

Social Services
Appeal Board

Annual Report
2012-2013





**MINISTER OF
FAMILY SERVICES AND LABOUR**

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2013

His Honour the Honourable Philip S. Lee, C.M., O.M.
Lieutenant Governor of Manitoba
Room 235, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Your Honour:

I have the pleasure of presenting herewith the Annual Report of the Social Services Appeal Board for the year 2012/2013.

Respectfully submitted,

Jennifer Howard



Social Services
Appeal Board

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September 2013

Honourable Jennifer Howard
Minister of Family Services and Labour
Room 357 Legislative Building
Winnipeg Manitoba R3C 0V8

Dear Minister Howard:

Attached please find the Annual Report of the Social Services Appeal Board for the fiscal year ending March 31, 2013. According to the *Social Services Appeal Board Act*, proclaimed in February 2002, the Social Services Appeal Board must provide the Minister with an independent Annual Report about its activities.

The Board is proud of its continued efforts to provide a fair and equitable appeal process for the citizens of Manitoba for a wide range of programs and services within its mandate. It also assumes its responsibility to inform, advise, and offer recommendations to the Minister related to matters of social services, programs, and policy issues that come about during appeal hearings.

This document reports the Board's continued work in these areas, and I respectfully submit it to your attention.

Yours truly,



Louise Plamondon
Chairperson



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BOARD MEMBERSHIP

The Social Services Appeal Board (SSAB) consists of 15 members who are appointed by the Lieutenant Governor in Council. Members must represent the social, economic, and cultural diversity of the province. They must also exhibit knowledge of the social programs and services that have the right of appeal to the Appeal Board. Members cannot be employees of a minister responsible for an act in which the right of appeal is granted. Each member is appointed for a term of two years and may be reappointed for two additional two-year terms.

Staff that support the activities of the Board are employed by the Department of Family Services and Labour.

Appeal Board Appointees during the 2012/2013 fiscal year:

Chairperson: Louise Plamondon

Vice-chair: Jany Keenan

Members: Frank Caldwell
Phillip Calver
Valerie Debooy
Eva Dupont
Ron Erickson
Edward Goralski
Jeannette Gougeon
Zanna Joyce
Mark Koenker
Sara Lazareck
Derek Legge
George Pelletier
Dennis Ruggles

Social Services Appeal Board Staff:

Heather Hamelin, Director
Judi Moxley, Assistant Director
Linda Bothorel, Administrative Assistant
Karen McKane, Administrative Secretary

Legal Counsel: Allison Fenske

BOARD BIOGRAPHIES – 2012/13

Louise Plamondon, Chairperson

Appointed April 17, 2009

Louise is a retired teacher/administrator who has worked both in rural and urban settings primarily in Manitoba. Her teaching career has provided her with the opportunity to focus on the young people with whom she worked, guiding them along the many facets of their educational path. Since her retirement, she has been involved in various cultural and community activities exercising her leadership skills while assuming various responsibilities.

Jany Keenan, Vice-Chairperson

***Appointed June 7, 2006
(Final term expired in February, 2013)***

Jany worked as a registered nurse for many years and is now retired. Graduated from the University of Manitoba with a law degree in 1993. Jany practiced law until 1996 and then joined the Department of Justice until retirement. Board member of C.E.D.A. (Community Education Development Association) since 1996. Active in advocating for children in schools and making presentations to the school board on their behalf.

Frank Caldwell:

Appointed August 15, 2012

Frank worked several years for the local mining company in Thompson, Manitoba before attending university (Bachelor of Social Work. 1980; Masters of Social Work 2000) and commencing a long career (recently retired) with the City of Winnipeg. Frank worked for many years as a social work supervisor before moving to various community-focused and administrative positions with emphasis on strengthening neighbourhoods and the provision of responsive public services. Frank was active on a variety of Boards, committees and inter-sectoral organizations including Main Street Project, Winnipeg School Division's Migrancy Steering Committee and Nutrition Education, West Broadway Project on Substance Abuse, St. Vital Crime Prevention Project, as well as a Board member of the City's management union.

Phillip Calver:

Appointed June 24, 2008

Presently retired, Phillip spent two years after his graduation with a BA as a welfare worker out of Portage la Prairie. He then returned to university to obtain his Honours Degree in Psychology. After graduating from the Manitoba Law School he practiced law from 1985 until his retirement in 2006. His main area of practice was family law. He is currently active as a member of the Manitoba and North Western Ontario United Church Conference Interview Committee.

Valerie Debooy

Appointed April 17, 2009

Graduated in 1974 as a Registered Nurse. Worked for 33 years as a neonatal nurse and coordinator of a specialized clinic in Child Development Clinic at Children's Hospital. Valerie is recently retired and volunteers at her local community centre.

Eva Dupont

Appointed August 15, 2012

Eva is a retired teacher/administrator who has supported and worked in the public education system for many years. As an educator, she has advocated for children, fostered safe and inclusive learning environments for all. She is committed to "giving back to community" in a variety of ways.

Ron Erickson

Appointed August 15, 2012

Ron Erickson has held many different jobs and positions during his career. He was elected as Vice-President of the Manitoba Metis Federation in Brandon in three different elections. He worked in the mental health field on two separate occasions both as a proctor and a psychiatric nursing assistant. He also was employed in the emergency preparedness program with the Manitoba and Ontario provincial governments as a community advisor. Since his retirement he owns a taxi which he operates part-time.

Edward Goralski

Appointed April 17, 2009

Edward was born and raised in Winnipeg, Manitoba. He was employed with the hospitality industry where he was actively involved in the Hotel and Restaurant Employees Union Local 206. In 1976 he was elected to the position of Secretary Treasurer where he spent 29 years serving members in the industry throughout Manitoba. Edward also served as a trustee for the Union Pension Plan and an Administrator for the Union Self-Administered Health Care Plan.

Jeannette Gougeon

Appointed February 9, 2011

Jeannette has retired following a 37½ year career as a caseworker in social services. Throughout her career she was active with her union and served in the capacity of delegate, secretary, negotiator, pension and benefit representative, vice-president and president of her component. Upon retirement she was given a Life Membership of the MGEU. She is a board member of the Canadian Paraplegic Association, a member of the Lion Club and an active volunteer in the community.

Zanna Joyce

Appointed August 15, 2012

Zanna is an educator in the field of Financial Literacy, operating from the point of view of the coaching style she uses in her additional work as Project Development Coach in her firm Duckwranglers.

This work has enabled her to gain direct experience in working with many communities, from corporate to inner-city, from the environment to the arts, which informs her decision-making with the Social Services Appeal Board.

She has her Bachelor of Arts in Justice and Law Enforcement with additional coursework in Public Administration, Family Studies and Communications.

Mark Koenker

Appointed April 18, 2007

An ordained pastor of the Evangelical Lutheran Church in Canada (ELCIC). Active on the boards of numerous non-profit and community-based organizations, most recently as founding member and vice-president of Heart Housing Inc. Mark is currently employed as pastor of Rural Beausejour Lutheran Parish, a three-congregation parish northeast of Beausejour and serves on the National Church Council of the ELCIC. He has also worked in government.

Sara Lazareck

Appointed June 24, 2008

Sara was born and raised in Winnipeg, Manitoba. She is currently employed as a Case Manager with the CODI Outreach Team of the Winnipeg Regional Health Authority, a community mental health program specializing in assisting, treating and advocating for individuals living with both severe and persistent mental illness as well as substance dependence. Sara graduated with her Bachelor of Science from the University of Winnipeg in 1999. She then attained her Bachelor of Medical Rehabilitation in Occupational Therapy from the University of Manitoba in 2004. Her previous experiences with marginalized populations include The Main Street Project, Mobile Crisis Service, Health Sciences Centre Addictions Unit and the Schizophrenia Treatment and Education Program. Sara has served a two-year term as the Awards and Nominations Chair for the Manitoba Society of Occupational Therapists as well as a four-year term on the School of Medical Rehabilitation's Endowment Fund Committee.

Derek Legge

Appointed August 15, 2012

Following his Bachelor of Commerce (Hons) degree from the University of Manitoba, Derek worked in the Human Resources field at Brandon General and Victoria General Hospitals. He then moved into employment equity with both the federal and provincial governments, spending his last 17 years with the Manitoba Human Rights Commission. His outside activities revolve around issues of disability and access.

George Pelletier

***Appointed May 3, 2006
(Final term expired in February 2013)***

Board member for Legal Aid Manitoba from 2002 until 2005. Past board member of Manitoba Métis Federation from 1997 to 2000. Past Chairperson of Westman Métis Association 1990 until 1997. Member of Knights of Columbus for the past 30 years. Recently joined United Commercial Travellers Association.

Dennis Ruggles

***Appointed June 7, 2006
(Final term expired in February 2013)***

Dennis has worked as a transit worker for several years where he was active in the Amalgamated Transit Union, serving as president, chief union steward, executive board member and appointed delegate. He has served as executive director for the Injured Workers Association of Manitoba. He was elected to the Seven Oaks School Division in October 2006 and served until October 2010. He is currently on the Board of Bright Futures School.

JURISDICTION OF THE SOCIAL SERVICES APPEAL BOARD

The Social Services Appeal Board is the independent appeal body for the majority of programs and services provided by the Department of Family Services and Labour. The Board reports directly to the Minister of Family Services and Labour.

The Board was first established in 1959 by *The Department of Welfare Act*. In 1974, that Act was repealed and the Board continued under the provisions within *The Social Services Administration Act*. On February 18, 2002, *The Social Services Appeal Board (SSAB) Act* was proclaimed.

Under *The Social Services Appeal Board Act*, the Board has the ability to determine its own administrative policies and procedures. A series of information bulletins has been developed and made available in order to provide this information to the public.

The Board's decision cannot be overturned by the minister's office. Only the Board, through a reconsideration of its decision, or the Court of Appeal, may overturn a decision.

There are several different issues that can be appealed. These are summarized below:

Adoption Agency Licensing

Under Section 9 of *The Adoption Act*, an individual may file an appeal with the Appeal Board if the director refuses to issue a licence for an adoption agency. An individual may also file an appeal if a licence that was previously issued has been suspended, cancelled or not renewed.

Child Care Facility Licensing

A person who is refused a licence for the operation of a child care facility other than a foster home or whose licence is suspended, cancelled or refused renewal may appeal this decision to the Appeal Board under Section 8(5) of *The Child and Family Services Act*.

Child Care Licensing and Subsidies

Section 20 of *The Community Child Care Standards Act* allows the Board to hear appeals on the following four issues:

- the refusal to issue a licence to a child care facility
- the suspension or revocation of a child care facility licence
- the imposition of terms or conditions on a child care facility licence
- the denial or amount of a child care subsidy

Financial Assistance Programs

Employment and Income Assistance Program

Subsection 9(3) of *The Employment and Income Assistance Act* gives an individual the right to appeal to the Appeal Board for the following reasons:

- a. he or she was not allowed to apply or re-apply for income assistance or general assistance
- b. his or her request for income assistance or general assistance or for an increase in income assistance or general assistance was not decided upon within a reasonable time
- c. his or her application for income assistance or general assistance was denied
- d. his or her income assistance or general assistance was cancelled, suspended, varied or withheld
- e. the amount of income assistance or general assistance granted is insufficient to meet his or her needs

55 PLUS Junior Component

The Junior Component of the 55 PLUS Program gives the right to appeal if an applicant is told that he or she is not eligible to receive benefits under the 55 PLUS Program. An appeal may also be filed if an individual disagrees with the level of benefits that he or she is receiving under the program. The right to appeal for these reasons is granted under Section 9 of the Income Supplement for Persons Not Eligible for Old Age Security Benefits (55 PLUS) Regulation of *The Social Services Administration Act*.

Manitoba Prenatal Benefit

If an individual disagrees with the assessment or re-assessment of his or her Manitoba Prenatal Benefit, the individual can appeal this decision under Section 12 of the Manitoba Prenatal Benefit regulation under *The Social Services Administration Act*.

Residential Care Facility Licensing

A person may appeal the Department's decision to deny, suspend or cancel a licence for a residential care facility. An individual may also file an appeal with the Appeal Board if a letter of approval relating to a residential care facility is cancelled or suspended. The right to appeal these decisions for adult facilities is granted under Section 13 of *The Social Services Administration Act* and under Section 8(5) of *The Child and Family Services Act* for residential care facilities for children.

marketAbilities Program (Eligibility)

The Appeal Board hears appeals regarding the marketAbilities Program. An appeal may be filed if the director refuses an application on the grounds that the applicant does not meet the eligibility criteria for enrolment. The right to appeal this decision is granted under Section 6 of the Vocational Rehabilitation of Disabled Persons regulation under *The Social Services Administration Act*.

Community Living disABILITY Services (Eligibility and Individual Care Plan)

The Appeal Board is also responsible for hearing appeals regarding *The Vulnerable Persons Living with a Mental Disability Act*. Section 16 of the Act allows individuals to appeal when a person's eligibility for entrance into the program is denied, or there is a dispute concerning the individual's support services plan.

FINANCIAL INFORMATION

In 2012/2013, the annual budget for the Social Services Appeal Board was \$516,000. This amount was apportioned into \$433,000 for staff and board salaries and benefits, and \$83,000 for operating costs. The actual expenditures were \$509,000, an under expenditure of \$7,000.

The board members' per diem payments are paid from salary expenses. In the 2012/13 fiscal year, the amount spent on board per diems was \$74,193.

09-1C Social Services Appeal Board

Expenditures by Sub-Appropriation	Actual 2012/13 \$000	FTE*	Estimate 2012/13 \$000	Variance Over/(Under)
Total Salaries and Employee Benefits	419	5.00	433	(14)
Total Other Expenditures	90		83	7
Total Expenditures	509		516	(7)

* Full time equivalents do not include board positions.

Board members are paid a per diem when they attend hearings, meetings, and training sessions. For a full day, the Chairperson receives \$243.00 and board members receive \$139.00. For a half day, the Chairperson receives \$138.00 and the board members receive \$79.00.

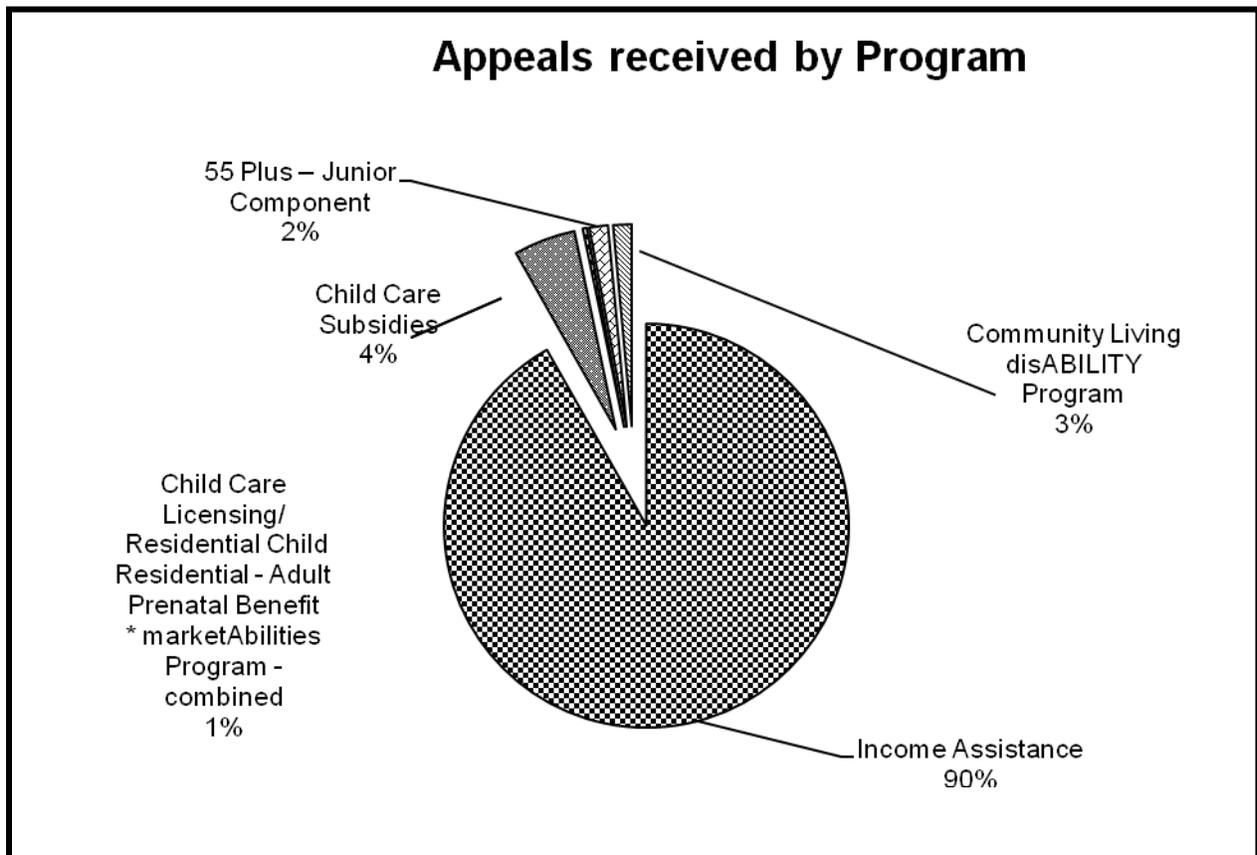
APPEAL ACTIVITY

In the 2012/13 fiscal year, there were a total of 615 appeals filed compared to 616 the previous fiscal year.

