan & Co, for Appellant

JUDGMENT of Mussenden J

Introduction

1. The Appellant the Bermuda Hospitals Board (the “**BHB**”) appeals against part of the judgment of the Learned Magistrate Wor. Chin dated 24 October 2019. In that judgment the Learned Magistrate found in favour of the Appellant in the amount of \$7,092.89 in respect of medical care at KEMH VII Memorial Hospital (the “**Hospital**”) for the son of

the Respondent (the “**Patient**”) during the period 18 – 19 December 2014. However, the Learned Magistrate rejected a claim for \$8,085 for a Diagnostic Related Group Charge (the “**DRG Charge**”) which is now the subject of this appeal.

2. At previous appearances, Counsel for the Appellant gave an undertaking to the Court that, if successful on this appeal, the Appellant would not pursue enforcement of the DRG Charge as they were only seeking to challenge the judgment of the Learned Magistrate in respect of the DRG Charge and a clarification of the calculation as set out in the legislation. As such, there were earlier orders of the Court that the Respondent need not participate further in the appeal and consequently she did not appear at the appeal.

Trial and the Learned Magistrate’s Judgment

3. Prior to the trial in the Magistrates’ Court, the Appellant had provided Further and Better Particulars which indicated that the medical report of the attending doctor had diagnosed the Patient’s condition as a viral infection. As a result the Patient was billed \$8,085 for the treatment of such at the non-resident rate.
4. At trial, the Learned Magistrate heard evidence from Margaret Ann Bassett for the Appellant. She held the position of Credit Collector and gave evidence about the invoice for the Hospital visit and the DRG Charge pursuant to the Bermuda Hospital Board (Hospital Fees) Regulations 2014 (the “**Regulations**”). She explained that generally each service that is provided to a patient attracts a charge corresponding to a charge number set out in the Schedule 1 to the Regulations. She referred to the BHB Invoice issued in respect of this matter which showed that there was an item as follows “9508664 DRG 866 Viral Illness W/O 19/12/24 \$8,085.00”. She stated that that invoice item corresponded with the Schedule 1 entry which states as follows “866 (DRG Column) 9508664 (CDM Code Column) Viral Illness W/O MCC (DRG Title Column) \$5,390 (\$ fee column)”.
5. Mrs. Bassett explained that the Patient was non-resident in Bermuda. She then explained that regulation 3 of the Regulations sets out that there is a surcharge of 50% added to the

fee for persons who are not ordinarily resident in Bermuda. She then explained that the amount owing (for the DRG Charge) on the invoice was the \$5,390 plus the 50% surcharge for the total of \$8,085. She explained that the BHB does not charge on a per diem basis anymore as charges are now determined after the patient is discharged based on the doctor's treatment or observation of the patient.

6. Prior to the trial, the Respondent filed a Defence which stated that "without more", she denied liability for the DRG Charge of \$8,085.
7. At trial, the Respondent gave evidence and explained that her son had visited her in Bermuda when he complained of back pain and was taken to the Hospital where he was examined by a doctor, had blood tests and a CAT Scan and was administered medication. He was released the following day and she later received the BHB Invoice for services rendered.
8. The Learned Magistrate considered the evidence and he found that the DRG Charge "*was not verified by Ms. Bassett, the Plaintiff witness nor by the Regulations which came into effect on 1 May 2014. Ms. Bassett and page 27 of the Regulations stated \$5,390 and not \$8,085. The discrepancy is \$2,695, and brings into doubt the veracity of that figure as the most recent 2018 Regulations cite \$5,648.*" He concluded that "*the Court does not support the "viral illness without" charge number 9508664 for \$8,085 which is the greatest single claim by the Plaintiff.*"

Appellant's Submissions

9. Counsel for the Appellant submitted that the Learned Magistrate erred in his finding that the DRG Charge was "*not verified*" and that the veracity of it was in doubt.
10. Mr. Swan submitted that the Hospital charges were based on a statutory scheme as set out in the Bermuda Hospitals Board Act 1970, the Regulations and the Schedule. As such, in light of proper evidence before the Court of medical services provided to a patient and the

issuance of the BHB Invoice for such services, it was not open to the Learned Magistrate to decide to not accept proper charges.

