



Memorandum

Date: February 19, 2002

To: Directors
Employment and Income
Assistance

From: Pam Goulet and John Petersen
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Assistance
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Telephone:

Subject: **Appeals under the *Social Services Appeal Board Act***

You were previously sent a copy of the new *Social Services Appeal Board and Consequential Amendments Act* and asked to familiarize yourself with the legislation.

The Appeal Board Act was proclaimed on February 18, 2001. All appeals from that date must conform with the requirements of the new legislation. For appeals that were filed and not disposed of before the new legislation was proclaimed, Subsection 28(2) of *The Appeal Board Act* states that those appeals "...shall be continued and completed..." under the former rules and procedures.

The Appeal Board has outlined their new procedure in a set of Bulletins, which we have attached for your reference. Please bring your copies to the orientation session you will be having with Heather Hamelin.

The important changes from the current legislation are as follows:

- Subsection 12(2) changes the time a participant has to file an appeal from 15 to 30 days;
- Subsection 12(3) provides the Appeal Board with the authority to extend the time limit for filing an appeal;
- Subsection 13(2) requires that the appellant must be present at the hearing;
- Subsection 16(1) changes the time limit within which the Appeal Board has to set a hearing date from 15 to 30 days;
- Subsection 16(2) the Appeal Board must provide at least six (6) calendar days notice as to the date, time and place of the hearing. Previous legislation required 3 clear days notice.
- Subsection 18(1) provides the Appeal Board with the authority to call and summons witnesses;
- Subsection 19(3) provides that all hearings are open to the public unless the appellant asks for a closed hearing;
- Subsection 20(3) requires the Appeal Board to make an order within 15 days of the hearing date;
- Subsection 22(1) of *the Act* allows for parties to an appeal to request a reconsideration hearing;

POLICY ISSUES:

1. Calling of Witnesses:

Bulletin # 4 advises that the Department, the appellant, or the Appeal Board may call witnesses. Generally, it is not the intention of the program to call witnesses. However, should a District Office Director be of the opinion that the testimony of a witness is essential to the case, the Director will be required to provide the Director of Field Services with the reason the witness is essential to the case. The Director of Field Services will make a final determination as to whether or not a witness will be called.

2. Extending the time limit for filing an appeal:

The Act provides the appellant with the right to seek an extension of the time for filing an appeal. The Appeal Board, by policy, suggests that the Department will be given the opportunity to argue against an extension. Generally, requests for an extension should not be disputed, unless it is expected that the Department will issue or continue to issue interim assistance pending the extended hearing date.

3. Adjournments:

Adjournments are requested after a hearing has begun. While Bulletin # 8 indicates that the Department may seek an adjournment, adjournments should not be requested. Decisions respecting eligibility and sufficiency of benefits should be made in accordance with regulation and should only be made after all the facts of the case are known or after the participant has been provided with reasonable time to provide the required documentation/information. If the case is sufficiently prepared, there should be no need to seek an adjournment.

4. Reconsideration hearings:

Policy is currently being developed and will be available in the next few days.

5. Providing reports:

As in the previous legislation, the Act does not stipulate how many days before a hearing the report must be submitted to the Appeal Board. The Appeal Board, by policy, has directed that the report must be submitted 3 calendar days prior to the hearing.

6. Please ensure all of your shelf stock letters are amended to reflect the new legislation.

7. All SAMIN letters that contain the appeal clause have been changed to reflect the new name of the legislation (*Social Services Appeal Board Act*) and to reflect the new name of the Social Services Advisory Committee (Social Services Appeal Board). The letters have removed the wording regarding the right to appeal (appeal clause) from the body of the letter and simply refer the reader to information about the appeal process contained on the reverse page of the letter.

8. For clarification and to ensure uniformity of use, the following definitions are provided:

Extension: Before or after the 30 days allowed in legislation for the filing of an appeal have lapsed, the Appeal Board may grant the appellant more time to file the appeal.

Postponement: Occurs when the date for a hearing, once set, is rescheduled prior to the start of the hearing.

Adjournment: Occurs when a hearing is in progress and the Appeal Board decides to temporarily break off the hearing and reconvene at a later date.

9. You will be provided with new posters that advise participants of their right to appeal, which are to be displayed in such a manner that they are clearly visible to the public.
10. You will be provided with updated versions of the Appeal Forms. Upon receipt please ensure your supply of old forms are destroyed (recycled).