Appeals Filed by Program:

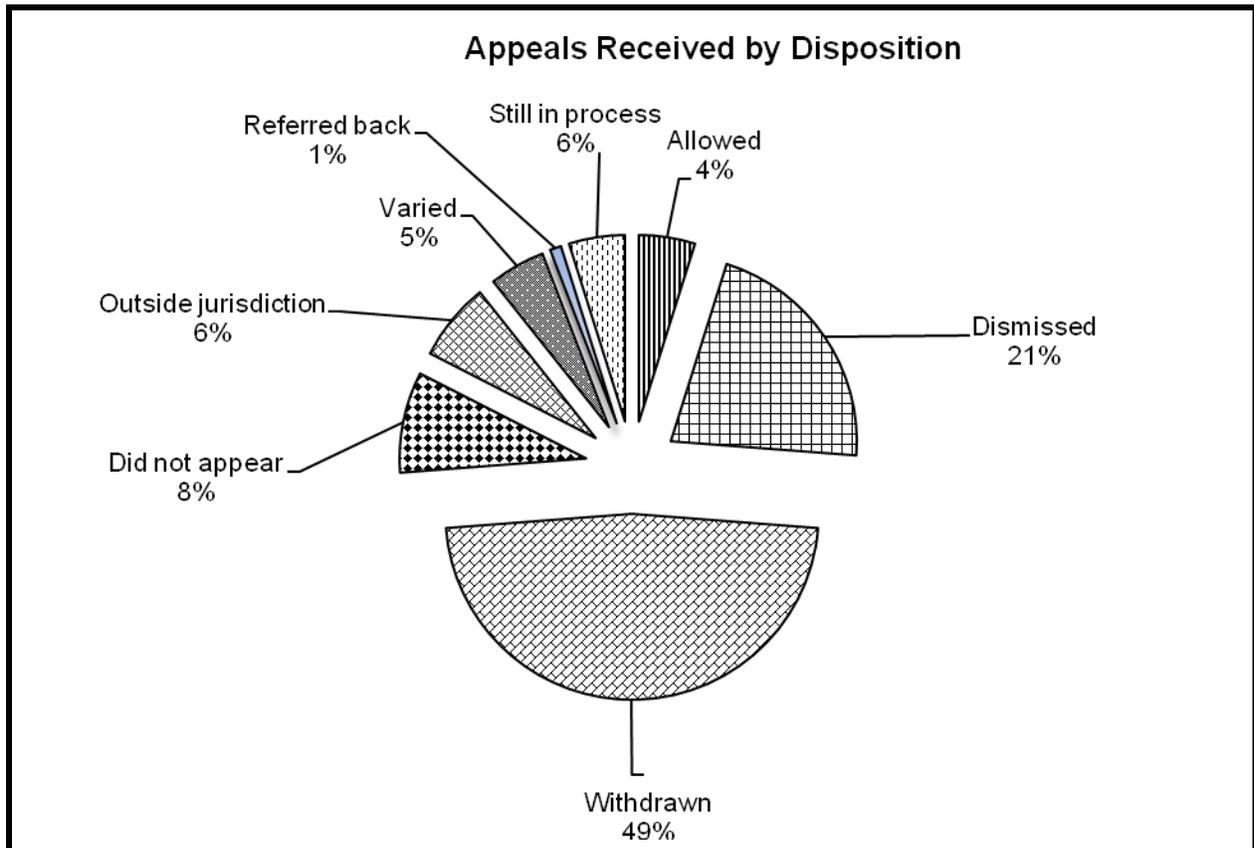
The 615 appeals are broken down by program area are as follows:

Employment and Income Assistance	554
Child Care Subsidy	25
55 Plus – Junior Component	13
Community Living disABILITY Program	16
marketAbilities Program	2
Residential Care – Child	1
Residential Care – Adult	1
Prenatal Benefit	3



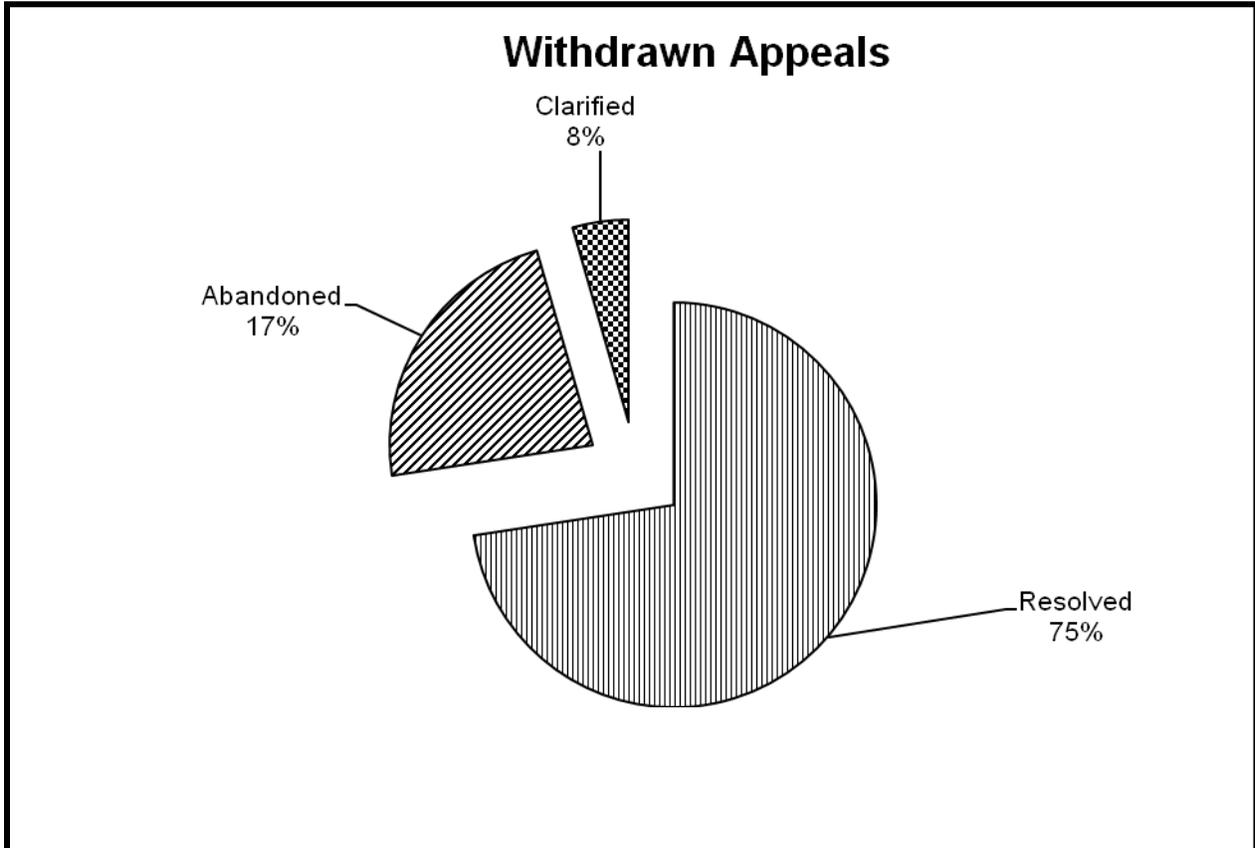
Appeals Filed by Disposition:

	<u>2012/13</u>	<u>%</u>	<u>2011/12</u>	<u>%</u>
Allowed	26	4	35	6
Dismissed	131	21	157	25
Withdrawn	298	49	272	44
Did not appear	52	8	44	7
Outside jurisdiction	35	6	41	7
Varied	32	5	28	5
Referred back	3	1	6	1
Still in process	38	6	33	5
TOTAL	615	100	616	100



Withdrawn Appeals:

Resolved ¹	223
Abandoned ²	52
Clarified ³	23



The 298 appeals that were withdrawn combined with the 26 that were allowed result in 324 appeals or 53% of total appeals whose outcome was in favour of the appellants.

