

Reasons for Decision:

The appellant appealed that the appellant was not provided the Board and Room rate for persons requiring special care from the time the appellant first applied for income assistance in <date removed>.

The appellant enrolled as a person with a disability on income assistance in <date removed>. From that time until the present the appellant has lived in the appellant's parents' home. At the time of enrolment the appellant was provided with the monthly Board and Room rate for a person who is living in a relative's home of \$252.00. On the appellant's application form the appellant indicates that the appellant pays board and room and the amount the appellant pays is indicated as <amount removed>. At the hearing the Board requested a copy of the actual rental agreement completed by the appellant's parents to determine the amount that they were charging their child for Board and Room. The actual full rent amount space on this form has been left blank.

When the appellant was recently hospitalized, the social worker at the hospital advised the family that they could receive a special Board and Room rate due to the amount of physical care they must provide for their child. A formal request for the special care rate was received by the Employment and Income Assistance Program on <date removed>. Once this letter of confirmation was received, the special care rate was added effective <date removed>.

The appellant and legal counsel indicated at the hearing that the appellant's needs and the type of care the appellant requires have remained the same since the appellant first enrolled in <date removed>. It is their point of view that the appellant was eligible and should have been receiving the special care rate for Board and Room since the appellant's enrollment in <date removed>. The appellant's mother has had to stay in the home to care for her child. It was also explained at the hearing that in <reference removed> years of enrolment on income assistance, the appellant has not once met face-to-face with a worker or had any phone calls to assess what the appellant's needs were. The appellant stated that the appellant has occasionally left messages to inquire if it was possible to get bus tickets, but these phone calls have never been returned.

Schedule B of The Manitoba Assistance Regulation outlines the amounts payable for shelter costs, including Board and Room rates.

Section 3 states:

*Shelter assistance for persons paying room and board who do not require special care
Recipients of income assistance or general assistance whose rent covers food and
shelter but who do not require special care are entitled to the following on account of
shelter costs:*

- (a) single person in the home of a relative — actual cost up to \$252 each month*

Section 4 states:

*Shelter assistance for persons paying room and board who require special care
Recipients of income assistance or general assistance whose rent covers food and
shelter and who require special care are entitled to the following on account of shelter
costs:*

(a) for a single person — actual cost up to \$583 each month

Neither the Regulation nor the Employment and Income Assistance Administration Manual provide any guidelines or criteria to determine who would qualify for the special care rate.

It is the position of the Employment and Income Assistance Program that they provided the special care rate from the date that they received documentation supporting the request for the increased rate, and that they would not backdate the benefit because it had not been asked for or identified as a need in the past.

It is the position of the appellant that the appellant could not request the additional funds because the appellant did not know that it was available and believed that the appellant was receiving the maximum allowable. The appellant and legal counsel argued that if the appellant had been overpaid it would not matter that the overpayment dated years back, and the appellant would be required to repay these benefits; and this same consideration should apply when the appellant had eligibility for benefits dating years back and for which the appellant was not paid.

The appellant and legal counsel provided some case law to the Board in which a British Columbia court addressed the issue of retroactive disability benefits.

After carefully considering the written and verbal information the Board has determined that the Department has not done their due diligence over a prolonged period of time, in ensuring that the appellant's needs were being met by the appellant's income assistance budget. However, it is difficult for the Board to determine the "actual cost" that the appellant was being charged by the appellant's parents for Board and Room. The regulation provides the maximum amount that the program will pay for shelter costs in a variety of circumstances, but each provision of the Regulation stipulates that the "actual cost" up to the legislated maximums will be paid. A person who is charged less than the legislated maximum would receive the actual amount they are required to pay, not the maximum amount allowed by Regulation. It is fairly clear to the Board that the appellant's parents did not set a Board and Room rate prior to the appellant's application for assistance as the amount of <amount removed> would be an unusual amount to be set for Board and Room outside the scope of the EIA guidelines. If the appellant's parents had completed the Rental Form indicating that the amount they charged their child was greater than the amount that the Department was paying, then a strong case could be made that the Department should have provided more than the basic amount of <amount removed> a month.

However the Board was also persuaded by the fact that a worker with the program has never met with the appellant to explore with the appellant what the appellant's circumstances are, what the appellant's needs are, and what opportunities there could be for the appellant. If a worker had met with the appellant, the appellant could have been assessed for the special care Board and Room rate much earlier than <date removed>.

Therefore the Board has determined that it is fair and equitable to provide a reasonable retroactive payment to compensate the appellant's parents for the daily care they have provided for their child. The Manitoba Assistance Regulation does not provide any guidance regarding paying retroactive benefits due to an error or oversight in the Department's assessment of needs, therefore the Board has followed the guideline of similar programs such as British Columbia's income assistance retroactive guidelines, and the federal CPP Disability benefits legislation, and determined that twelve months is a reasonable period for back payment. Therefore the decision of the Director has been varied and the Board orders that the special care rate of \$583 per month be applied effective <date removed> and a deficit payment for the difference from the amount actually paid be paid to the appellant's care providers.