

**In the Matter of an Adjudication Concerning
Market Supplemented Wage Rates
In the following classification:**

- **Physical Therapist**

Between:

Health Sciences Association of Saskatchewan

-and-

Saskatchewan Association of Health Organizations

Before: Beth Bilson, Adjudicator

**Appearances: For HSAS: Kate Robinson
Bill Craik
Natalie Horejda
Sheila Kerr**

**For SAHO: Dale Hallson
Ian Billett**

Date of Hearing: May 10, 2012

Decision of Adjudicator

The Health Sciences Association of Saskatchewan (HSAS) and the Saskatchewan Association of Health Organizations (SAHO) are parties to the collective agreement which governs the terms and conditions of employment of a number of classifications of employees in the health care sector. Appended to the collective agreement whose term began on April 1, 2009, are two Letters of Understanding outlining a process for considering and implementing market supplemented wage rates for these classifications. My authority and function as an adjudicator is set out in those Letters of Understanding.

The question addressed in this decision is whether a market supplement should be added to the wage rates in the Physical Therapist classification. A report of the Market Supplement Review Committee (MSRC) dated September 26, 2011, found that a market supplement was not warranted for this classification at that time. This finding was referred to adjudication pursuant to Letter of Understanding #13.

In considering whether a market supplement should be awarded, the Letters of Understanding require me to take into account five criteria: service delivery impacts, turnover rates, vacancy rate analysis, recruitment issue analysis and salary market conditions. The employer health regions were asked to provide information concerning these issues, and they were the subject of comment in the MSRC report.

In challenging the recommendation of the MSRC report, HSAS submitted, among other things, information derived from a survey undertaken of Physical Therapist members of HSAS. This survey was conducted in April, 2012 in preparation for the hearing before me. Mr. Hallson objected to the admission of this information on the grounds that it was obtained after the MSRC report had been issued, and cannot therefore be relevant to an appeal of the finding in that report. I agreed to receive the information on the basis that the proceedings under the Letters of Understanding are intended to permit the parties to put forward a wide range of arguments or information which can help shed light on the question of whether the assessment of the MSRC was sound in a particular case. I also noted that HSAS does not have access to all of the employer information put before the MSRC, and that I have been inclined to give them some latitude in providing information.

That said, I agree with Mr. Hallson that the results of this survey are of limited assistance in the context of this appeal. The market supplement program outlined in the Letters of Understanding was based on the premise that an enhancement of wage rates in a particular classification on occasion may assist in the recruitment and retention of highly qualified health care professionals.

Many of the constituents of the assessment that goes into deciding whether a market supplement is warranted or what the level of that market supplement should be are inherently moving targets. The salary levels of comparable professional employees in other provinces will change according to their own bargaining cycles, government policies with respect to public sector wages, and other factors; any gap between employees in other provinces and those represented by HSAS may be affected by the results at the bargaining table in Saskatchewan. The ease or difficulty of recruiting new employees into the classification may depend on things like the graduation dates of particular programs. As the parties both acknowledged at the hearing, some of the turnover identified in the information presented to the MSRC and to me stems from the movement of employees from one health region to another, and this movement may result from many different things.

When added to the list of non-salary factors that may affect the employment choices of employees – the relocation of a spouse, location of extended family members, campaigns by particular communities to lure newcomers or the harmonious environment in a particular facility – the picture is one which is always in a state of change.

According to my understanding of the market supplement program, the parties chose to deal with the fluidity of the circumstances affecting recruitment and retention by creating frequent – but fixed – opportunities to reappraise the need for market supplements. The parties are able to raise the issue of a market supplement for any given classification on an annual basis. At any stage of the process, the parties can, of course, negotiate with each other concerning the necessity or scale of a market supplement. The issue can be reviewed by an MSRC, and, in the event this does not lead to a result that is satisfactory, the union can refer to adjudication the issues of whether a market supplement should be awarded, and, if so, what the amount of it should be.

The role of the adjudicator in relation to the first of these issues is to assess the recommendation of the MSRC concerning whether a market supplement is warranted. In the case of the second issue, the amount of any market supplement, the adjudicator is charged with choosing between the proposals made by SAHO and HSAS.

In this process, the parties of necessity, I think, have created a process that depends on a snapshot of information representing a particular point in time. This does not mean, in my view, that the parties are barred from presenting information at the adjudication stage that can shed light on whether a trend that is real has been ignored by the MSRC, or that the picture is direr than the one they have accepted. In this respect, it is necessary to grant some latitude to the parties at the adjudication stage because there is no opportunity for challenging or testing the information given to the MSRC.

In this case, the MSRC Report was issued in September, and the survey of HSAS members was not conducted until April. It is therefore impossible to tell whether the information and sentiments shared by HSAS members in the survey speaks to a changed set of circumstances from those put before the MSRC. Though I can have some regard for the dynamic nature of the recruitment and retention issues, my review must try as much as possible to focus on the period when the MSRC was asked to make their decision, and to determine whether they came to a reasonable conclusion.

Though, as I say, the material resulting from the survey is of limited usefulness to me in the context of this case, it represents a laudable effort by HSAS to gather systematic information that could be useful to the market supplement process. There was some discussion at the hearing of how the gathering of this information might be better aligned with the timetable of the process, and I would encourage HSAS to pursue this.

With respect to the criteria set out in the Letters of Understanding, the MSRC first considered service delivery impacts. The discussion of this factor is somewhat cryptic. It appears that several health regions did report difficulties with maintaining adequate service levels, especially in the light of growing demand for services, but they apparently attribute this to insufficient budgetary resources rather than to recruitment difficulties.