11. Mr. Swan submitted that the Learned Magistrate's assessment of the evidence was incorrect in that, despite the clear evidence of Mrs. Bassett, he did not recognise that the \$8,085 total was calculated by starting with the DRG Charge of \$5,390 then adding the 50% surcharge to it as the Patient was not ordinarily resident in Bermuda. On the contrary, the Learned Magistrate erred in finding that the 50% surcharge amount was a discrepancy and referring to the 2018 version of the Regulations which had another basic DRG Charge rate. Thus, the Learned Magistrate's conclusion ran against the strength of the evidence and he erred in coming to the conclusion that he did in not allowing the claim.

Law on the Procedure of Civil Appeals

12. The Civil Appeals Act 1971 section 14 provides as follows:

“Determination of appeals

14 (1) Subject to any other provision of law, upon the hearing of an appeal the Court may allow the appeal in whole or in part or may remit the case to the court of summary jurisdiction to be retried in whole or in part and may make such other order as the Court may consider just.

(2) All appeals to the Court shall be by way of re-hearing on the record, and shall be by notice of appeal, and no writ of error or other formal proceedings other than such notice of appeal shall be necessary.

(3) The Court shall have power to draw all inferences of fact which might have been drawn in the court of summary jurisdiction and to give any judgment and make any order which ought to have been made.

(4) No appeal shall succeed on the ground merely of misdirection or improper reception or rejection of evidence unless in the opinion of the Court substantial wrong or miscarriage of justice has been hereby occasioned in the court of summary jurisdiction.

(5) The Court shall, on the hearing of an appeal, have all the powers as to amendment and otherwise possessed by the Court in the exercise of its original jurisdiction, together with full discretionary power to receive further evidence upon questions of fact, either orally or by affidavit or deposition.”

13. Under the Civil Appeals Act 1971 the Court has broad powers in the conduct of an appeal. The appeal is a re-hearing on the record, the Court can draw all inferences of fact which might have been drawn in the court of summary jurisdiction and the Court has full discretionary power to receive further evidence upon questions of fact, either orally or by affidavit or deposition.

Analysis

14. Section 3 of the Bermuda Hospital Board (Hospital Fees) Regulations 2014 provides as follows:

“Rates for in-patient treatment of non-residents in the general hospital

3 In the case of any person who is not ordinarily resident in Bermuda or who is deemed not to be so resident for the purposes of the Health Insurance Act 1970, the fees payable to the Board for in-patient treatment at the general hospital—

“(a) in respect of any admission to the hospital with a length of stay of 15 days or less, are equal to the sum of—

(i) the amount in Schedule 1 opposite the Diagnosis Related Group to which the patient has been assigned by the attending physician plus a 50% surcharge based on that amount; and

...

15. In my view Mrs. Bennett’s evidence was a clear explanation of how properly to calculate the DRG Charge based on section 3 of the Regulations and Schedule 1. First, there was clear evidence that the medical treatment was provided to the Patient as no serious challenge to it was mounted. Second, it was not in dispute that the Patient was not ordinarily resident in Bermuda, thus for the DRG Charge, he was to be charged the basic rate of

\$5,390 plus the 50% surcharge of \$2,695 as a non-resident for the total of \$8,085. In my view the Learned Magistrate flummoxed himself as to the application of the proper calculation and thus erred in finding that the \$2,695 was a discrepancy when in fact it was the 50% surcharge. On that basis and in light of the credible evidence before the Learned Magistrate, it was not open to him to disallow the claim for the DRG Charge.

16. In my view, I am satisfied on the balance of probabilities of the Appellant's claim for the DRG Charge in the amount of \$8,085. The Learned Magistrate's decision not to award the DRG Charge of \$8,085 is quashed and I find that the Appellant was entitled and is entitled to the claim.

Conclusion

17. For the reasons above, I allow the Appellant's appeal which is in respect of the DRG Charge part of the Learned Magistrate's judgment.

18. As stated above, the Appellant had given an undertaking to the Court that, if successful on this appeal, it would not enforce the DRG Charge part of the judgment.

Dated 29 April 2022

**HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT**