

Social Services
Appeal Board

**Annual Report
2005 - 2006**

September 2006

His Honour John Harvard
Lieutenant-Governor
Province of Manitoba

May It Please Your Honour:

I have the pleasure of presenting herewith the Annual Report of the Social Services Appeal Board for the year 2005/2006.

Respectfully submitted,

Christine Melnick
Minister, Family Services and Housing



September 2006

Honourable Christine Melnick
Minister of Family Services and Housing
357 Legislative Building

Dear Madam:

Attached is the Annual Report of the SSAB for the fiscal year ending March 31st, 2006. This is the fourth independently produced Annual Report since *The Social Services Appeal Board Act* was proclaimed in February 2002.

The Board has continued its efforts to ensure a fair, impartial and equitable appeal process for the citizens of Manitoba. We are proud to have the opportunity to carry out our mandate and to provide advice on program and policy issues that arise through appeal hearings.

As the newly appointed Chairperson, I am pleased to have the opportunity to serve in this capacity. I would like to note the extensive contributions of David Schellenberg, who served as Chair of the SSAB for the past six years. His leadership and expertise have been a real asset.

This report includes case examples to provide a better picture of the different types of matters that have been considered by the Board. These also help to exemplify the breadth of our decisions. We anticipate that by distributing this report to the community, more citizens of Manitoba will have an opportunity to appreciate the appeal process.

This document reports on the Board's activities for 2005-2006, and I respectfully submit it to your attention.

Kristine Barr
Chairperson



TABLE OF CONTENTS

Board Membership	Page 2
Jurisdiction	Page 3
Financial	Page 6
Appeal Activity	Page 7
Requests for Reconsideration	Page 12
Advisory Capacity	Page 13
Selected Overviews and Case Summaries	
• Employment and Income Assistance	Page 18
• Child Care	Page 25
Social Services Appeal Board Act	Page 27

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 Housing.

Appeal Board Appointees during the 2005/06 fiscal year:

Chairperson: David Schellenberg

Vice-chairs: Rose Buss
Pat Chimney

Members: Kristine Barr
Robert Doherty
George Dyck
Patrick Fortier (resigned March 2005)
Kelley Gibbings
Paula Keirstead
Leslie King (resigned June 2005)
Kana Mahadavan (resigned August 2005)
Larry Morrissette
Linda Shewchook
Robert Smith
Cindy Stroppa

Social Services Appeal Board Staff:

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

Legal Counsel: Lawrie Cherniack

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 Housing (FSH). The Board reports directly to the Minister of FSH.

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 have 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 revoked.

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 day care facility;
- the suspension or revocation of a child day care facility licence;
- the imposition of terms or conditions on a child day care facility licence;
or
- the denial or alteration of a child day care subsidy.

Financial Assistance Programs

Employment and Income Assistance Program

Subsection 9(3) of *The Employment and Income Assistance (EIA) 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; or
- 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 their 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 is granted under Section 13 of *The Social Services Administration Act*.

Vocational Rehabilitation Services Program (Eligibility)

The Appeal Board hears appeals regarding the Vocational Rehabilitation Services 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*.

Vulnerable Persons Living with a Mental Disability Program (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 2005/06, the annual budget for the Social Services Appeal Board was \$365,200. This amount was apportioned into \$276,900 for staff and Board salaries and benefits, and \$88,300 for operating costs. The actual expenditures were \$403,600 for an over expenditure of \$38,400.

The Board members' per diem payments are paid from salary expenses. In the 2005/06 fiscal year, the amount spent on Board per diems was \$81,072.

Actual Expenditures* 09-1C Social Services Appeal Board

Expenditures by Sub-appropriation	Actual 2005/06 \$000	FTE**	Estimate 2005/06 \$000	Variance Over(Under)***
Total Salaries and Employee Benefits	305.0	4	276.9	28.1
Total Other Expenditures	98.6		88.3	10.3

* Amounts are expressed as thousands of dollars.

** FTEs do not include Board positions.

*** Board members received an increase in per diems this past year, which accounted for the overage in salaries.

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.