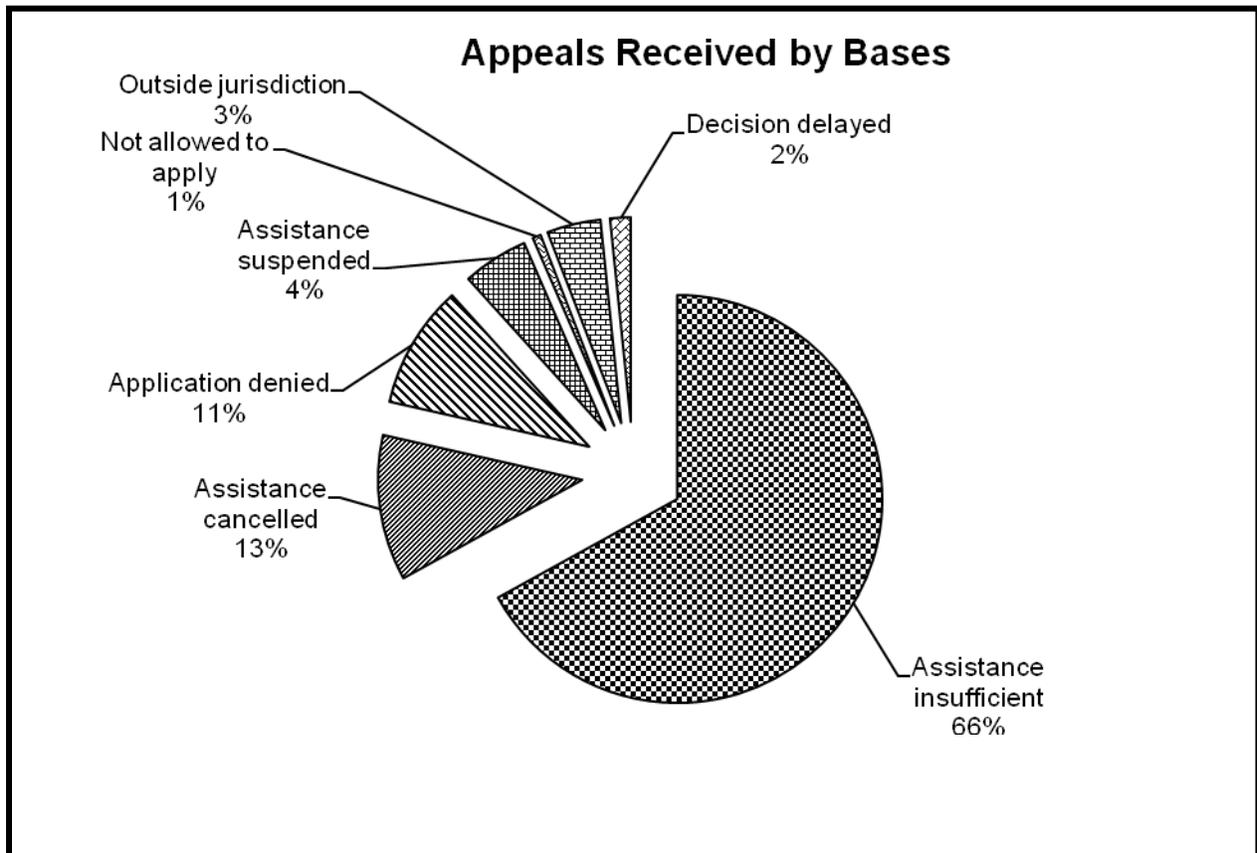
Notes:

- ¹ A **resolved** appeal means that some action was taken by the Department to address the concerns raised in the appeal.
- ² An **abandoned** appeal means that the Appeal Board has been unable to contact the appellant for a significant period of time and their appeal has been closed.
- ³ A **clarified** appeal means that an explanation by the Department caused the appeal to be withdrawn.

Bases of Appeal*:

Of the 615 appeals filed during the 2012/2013 fiscal year, the bases of appeal were as follows:

Assistance insufficient	404
Assistance cancelled	77
Application denied	66
Assistance suspended	25
Not allowed to apply	9
Outside jurisdiction	21
Decision delayed	12
Decision varied	1



Of the 615 appeals received, 270 or 43% went to the hearing phase.

*May include appeals filed in previous fiscal years.

Allowed Appeals:

For the 2012/13 fiscal year, there were 26 appeals allowed. All of the allowed appeals were for the Employment and Income Assistance program.

Reasons for Appeal*:

Of the 615 appeals received for 2012/13, the most common reasons for filing appeals were as follows:

Medical eligibility	145
Financial resources	48
Health needs	77
Overpayments	34
Shelter costs	41
Non cooperation	40
Special needs	32
Common-law union	22
Work expectations not met	9
Basic needs	39

These reasons apply to 487 appeals, or 79% of the total appeals filed.

* Reasons for appeal apply only to Employment and Income Assistance appeals.

Hearing Activity in 2012/2013*:

Month	Scheduled	Held
April	33	19
May	36	11
June	27	14
July	32	21
August	43	25
September	41	2
October	41	30
November	43	25
December	33	15
January	45	25
February	46	31
March	33	15
Total	453	233

Of the 615 appeals received, 233 or 38% went to the hearing phase.

*May include appeals filed in previous fiscal years.

REQUESTS FOR RECONSIDERATION

Number of Requests:

	<u>2012/13</u>	<u>2011/12</u>
Total requests received	15	11
From appellant	12	11
From respondent	3	0

Program Breakdown of Reconsideration Requests:

	<u>2012/13</u>	<u>2011/12</u>
Employment and Income Assistance	15	11

Disposition of Reconsideration Requests:

	<u>2012/13</u>	<u>2011/12</u>
Requests granted	1	1
Requests denied	14	10
Withdrawn	0	0

Of the Requests Granted:

	<u>2012/13</u>	<u>2011/12</u>
Decision upheld	1	0
Decision overturned	0	0
Decision varied	0	1

SUMMARY OF ADVISORY ACTIVITIES

Under *The Social Services Appeal Board Act*, the Appeal Board has the responsibility to advise and make recommendations about matters that relate to social services provided under the designated Acts. The Appeal Board met three times during the 2012/2013 fiscal year. The recommendations and issues raised by the Appeal Board this year were as follows:

Income assistance rates

The Board members have observed an increase in the number of appeals requesting an increase in the monthly budgeted amount.

Traditionally, “income assistance insufficient” has been proportionately the most frequent reason for appeal. The Board has observed specific increases in the number of people requesting funds for therapeutic diet allowances, food supplements, and over the counter products. The information coming from the appellants at the hearings is that they simply do not have enough money to be able to feed themselves. The Board believes that many of the requests for disability benefits, special diet allowances, and food supplements are the result of a number of factors. Some factors identified by the Board are:

- A large portion of the food budget is being used to pay excess rent;
- There is a lack of affordable grocery stores in the downtown area, and no transportation funds are available to help people shop at an affordable grocery store;
- The price of food is escalating;
- There is an increase in food allergies and chemical sensitivities;
- The basic needs budget is not indexed to reflect the actual cost of purchasing a basket of goods which meet the standards of Canada’s food guide;
- There is a lack of accessible information on how to budget the available food budget to assist persons to maximize the food budget that they do have.

The Board recommended that the Employment and Income Assistance Program review the current rates in relation to the actual costs of these items.

Community Living disABILITY Services

The Board experienced a steady increase in the number of appeals received each year. There were five appeals filed in both 2008/2009 and 2009/2010 fiscal years, six in 2010/2011, nine in 2011/2012, and 16 in the 2012/2013 fiscal year.

