

Overcoming Medical Inadmissibility

Earlier this year, Canadian immigration policy on medical admissibility due to "excessive demand" had been updated to "strike a balance between protecting publicly funded health and social services" and becoming more consistent with "current views on the inclusion of persons with disabilities."

These changes, which took effect on 1 June 2018, consist of the following: 1. increasing the cost threshold for medical inadmissibility to three times the previous level; 2. amending the definition of social services by removing references to special education, social and vocational rehabilitation services and personal support services; and 3. implementing administrative reforms such as providing further training to immigration and medical officers, centralizing medical admissibility assessment in one office and improving language that will explain the process to applicants.

Although no specific medical condition or disability should lead to automatic inadmissibility, the previous rules were such that applicants may be found inadmissible if the services required to treat their health condition or that of an accompanying dependent is anticipated to cost more than the average per capita for Canadians. In 2017, this cost threshold was at \$6,655 per year.

With the recent change, the relevant amount has been tripled to \$19,965 per year. The increased cost threshold and the removal of certain types of social services are meant to help reduce discrimination against persons with disabilities which inevitably arose from the previous system.

Details of the IRCC public policy on excessive demand released on 1 June 2018 listed the specific services for which costs will be included in determining whether the applicant is eligible to be exempted from medical inadmissibility. These services are as follows:

Health services:

- Physician and Nursing services
- laboratory and diagnostic services
- pharmaceuticals and pharmaceutical services
- hospital services, chemotherapy and radiotherapy, dialysis
- psychiatric services and
- supplies related to these services

Social services:

- Social services closely related to health services:
 - Social services that are provided by a health professional:
 - home care (by a nurse, physiotherapist, respiratory therapist, etc.),
 - palliative care, psychological counseling and
 - the provision of devices related to those services.
 - Medical aids, appliances, and prostheses.
- Social services that provide constant supervision and care for those who are not able to integrate into society
 - Residential facilities (long-term care, substance abuse services, etc.)

- Day facilities providing constant supervision (respite care, etc.)

The same recent public policy also lists the social services for which costs will not be included to determine if an applicant meets the eligibility criteria and conditions under the public policy, namely: |

- special education services (preparation of an individualized education plan, educational assistants, etc.)
- social and vocational rehabilitation services (rehabilitation facilities, occupational therapy, behavioural therapy, speech-language therapy, etc.)
- personal non-professional support services means services such as assistance with activities of daily living (bathing, dressing, feeding, etc.), meal preparation, house cleaning, etc.
- provision of devices related to those services.

Although these changes are expected to reduce medical inadmissibility cases especially for those with developmental disability, many advocates feel that these are not enough as the current policy can still exclude those requiring more expensive health and social services. These may include those with severe physical or mental disabilities or chronic illnesses that are often deemed medically inadmissible for allegedly imposing a “burden” on Canadian health and social services.

Moreover, a lot of subjectivity still comes into play when assessing the potential cost of the applicants' and/or their family members' medical and social services needs. Among others, not all applicants are aware of how to effectively respond to procedural fairness letters in medical inadmissibility cases or are unable to provide adequate evidence to refute the medical officer's initial assessment (which is often generalized rather than individualized).

Aside from invoking the changes specified in the public policy, it is also very important that the potentially inadmissible applicant provide convincing evidence of humanitarian and compassionate (H&C) grounds that may justify an exemption from medical inadmissibility. If one is unsure how to invoke the new public policy or present H&C submissions, it will be best to seek competent professional help.

It must be also be noted that the excessive demand provision which may lead to medical inadmissibility generally applies only to applicants (and their dependents) for permanent residence under the economic and family classes. Under existing Canadian immigration law, certain categories of permanent residence applicants are exempt from the excessive demand provision, namely refugees and certain family class applicants (i.e. sponsored spouses/common-law partners and dependent children).

As always, the above are meant for information purposes only and not as specific legal advice. To seek legal advice about your particular situation, please consult a trusted immigration legal professional.

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