Vacancy rates for full-time Physical Therapists had fallen somewhat over the period that of 2009 (9.4%) to 2011 (7.8%); there was no report in 2010, as the adjudication process arising from the 2009 report was ongoing. The rate had also fallen for part-time vacancies. As I have commented before, it is difficult

to assess the specific recruitment issues associated with part-time vacancies, as their short time-span may have an impact on their attractiveness. Turnover rates had gone down in 2010 and then up again in 2011.

With respect to recruitment analysis, a number of health regions reported specific recruitment activities they were conducting, and indicated again that the number of budgeted positions could not meet the demands for services.

In connection with the final factor, salary market conditions, the MSRC Report indicated the salary levels for Physical Therapists in the western provinces, noting that a new collective agreement had been concluded as of August 1, 2011, very shortly before the MSRC reported. As usual, Alberta is the outlier in terms of salary levels, and – not surprisingly – the comparator HSAS draws attention to as creating the biggest competitive challenge. Mr. Hallson indicated that the salary levels in the new collective agreement made the salaries for Physical Therapists the equivalent of the western Canadian average, at least at the time the agreement was concluded.

On the basis of all of the information before them, the MSRC concluded that no enhancement to the market supplement should be awarded.

It is clear from the terse references in the MSRC Report, and from the representations the parties have made to me on a number of occasions, that there are many factors at play that affect service levels, job satisfaction and managerial decisions in the health care system. Ms. Robinson spoke with feeling about hearing from Physical Therapists about heavy workloads, frustration with limits placed on the services offered, and disappointment at not being able to serve clients to an optimal level. She argued that the market supplement program was intended to alleviate these circumstances for HSAS members, that market supplement money would “get the job done,” as she put it.

Mr. Hallson, in contrast, pointed out that the Letters of Understanding make clear the scope and intention of the market supplement program. Letter of Understanding # 13 begins with this paragraph:

The SAHO Market Supplement Program is designed to address specific pay related skill shortages by use of a market supplement to attract and/or retain qualified Employees where workplace initiatives have been unsuccessful in addressing recruitment and retention challenges. A market supplement will be implemented only when it is necessary to enhance the ability of Employers to retain and/or recruit Employees with the required skills to deliver appropriate health services.

Many of the factors alluded to in the HSAS submissions – the number of budgeted positions for Physical Therapists, the assignment of duties to employees, the shortage of qualified Physical Therapists in the pool nationally and internationally, the demographic factors associated with retirements or maternity leaves, the decisions about how to configure the services provided, the location of positions in rural areas – Mr. Hallson argued to be irrelevant to market supplement decisions, if one takes seriously the description of the purpose of the program in the Letters of Understanding.

I agree with Mr. Hallson that the market supplement program cannot be the vehicle for resolving all of the concerns that Physical Therapists have about their numbers and activities in the health care system. Workload, budgetary or service delivery issues may make work as a Physical Therapist in Saskatchewan unappealing, and therefore give rise to recruitment or retention issues which might be ameliorated by offering market supplemented salaries as an inducement; in this sense, information about what factors

seem to lie behind recruitment and retention issues may be relevant. It plays a limited role, however. The primary exercise in the assessment of the need for a market supplement is to estimate whether an enhancement of wages might act as an inducement – not to all employees who may find their working conditions trying in some respects – but to those employees who have not yet taken up employment as Physical Therapists in Saskatchewan or who are at genuine risk of being lost to the system because of allurements elsewhere.

In this respect, as I have said in some earlier decisions, it is relevant to consider the potential impact of a sizeable economic increase that comes about through collective bargaining rather than through the market supplement program. Ms. Robinson argued that the parties did not intend the conclusion of a collective agreement to signal a “cooling off period” with respect to market supplements. I agree with this, in the sense that it is open to either party to raise the issue of market supplements and to refer the matter to the MSRC and subsequently to adjudication even if a collective agreement is being negotiated or has recently been concluded. There may certainly be instances where collective bargaining has failed to address wage anomalies for particular classifications or to arrive at general wage increases that will resolve recruitment and retention issues.

On the other hand, the essential question underlying a consideration of a market supplement is whether wages are currently high enough to be a sufficient enticement to a sufficient number of Physical Therapists to take up positions in the health regions and to stay in them, and if they are not high enough, whether there is some level of market supplement that might attract or retain more Physical Therapists. In this framework, surely a significant increase to the existing salary levels is a relevant consideration.

In this case, a new collective agreement between the parties was concluded on August 11, 2011, over two years after the previous agreement had expired. The MSRC made reference to this in their September, 2011, report, and seem to have considered the economic increase that resulted from collective bargaining as a factor that weighed in their recommendation that no additional market supplement should be awarded.

It is my conclusion that the MSRC recommendation that no additional market supplement is warranted was a reasonable one, and that there was a sound basis for them to conclude that the fairly significant economic increase given to employees after a lengthy period without a collective agreement might, at least in the short run, have some impact on recruitment and retention issues.

If, as HSAS would argue, circumstances have changed – vacancy rates are now higher, or salaries elsewhere have become even more attractive - or the economic increase put in place last August has not had any impact in resolving whatever recruitment and retention stressors there are in the system, it is open to the union or to the employers to ask for another review within a fairly short space of time.

On the basis I have outlined here, I have concluded that no additional market supplement is warranted at this time.

DATED at Saskatoon, Saskatchewan, the 6th day of June, 2012.

Beth Bilson