The criteria for eligibility under this program is quite specific and narrow and a number of factors must be met. Specifically, a person must be found to be significantly intellectually impaired, have a significant adaptive behaviour impairment, and these must have manifested themselves before the age of 18.

The Board has observed, at numerous hearings, situations where a person has severe deficits in the area of adaptive functioning, but either does not meet the impaired intellectual function criteria or it cannot be proven that these criteria were manifested prior to age 18. The Board believes that those adults who are not eligible for the services provided under the Community Living *disABILITY* Services Program have serious and significant needs that the Province of Manitoba is failing to meet. This either puts enormous strain on these individuals' families, or leaves the individual vulnerable and unable to cope. The Board believes that it is imperative that government provide services to individuals based on their current needs, regardless of their eligibility under the current legislation.

SELECTED OVERVIEWS AND CASE SUMMARIES

The following case summaries have been selected to illustrate some typical appeal situations, and to explain the rationale the Board uses when making decisions. It is hoped that these summaries provide some assistance to community members in understanding the function of the Board and what to expect when preparing for an appeal.

Sample #1

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Insufficient

Appeal Detail: Medical Eligibility

Decision: Rescinded (allowed)

The appellant appealed that her eligibility under Section 5(1)(a) was denied.

In September 2011, the appellant was granted medical eligibility for nine months in order to provide the Department with a copy of a neuropsych report. The medical assessment at that time stated that the appellant had a head injury in 2009 which had resulted in ataxia and decreasing cognitive abilities. She was also diagnosed with chronic lower back pain and hypertension.

In May 2011, the appellant submitted a new medical assessment report which reported her diagnosis as severe head injury in 2009, ataxia and frequent falls. There were also secondary diagnoses of a recent right ankle fracture, hypertension, and osteoarthritis in the lower spine. The doctor checked off that there was a permanent limitation of functions and that she was too uncoordinated to do any labour occupation. The medical panel found that the appellant was not eligible; however the appellant's eligibility was extended for an additional two months to allow her time to submit the neurological assessment that had been completed.

The neurological assessment stated that the appellant reported slower thinking, memory problems, and slowed speech. She had denied symptoms of depression but had reported difficulty falling asleep. She also reported having balance difficulties when walking and that she used a walker. The tester observed her gait to be slow and unsteady without a walker. The testing revealed her intellectual functioning to be in the average range. The testing of motor function exhibited impaired performance bilaterally. Testing showed normal functioning on tasks of working memory, but demonstrated impaired performance on a measure of speed of information processing. Her overall performance on conceptualization skills and abstract reasoning were unremarkable. Her verbal and visual memory were within normal limits. The self-reported questionnaire with the focus on depression and anxiety symptoms showed symptoms of mild depression, pessimism, loss of pleasure, feelings of guilt and punishment, and irritability. The psychologist concluded that the appellant demonstrated slowed speed of information processing and mental flexibility, and poor

visual planning and organization skills. Her overall intellectual functioning was considered in the average range. The psychologist also commented that the appellant's psychological functioning should be closely monitored to ensure her symptoms of depression did not escalate.

The medical panel reviewed the new medical information and recommended that as the appellant's full scale IQ was in the average range, she should be capable of sedentary employment.

The appellant's doctor also submitted a letter to the Department on June 28, 2012 which the appellant included with her appeal. The Department received this letter, but it had not yet been reviewed by medical panel. This letter provided some additional information regarding the appellant's history and diagnoses. The doctor requested a food supplement and health transportation. In addition the letter stated,

I would also like to state that this patient is unemployable from the assault or the head injury that she sustained a few years ago. I would ask that you be empathetic and continue with her social supplement, as she truly is one that should receive it.

At the hearing the appellant and her common-law spouse stated that the appellant struggled with her day-to-day tasks. She was able to do some cooking, but was unable to grasp or carry pots and dishes. She was unable to carry a plate from her cupboard to the kitchen table without dropping it. Her spouse assisted her with most of the household chores, whether by physically assisting her or verbally reminding her that something needed to be done. The appellant stated that her short-term memory was good, she could repeat things after she was told them, but her longer term memory was gone. She also stated that she was afraid to go out of the house by herself.

Section 5(1) of *The Employment and Income Assistance Act* states that in order to be eligible for disability benefits, you must be a person:

- (a) who, by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days
 - (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any; or

The Board determined that the appellant met the eligibility criteria under Section 5(2) of *The Employment and Income Assistance Act*. The Board determined that the combination of the appellant's physical limitations, the appellant's cognitive limitations, and the appellant's mental health, (depression and anxiety) taken together did not make the appellant capable of earning a living sufficient to meet her basic needs. The Board put a significant amount of weight on the doctor's comments in the medical assessment that the appellant would not ever be able to work. Therefore the Board rescinded the decision of the Director and ordered the Department to enroll the appellant under

Section 5(1)(a) of *The Employment and Income Assistance Act* for a period of twenty-four months.

Sample #2

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Insufficient

Appeal Detail: Medical Eligibility

Decision: Confirmed (dismissed)

The appellant appealed the Department's decision to deny his application for medical eligibility under Section 5(1)(a).

The Department explained that its decision was based on insufficient medical information provided to the Medical Panel that the Department determined did not meet the criteria for enrolment under the medical category in accordance with Section 5(1) of *The Employment and Income Assistance Act*.

5(1) *The director shall provide income assistance, in accordance with this Act and the regulations, to or in respect of a person who, in the opinion of the director is a person*

- (a) who, by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days
 - (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any; or

The medical information submitted in October 2011 stated that the appellant had back pain from Spondylolisthesis and was advised to discontinue heavy work. The doctor also stated that he was not able to work for 7 to 12 months and to work on hardening techniques and that he could return to work in 2012. The doctor stated that he may not be able to return to construction labour but could do construction trucking or handicap driver. The Medical Panel determined that there was insufficient objective data provided to determine that the appellant met the criteria as outlined above in Section 5(1)(a) and his application was denied. There was nothing in the medical information that confirmed that he was incapable of doing some type of employment based on his back or his pain. The appellant was advised in writing on November 28, 2011, that his health issues would not preclude all types of employment and that further medical information would be reviewed. The Department confirmed that the appellant was over the age of 55 years and therefore is not subject to the Department's work expectations.

The appellant and his advocate explained that he had worked all his life and now had a sore back. He could not stand for long periods of time. He had tried to work at his welding job and labour jobs, but he had pain and then had to take pain medication. The appellant advised the Board that he had not seen his doctor for about a year when he

was working at Capital Steel. He explained that he wanted to work and had thought of doing driving jobs, but that he would need to be re-trained for that type of employment.

The Board agreed with the Department's decision to deny the appellant's medical eligibility. The Board agreed that not enough information had been submitted about his medical condition to determine that he met the legislated criteria. The Board felt that there was insufficient medical information about the appellant's level of pain and how it would prevent him from being employed. The Board was not convinced by the appellant's verbal testimony that he was not able to work to earn an income to meet his basic needs. The Board was partially persuaded by the information that since the appellant was first denied medical eligibility, he had not seen his doctor for any treatment nor to get further information. The legislated criteria do not take into account a person's lack of education and training regardless of a person's age. The Board determined that the appellant's file had been appropriately administered in accordance with the legislation and confirmed the decision of the Director.

Sample #3

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance cancelled

Appeal Detail: Still in marital relationship

Decision: Confirmed (dismissed)

The appellant appealed that his income assistance was cancelled and an overpayment of \$13,243.76 was assessed as it was determined that the appellant was collecting assistance as a single person while he was actually still in a marital relationship.

The appellant applied for income assistance benefits on January 9, 2012. He applied at that time as a single person, and indicated to the Department that he was living with his father and that he had separated from his wife three months prior.

The assets declared at the point of intake were: joint title to the marital home, joint savings and bank accounts with his wife, and a vehicle. He stated that he could not remove his name from the accounts as the mortgage for the home was attached to the account. When asked if he transferred any property or assets in the last five years he replied "no".

The appellant was advised at the point of intake that he would have three months to separate his assets, particularly the marital home, from his wife's assets. He was advised that he must set up his own bank account to manage his finances.

The Department began to have concerns about the appellant's residency, assets, marital relationship, and overall eligibility and requested that the investigator look into the file.

