



THE PROFESSIONAL
ASSOCIATION OF FOREIGN
SERVICE OFFICERS
L'ASSOCIATION
PROFESSIONNELLE DES AGENTS
DU SERVICE EXTERIEUR

By e-mail (carole.bidal@tbs-sct.gc.ca)

Ms. Carole Bidal
Associate Assistant Deputy Minister Employee Relations
and Total Compensation Treasury Board of Canada
219 Laurier Ave Ottawa, ON K1A 0R5

July 11, 2024

Dear Ms. Bidal:

We write again with respect to the Government's ongoing and systemic failure to provide PAFSO members – and federal public service employees at large – with a functioning health care plan for out-of-Canada claims.

PAFSO members rely on the Public Service Health Care Plan (the "Plan") for all their health care needs. Since the transition to MSH International ("MSH") on July 1, 2023, members have been left with a Plan that is, simply, not functional and which deprives them of adequate or reliable health care. This is untenable.

The Association has attempted to raise the urgent and ongoing nature of its concerns with the Government for several months, including by filing a policy grievance, without success. The Government must take immediate action to comply with its legal obligation to provide a functional health care plan. In the absence of such action, PAFSO will be required to seek an order of *mandamus* to compel the Government to fulfill its legal obligations in a timely manner.

Background

The Plan provides health coverage for 1.7 million federal public sector employees, CAF members and veterans, retirees, and dependents, including all employees in PAFSO's bargaining unit.

On August 31, 2020, the Government issued a Request for Proposal for a new Plan administrator. It received compliant bids from Sun Life, Greenshield, and Canada Life. In 2021, the Government announced that it would be switching the Plan administrator

from Sun Life to Canada Life, in what was promised to be a “seamless transition”. On July 1, 2023, the Plan transitioned to Canada Life. Canada Life subcontracted out-of-Canada claims processing to MSH International.

When contracting with Canada Life to administer the Plan, the Government agreed not to enforce Service Level Standards for six months, double the period initially included in its Request for Proposals. Further, it did not require Canada Life and its subcontractor MSH to meet all the standards set by Sun Life and its sub-contractor Allianz Global Assistance, including direct billing in the United States. Both these decisions left Plan members to bear the burden of the failures in the health care plan’s administration

Almost immediately following the change and on an ongoing basis since, Plan members have experienced a wide array of problems receiving all forms of health care. On July 10, 2023, for instance, CBC reported that “Frustration abounds as public service health plan gets switched to Canada Life”. The barriers faced by Plan members have included interruptions in benefits, lack of communication or status updates from MSH, long delays in reaching agents, the inability to reach agents, long delays in processing claims or receiving reimbursements, increased administrative burdens, and the arbitrary and erroneous denial of claims.

PAFSO’s members have been particularly harmed by the failure to provide a functional health care system. Because members rely on the Plan for Comprehensive coverage in order to access all forms of health care while serving abroad, problems with Plan administration pervade all aspects of their ability to access health care. Members are forced to choose between carrying thousands of dollars in medical debt, foregoing or delaying treatment, or placing themselves in debt to their employer instead. As noted in a letter from ambassadors to deputy ministers at Global Affairs Canada, MSH’s system “failed to function from the outset”, causing employees posted abroad to “carry significant financial burdens due to a failure to be financially remunerated as they are entitled to be.”

These long delays were exacerbated by MSH’s pausing of all claims processing for much of February 2024 when it announced that it had detected a “cybersecurity incident”. While claims processing ultimately resumed in late February, the underlying defects and subsisting problems remain unaddressed and continue to affect members daily. As of June 19, 2024, there were over 11,000 backlogged and unprocessed claims with MSH, of which almost a quarter were over 30 days old.

As a result, PAFSO members and their dependents have been left waiting for months for reimbursement, are incurring thousands of dollars of debt to access fundamental health care, and face constant errors and underpayments. The disarray in the health care plan is systemic, intolerable, and unsustainable. It has, and continues, to cause harm to PAFSO members and their families in their everyday lives and, particularly, when they are acutely vulnerable due to health care crises.

GAC’s solution to date has been to introduce emergency loans for health care costs. To be sure, this has been helpful to our members. However, emergency loans are only a

band aid fix, which fails to address the core issues with the Plan and leaves employees in an untenable situation. Particularly, it requires employees to disclose sensitive health information to their employer and simply shifts the indebtedness of employees from MSH to their employer, while the actual amount of reimbursement from MSH remains to be determined.

To date, no substantive action has been taken by the Government to address the ongoing harm that employees are facing or the systemic failing of the Plan, nor has the Government taken other available steps to minimize prejudice or offer interim solutions.

Compliance with Legal Duty

The Government must bring itself into compliance with its legal duty to provide a functional health care plan for employees.

The Government is plainly under a legal obligation to provide public service employees with a functional health care plan. The Plan is established under subsection 7.1(1) of the *Financial Administration Act*, which empowers Treasury Board to “establish or modify any group insurance or other benefit programs for employees of the federal public administration and any other persons”. The terms of the Plan are formalized by Treasury Board in the Public Service Health Care Plan Directive (the “Directive”).

There can equally be no dispute that the Government is not complying with its duty, as the Plan continues to fail Plan members on a day-to-day basis with respect to the most basic provision of health care. PAFSO has repeatedly prevailed upon GAC and the Government to take steps to bring themselves into compliance with the Government’s duty but to no effect. The Government has failed to take adequate and necessary steps to ensure a long-term solution to the ongoing issues and has not taken even those interim steps that would help to minimize the damage being done in the short term.

At this time, the following immediate action is necessary for the Government to work towards compliance with its legal duty. While PAFSO remains open to working collaboratively with the Government to ensure that members receive the health care they are entitled to, the following actions are the minimum steps that the Government must take at this time:

- 1) Provide all Plan members working out-of-Canada with alternate private insurance plans until the problems with the Plan are conclusively resolved, and for no less than one year;
- 2) Exercise all available options under the contract with Canada Life to monitor and enforce Service Level Standards, including ensuring that Canada Life is monitoring and enforcing contractual requirements with MSH;
- 3) Implement the recommendation of the Standing Committee on Government Operations and Estimates to “ensure employees who have suffered financial

loss as a result of Canada Life's unjustified delays or denials of claims are fully compensated for these losses”; and,

- 4) Provide a firm deadline by which the problems with the Plan will be fully resolved and a functioning health care plan restored.
- 5) Provide a written commitment to prioritize the health and safety of employees and their families in dealing with the health insurance issue going forward.

Failing a firm commitment and concrete action on these points, PAFSO will be required to initiate legal proceedings for a *mandamus* order to compel the Government to act on its legal duty in a timely manner.

Conclusion

PAFSO is prepared move forward collaboratively and to continue to meet towards that end. However, urgent and concrete action is required to avoid the need for a *mandamus* application. The Union therefore requires a commitment on the above-noted actions no later than August 12, 2024 and for action towards these items to commence by no later than September 3, 2024.

Sincerely,



Pamela Isfeld
President
Professional Association of Foreign Service Officers (PAFSO)

Copies to:

The Honourable Anita Anand, President of the Treasury Board of Canada
Vera Alexander, Assistant Deputy Minister of Human Resources, Global Affairs Canada
Morgan Rowe, Raven and Associates
Bertrand Myre, General Manager, PAFSO