Several issues came to light during this investigation:

- the appellant's driver's license continued to list the marital home as his address;
- vehicle registration continued to list his address as the marital home;
- the appellant had an undeclared asset, a 2001 Ford 150, which listed him as the registered owner and was registered at the address of the marital home;
- the appellant had an undeclared asset of a 2007 Yamaha Raptor ATV, for which he was listed as the registered owner at the address of the marital home;
- MPI paid the appellant a loss claim of \$4,829 in September 2012 and the appellant did not declare this income;
- the appellant used the address of the marital home in his correspondence with Canada Pension Plan;
- all the utility bills for the marital home remained in the appellant's name with the marital home listed as his address;
- the appellant continued to use the joint bank account to pay his expenses and to pay the expenses of the marital home.
- the appellant transferred the majority of the funds deposited by Income Assistance from his sole account into the family's joint bank account;
- the appellant consistently made phone calls to the Employment and Income Assistance office from the marital home, some of these calls were late in the evening.

At the hearing additional information was presented to support the Department's position.

- the appellant's worker had observed the appellant's vehicle parked in the garage at the marital home;
- the appellant was billed by the veterinarian at the marital home in May of 2012;
- all cheques written on the joint account were signed by the appellant, and none were signed by his wife, nor his son;
- a third undisclosed bank account was discovered which appeared to be the account to which the mortgage was actually connected;
- the appellant filed his 2011 income tax with the marital status of "married" and listed his address as the marital home;
- the appellant's doctor had his address listed as the marital home up to and including January 2013.

The Department stated at the hearing that based on this information it was satisfied that the appellant's address could be established as the marital home, and that he and his wife had financial interdependence.

The appellant and his advocate stated that the appellant had separated from his wife in October 2011, and that the appellant lived with his father at Star Lake. They stated that the appellant had not tried to conceal any information from the Department and had no understanding that anything he had been doing would make him ineligible for his income assistance benefits.

They argued that the appellant and his wife had not been living together and therefore did not meet the definition of “spouse” in the Act, as they were not members of the same household.

The appellant and his advocate stated that the appellant continued to use his wife’s address for all matters deemed important because there was no answering machine at his father’s home and due to his father’s age he was unable to take and pass on messages. The appellant also stated that it was a 15 minute drive from his father’s home to get the mail from the mailbox. He stated that his father was prone to open his mail and on at least one occasion he had not received mail that was sent to his address at Star Lake. He stated that his wife was amenable to his continued use of the address as she knew the importance of his appointments related to his medical condition.

He stated that he did visit the property to visit his son, work on his vehicle, and would occasionally stay overnight in the workshop/barn. The appellant and his advocate stated that the workshop was a separate structure from the house and had its own heat and plumbing. The appellant also stated that he slept there on occasion when he had early morning medical appointments in Winnipeg. He also stated that he used the photocopier or fax machine at his wife’s home on occasion.

He stated that he did not know that he could get his name removed from utility bills, and later found out that he could only get his name removed if there was a zero balance, or in the case of the cell phones, that the contract was paid out.

With regard to the joint bank account, the appellant stated that he did not have a bank card for his sole account, so it was more convenient to transfer the funds to the joint account and then pay his expenses from there. He also stated that he often owed money to his son or his father and would have to pay them back. For example, he paid for his son’s dentist bill because he owed him money. He stated that the money he received from Income Assistance was only used to pay for his basic necessities, and he managed his wife’s bills because she was unable to do so.

The advocate stated that once the appellant was aware of how the Department perceived his situation, he took immediate steps to take his name off the bank accounts, registrations, and to change his address. He stated that the home still remained in both their names as neither he nor his wife had the funds to pay the legal fees associated with transferring title. He also stated that there was more owed on the home than they would receive in a sale, and therefore they could not afford to sell the home.

The advocate argued that as the appellant was not actually living with his wife at the marital property, he could not be considered part of the household, and even if financial interdependence was present, they did not meet the definition of spouses because the main criteria of co-habiting could not be met.

The appellant and his advocate also testified that the reason some of the appellant’s assets were not declared at the time of intake was because they were not actually in his

possession. It remained the appellant's position that the truck did not belong to him.

The Board determined that the Department had correctly concluded that the appellant and his wife were still legally married and were financially interdependent on each other, while the appellant was collecting income assistance benefits to which he was not entitled.

The Board also determined that the policy parameters established to determine if two people who were co-habiting were in a common-law relationship did not apply to this case. This policy was established to determine whether or not two people who were not legally married to each other should be treated the same as two people who were legally married. As the appellant and his wife were in fact legally married, the Board determined that the provisions for establishing a common-law relationship are not relevant to their decision.

The definition of spouse in The Employment and Income Assistance regulation did have some relevancy. Spouse is defined as:

"spouse" means a member of an applicant's or recipient's household who is married to the applicant or recipient

The question for the Board was whether or not the appellant had financial eligibility which under Section 4(1) of The Employment and Income Assistance regulation is contingent on comparing the financial resources of an applicant or recipient's household with the basic necessities. As the appellant continued to have full access to the bank account established to maintain the marital household, it was the Board's determination that all funds deposited into that account by any of the three parties listed on the bank account were legally accessible to and legally belonging to all three of the parties listed on the bank account. Once deposited into the joint account, the appellant's money could no longer be identified as separate from the whole. This bank account was accessed by the appellant on a regular basis to both deposit and withdraw funds. The Board also determined that whether or not the appellant actually slept at the marital property on a consistent basis, he still considered it his home, and it was his responsibility to ensure that the household bills were paid. The appellant stated during the hearing that he still considered himself to be married, but that they were taking a break. Therefore, the Board found that for all intents and purposes, the appellant was conducting himself as a member of the household.

The Board also felt that the worker at Intake did advise the appellant in writing that he needed to sever his finances and assets from his wife's in order to be eligible for income assistance. The Board understood that the issue of the home ownership and the house mortgage were difficult to separate in the short term. However, it was clear to the Board that the appellant had legal access to financial resources in the joint bank account which would render him not financially eligible for the program. Therefore, the Board confirmed the decision of the Director to cancel the income assistance and to assess an overpayment of \$13,243.76.

Sample #4

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance cancelled

Appeal Detail: Undeclared common-law relationship

Decision: Rescinded (allowed)

The appellant appealed that her income assistance benefits were cancelled and an overpayment of \$11,499.08 was added to the file.

The appellant applied for income assistance as a single person with a disability in January 2011. The Department stated that over the next several months, the Department had suspicions that the appellant was in a common-law relationship, but had insufficient evidence. In July 2012, a case coordinator in another office sent an email to the appellant's case coordinator stating that the appellant had advised him that she was going to Osborne House because her boyfriend was violent. The file was referred to Investigations at this point.

The Department's evidence was as follows:

- There had been several allegations and suspicions since the appellant applied for income assistance;
- There were a number of police incidents which the police termed to be domestic disputes;
- A printout from Revenue Canada listed the appellant's marital status as common-law;
- The appellant's bank statement showed that she had debited \$40 at Domo Gas, and the appellant advised the Department that she sometimes paid for the alleged common-law's gas;
- A letter from the alleged common-law's mother confirmed that the appellant lived in her home and that she was good friends with her son.

The appellant and her advocate acknowledged that the appellant and the alleged common-law have lived at the same address, but maintained that they lived together as roommates, and have never been in a romantic relationship. They stated that the appellant was facing homelessness when she met the alleged common-law, and he arranged for the appellant to stay with his parents. They later moved into shared accommodations as they each could not afford a place on their own.

The appellant and her advocate stated that the appellant would prefer to live on her own, but with the shelter rates on income assistance, she could not find a safe and affordable place to live.

The advocate presented the Board with a copy of a letter which was sent by the appellant's probation officer to her case coordinator in October 2012. The probation officer wrote that the appellant suffered with significant mental health concerns; she was under the care of a psychiatrist and a mental health worker. The probation officer

stated that the appellant's relationship with the alleged common-law was considered to be unhealthy and the police had been called a number of times when arguments had gotten out of hand. The appellant had been referred to Osborne House, but she was denied shelter there as it was determined that she was not in an intimate partner relationship with the alleged common-law. The probation officer specifically identified the alleged common-law as her "friend/roommate". It was the opinion of the probation officer that the use of the term "domestic violence" did not mean that they were in an intimate partner relationship, but that in any situation where the police visited a residence where two people reside together and engage in any disputes together; these would be termed "domestic".

The appellant's advocate also indicated that the last time the appellant filed her income tax was in 2007 at which time she was in a common-law relationship with a different person. The records which the Department received indicated no record of taxes being filed in 2011, reflected the last known marital status of the appellant which had no bearing on her current status.

The appellant stated that she and the alleged common-law always shared the rent 50/50. Most of the time, she gave the cash to him, and he would pay the landlord. The appellant stated that she lived with the alleged common-law only because she had no alternative place to live. She stated that even though she knew that the relationship with the alleged common-law was an unhealthy one, she felt that it was a safer alternative to living in a rooming house or staying in a shelter.

The Employment and Income Assistance Act Section 5(5) states:

Where two persons who are not legally married to each other are living together under circumstances that indicate to the director that they are cohabiting in a conjugal relationship, they shall, for the purposes of this Act and the regulations, be treated in the same manner as two persons who are legally married, and any application by either or both of them for income assistance or general assistance shall be dealt with in every respect in that manner.

In addition, the Employment and Income Assistance Program has developed policies to assist its staff in determining whether or not a relationship should be considered a common-law relationship. The policy indicates that when two people are living together and it can be shown that they are also either financially interdependent or have familial interdependence, they will be considered to be in a common-law relationship.

The Board determined that the evidence did not support that the appellant was in a common-law relationship. The Board felt that the Department was aware that the appellant was living at the alleged common-law's parents' place, and approved the appellant's continued assistance when she moved in with the alleged common-law. The worker at that time was aware that police had been called to the appellant's

residence, but did not feel that the relationship was a common-law relationship, and did not request that an investigation look into the relationship further. The current investigation did not discover any new information or evidence during this period of time that was not known to the case coordinator who approved ongoing assistance to the appellant in a shared residency situation. The Board felt that the Department had not shown any financial interdependence between the appellant and the alleged common-law. The Board was not persuaded that suspicions based on how the appellant spent her money showed any financial interdependence. The alleged common-law's family did not consider the appellant to be their son's girlfriend. The only familial interdependence shown by the Department was based on the police characterizing their arguments as "domestic disputes". The appellant's probation officer, who presumably had knowledge of the appellant's interactions with the Winnipeg Police, had stated in a letter that the appellant and the alleged common-law were not in an intimate relationship and that the alleged common-law should not be considered a common-law partner. The Board put a great deal of weight on this letter from the probation officer.

The Board was not convinced that the appellant and the alleged common-law had been cohabitating in a conjugal or a 'like married' relationship. The Board determined that the only real evidence was the information that the police viewed the alleged common-law and the appellant as boyfriend and girlfriend. This impression was negated by the probation officer's letter and the letter from the alleged common-law's mother. Therefore, the Board rescinded the decision of the Director and ordered that the appellant's benefits be reinstated and the overpayment be removed from the file.

Sample #5

Program: Community Living disABILITY Services

Basis of Appeal: Eligibility Denied

Decision: Confirmed (dismissed)

The appellant filed an appeal that services under the Community Living disABILITY Services program were denied.

In order to be eligible for services under the Community Living disABILITY Services Program, an individual must be deemed to be a Vulnerable Person under *The Vulnerable Persons Living with a Mental Disability Act* (further referred to as "the Act"). Under the Act, a vulnerable person is defined as:

an adult living with a mental disability who is in need of assistance to meet his or her basic needs with regard to personal care or management of his or her property.

The Act also defines “mental disability” as:

Significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour and manifested prior to the age of 18 years, but excludes a mental disability due exclusively to a mental disorder as defined in Section 1 of The Mental Health Act.

The Department did not dispute the fact that the appellant did have impaired adaptive behaviours, rather it was the appellant’s intellectual functioning that did not meet the criteria as outlined in the legislation and policies. The psychological assessment indicated that her IQ score fell within the borderline range with a 95% confidence that the Full Scale score fell within the extremely low to borderline range with significant variability among the four index scores. Because of that variability, it was determined that all of the appellant’s strengths and weaknesses should be considered. After reviewing those strengths and weaknesses, the assessment concluded that the appellant did not have significantly impaired intellectual functioning. An *Assessment of Intellectual Functioning* form was signed by the assessor to confirm this information. On that basis, the Department denied the appellant’s application for Community Living disABILITY Services.

The appellant’s mother advised the Board that the appellant had autism and recently had been diagnosed with Bipolar Disorder. At times, her language could become extremely offensive and she would even try to remove her clothes in public when she got frustrated. She needed to be constantly supervised and the only time that the appellant could be left alone was when she rode the bus to and from school. She would be unaware of street safety and would be vulnerable to people who would easily take advantage of her. She was able to handle money and make change but she was not practically aware of where money comes from. The appellant’s mother also stated that the appellant’s worker from Children’s disABILITY Services disagreed with the assessment, but she was not able to attend the hearing.

In order to find a person eligible as a vulnerable person, the Board must be convinced that a qualified psychologist had made a clinical determination that the applicant’s intellectual functioning was in the ‘extremely low range’. It is not the IQ number, or the score ranges in and of themselves that will determine the Board’s decision in this matter. As the Board members are not experts in analyzing intelligence test results scores, they must rely on the interpretations of experts in that field. The clinician that conducted the appellants’ testing concluded that she did not present with significant impairments in intellectual functioning, and that she had no reservations regarding the reliability of these findings. Therefore, the Board found that the appellant did not meet the definition as a “vulnerable person” and must confirm the decision of the Director.

The Social Services Appeal Board Act

(Assented to July 6, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

DEFINITIONS AND PURPOSE

Definitions

1 In this Act,

"appeal board" means the Social Services Appeal Board referred to in section 3; (« Commission d'appel »)

"designated Act" means

- (a) *The Adoption Act*,
- (b) *The Community Child Care Standards Act*,
- (c) *The Employment and Income Assistance Act*,
- (d) *The Social Services Administration Act* or a regulation under that Act,
- (e) *The Vulnerable Persons Living with a Mental Disability Act*,
- (f) any other Act or regulation designated as a designated Act in the regulations; (« loi désignée »)

"designated officer" means a person who has authority under a designated Act to make a decision or order for which there is a right of appeal under the designated Act to the appeal board, or the person to whom that authority is delegated; (« fonctionnaire désigné »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"panel" means a panel of the appeal board. (« comité »)

S.M. 2004, c. 42, s. 50.

Purpose

2 The purpose of this Act is to give Manitobans a fair, impartial and informal appeal process from decisions relating to various social services and programs.

APPEAL BOARD

Social Services Appeal Board

3 The Social Services Advisory Committee, which was established under *The Social Services Administration Act*, is continued under this Act as the Social Services Appeal Board.

Members

4(1) The appeal board is to consist of 15 members appointed by the Lieutenant Governor in Council.

Who can be a member

4(2) The members of the appeal board must, in the opinion of the Lieutenant Governor in Council,

- (a) be representative of the regional, economic and cultural diversity of Manitoba;
- (b) be knowledgeable about social services and programs under designated Acts; and
- (c) not be employees under the control of a minister responsible for a designated Act.

Two-year terms

4(3) Each member is to be appointed for a term of two years, and may be reappointed for two further two-year terms.

Reappointing a member

4(4) A member who has served for three terms may be reappointed for a further term, but only if at least one year has passed since the end of his or her last term.

Member continues to hold office

4(5) A member continues to hold office until he or she is reappointed, a successor is appointed or the appointment is revoked.

Remuneration and expenses

5 The members of the appeal board are to be paid remuneration and expenses at rates set by the Lieutenant Governor in Council.

Chair and vice-chair

6(1) The Lieutenant Governor in Council must designate one of the members of the appeal board as chair and one or more members as vice-chairs.

Duties of vice-chair

6(2) A vice-chair has the authority of the chair if the chair is absent or unable to act, or when authorized by the chair.

Staff

7 Any employees required to enable the appeal board to carry out its responsibilities may be appointed in accordance with *The Civil Service Act*.

Responsibilities of the appeal board

8 The appeal board has these responsibilities:

- (a) to hear and decide appeals under designated Acts;
- (b) at the minister's request, to advise and make recommendations about matters that relate to social services and programs in Manitoba;
- (c) on its own initiative, to advise and make recommendations to the minister about social services provided under the designated Acts;
- (d) to perform any other duties assigned to it by an Act or regulation or by the minister.

Procedural rules

9 The appeal board may establish its own rules of practice and procedure and must make them available to the public.

Posting information about appeals

10 A designated officer must post information about the right to appeal to the appeal board, and about the appeal process, in a visible public location in any office in which decisions are made that can be appealed under a designated Act.

PANELS OF THE APPEAL BOARD

Board to sit in panels

11(1) The appeal board must sit in panels of three members when hearing appeals.

Assigning members to panels

11(2) The chair is to assign members to sit on panels.

Chair of panel

11(3) The chair or a vice-chair is to preside over a panel, or the chair may designate another member of the appeal board to preside.

Who is not eligible to be a member of a panel

11(4) A member of the appeal board is not eligible to sit on a panel if he or she

- (a) is a relative of a party; or
- (b) is not able to be impartial and independent about the outcome of the appeal.

Quorum

11(5) A quorum for a panel is the three members referred to in subsection (1).

Jurisdiction of panel

11(6) In considering and deciding an appeal,

- (a) a panel has all the jurisdiction of the appeal board and may exercise the board's powers and perform its duties; and
- (b) a decision of a majority of the members of a panel is the decision of the appeal board.

APPEAL TO THE APPEAL BOARD

Filing an appeal

12(1) A person who has a right to appeal a decision or order to the appeal board under a designated Act may commence an appeal by filing a notice of appeal with the board.

Time limit for filing

12(2) A notice of appeal must be filed within 30 days after the date of the decision or order, unless the designated Act specifies a different time limit. **Extending the time limit**

12(3) The appeal board may extend the time limit for commencing an appeal, and may do so either before or after the time limit expires.

Reasons

12(4) A notice of appeal must be in writing and must state the reasons for the appeal.

Parties

13(1) The parties to an appeal are the person who has a right to appeal to the appeal board and the designated officer under the designated Act.

Parties to be present

13(2) The appellant and the designated officer or a delegate of the designated officer must be present at the hearing or, if subsection 19(2) applies, must be able to communicate with each other and the appeal board simultaneously.

Advocates

14 At the appellant's request, another person may communicate with the appeal board at any time on the appellant's behalf and may be present with the appellant at the hearing.

Notice to the designated officer

15(1) On receiving a notice of appeal, the appeal board must promptly give a copy of it to the designated officer.

Designated office must forward documents

15(2) On receiving the notice of appeal, the designated officer must promptly give the appeal board

- (a) all of the documentary evidence on which the designated officer made the decision or order being appealed;
- (b) any documents that the designated officer is specifically required to provide to the board under the designated Act; and
- (c) any other documents the designated officer thinks might be relevant to the appeal.

Hearing date

16(1) For each appeal, the appeal board must arrange the earliest possible hearing date. The hearing must not be commenced more than 30 days after the board receives the notice of appeal, unless the board at the request of the appellant, grants an extension.

Notice

16(2) Unless the parties agree to a shorter period of notice, at least six days before the hearing the appeal board must give the parties written notice of the date, time and place of the hearing.

Parties may examine evidence

17 The appeal board must give each party a reasonable opportunity to examine and copy any information that has been submitted to the board for the purpose of the hearing.

Powers and duties of the board

18 The appeal board must inform itself fully of the facts concerning each appeal. For that purpose, the board

- (a) may require the attendance of witnesses and the production of documents in addition to the witnesses called by the parties and the documents produced by the parties; and
- (b) has the powers of a commissioner under Part V of *The Manitoba Evidence Act*.

Hearing process: rules of evidence do not apply

19(1) The appeal board is not bound by the rules of evidence that apply to judicial proceedings.

Hearing by teleconference

19(2) A hearing may be held by means of a conference telephone call, or by another method of communication that permits the appeal board and the parties to communicate with each other simultaneously.

Closed hearing if appellant requests

19(3) The hearing is to be closed to the public if the appellant asks for it to be closed; otherwise it is to be open to the public.

Adjournment

19(4) The appeal board may adjourn a hearing when it considers it appropriate to do so.

ORDER OF THE APPEAL BOARD

Order of the board

- 20(1) Unless the designated Act states otherwise, after a hearing the appeal board may, by written order,
- (a) confirm, vary or rescind the order or decision of the designated officer;
 - (b) make any order or decision that the designated officer could have made; or
 - (c) refer the matter back to the designated officer for further consideration by the designated officer in accordance with any direction of the appeal board.

Reasons

- 20(2) The appeal board must give written reasons for its order.

Time limit for making order

- 20(3) The appeal board must make its order within 15 days after the hearing ends.

Order given to the parties

- 20(4) The appeal board must give the parties a copy of the order and inform them of their right to appeal a question of law or jurisdiction to The Court of Appeal.

Method of giving the order

- 20(5) The order must be given to the parties personally or by regular lettermail or by another method acceptable to the appeal board and the parties.

Order must be given effect

- 21 A designated officer must give effect to the order of the appeal board.

Reconsideration of the order

- 22(1) At the request of a party to the appeal or on its own initiative, the appeal board may reconsider all or part of its order and may confirm, vary, suspend or rescind its order.

Time limit for making request

- 22(2) A written request for a reconsideration, stating the reasons for the request, must be filed with the appeal board within 30 days after the date of the board's order.

Time limit for deciding request

- 22(3) The appeal board must, by order, make a decision as to whether an order will be reconsidered, within 15 days after the date the request for a reconsideration is filed.

Reasons

- 22(4) The board must give written reasons if it decides not to reconsider an order.

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

- 23(1) Any party to the appeal before the appeal board may appeal the board's order to The Court of Appeal on any question involving the board's jurisdiction or on a point of law, but only after obtaining leave to appeal from a judge of The Court of Appeal.

Time limit

- 23(2) An application for leave to appeal must be made within 30 days after the date of the appeal board's order, or within any further time that a judge allows.

Parties

23(3) The parties to the appeal before the appeal board, and the appeal board, are entitled to be heard on the application for leave to appeal and on the appeal itself.

Order of Court of Appeal

24 The Court of Appeal may

- (a) quash, vary or confirm the order of the appeal board; or
- (b) refer the matter back to the appeal board for further consideration in accordance with any direction of the Court.

REGULATIONS

Regulations

25 The Lieutenant Governor in Council may make regulations

- (a) designating Acts or regulations for the purpose of the definition "designated Act" in section 1;
- (b) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Act.

ANNUAL REPORT

Annual report

26 Within six months after the end of the government's fiscal year, the appeal board must provide the minister with a report about the board's activities during that fiscal year. The minister shall lay a copy of the report before the Legislative Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

PROTECTION FROM LEGAL ACTION

Protection from legal action

27 No action or proceeding for damages may be brought against the appeal board or any member of the board because of anything done or omitted in good faith

- (a) in the performance or intended performance of a duty under this Act; or
- (b) in the exercise or intended exercise of a power under this Act.

TRANSITIONAL

Transitional: definitions

28(1) *In this section,*

"former Act" means *The Social Services Administration Act, R.S.M. 1987, c. S165; (« ancienne loi »)*

"former designated Act" means *a designated Act as it read immediately before the coming into force of this Act. (« ancienne loi désignée »)*

Appeals already commenced

28(2) *Where on the day this Act comes into force an appeal under a former designated Act to the Social Services Advisory Committee under the former Act has been commenced but not finally disposed of, the appeal shall be continued and completed in accordance with that former designated Act as if this Act had not come into force.*

CONSEQUENTIAL AMENDMENTS

29 to 32

NOTE: These sections contained consequential amendments to other Acts that are now included in those Acts.

33

NOTE: This section contained consequential amendments to *The Social Services Administration Amendment Act*, S.M. 2000, c. 31, and is not yet proclaimed.

34

NOTE: This section contained consequential amendments to *The Vulnerable Persons Living with a Mental Disability Act* that are now included in that Act.

C.C.S.M. REFERENCE AND COMING INTO FORCE

C.C.S.M. reference

35 This Act may be cited as *The Social Services Appeal Board Act* and referred to as chapter S167 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

36(1) This Act, except section 33, comes into force on a day fixed by proclamation.

Coming into force: section 33

36(2) Section 33 comes into force on the day *The Social Services Administration Amendment Act*, S.M. 2000, c. 31, comes into force.

NOTE: S.M. 2001, c. 9, except section 33, was proclaimed in force February 18, 2002.