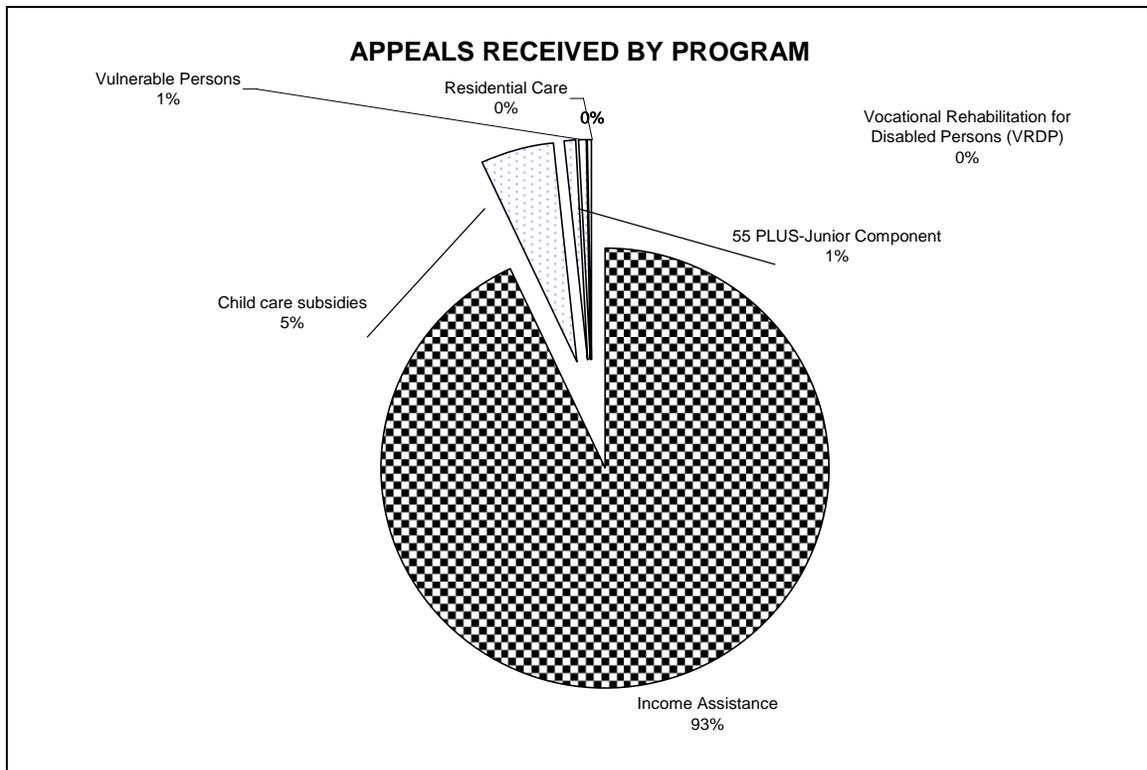
Appeal Activity

In the **2005/2006** fiscal year, there were a total of 747 appeals filed compared to 769 the previous fiscal year.

Appeals filed by Program:

The 747 appeals broken down by program area are as follows:

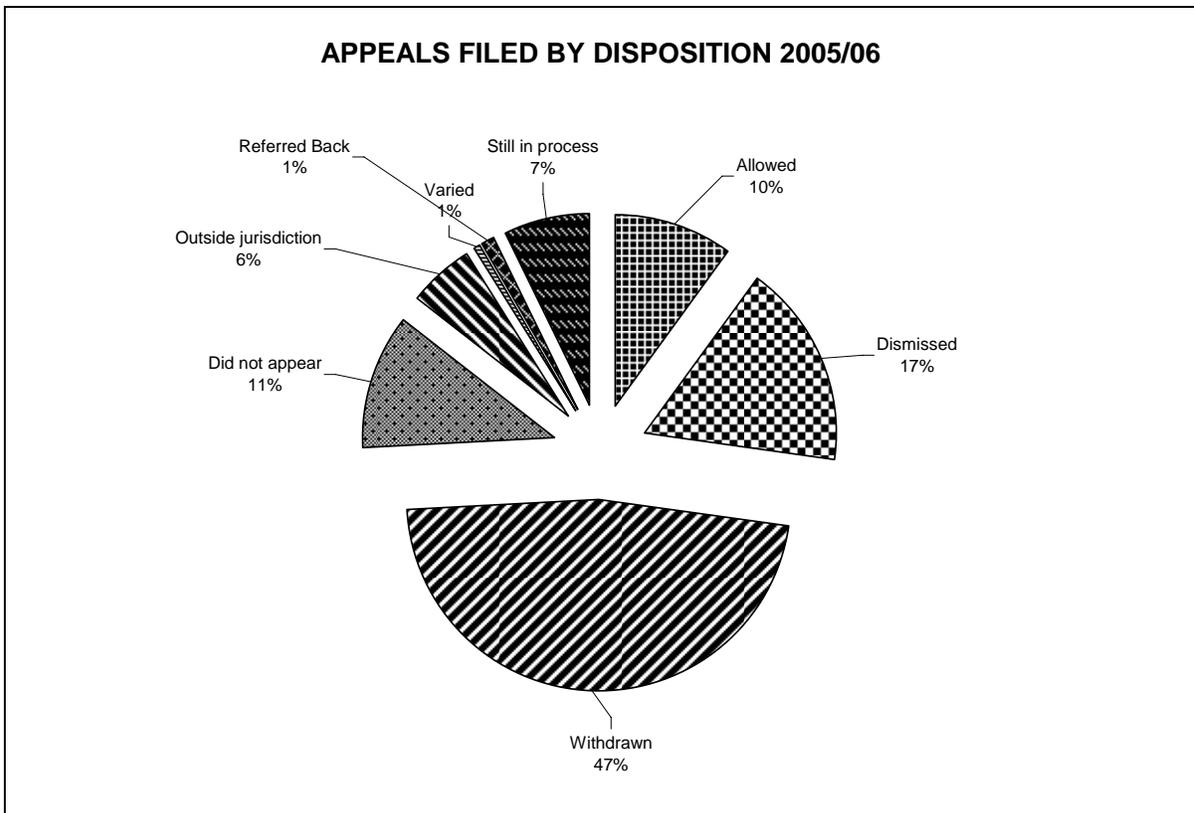
Income Assistance	695
Child Care subsidies	39
55 PLUS-Junior Component	7
Vulnerable Persons	4
Vocational Rehabilitation for Disabled Persons (VRDP)	1
Residential Care	1



Appeals filed by Disposition:

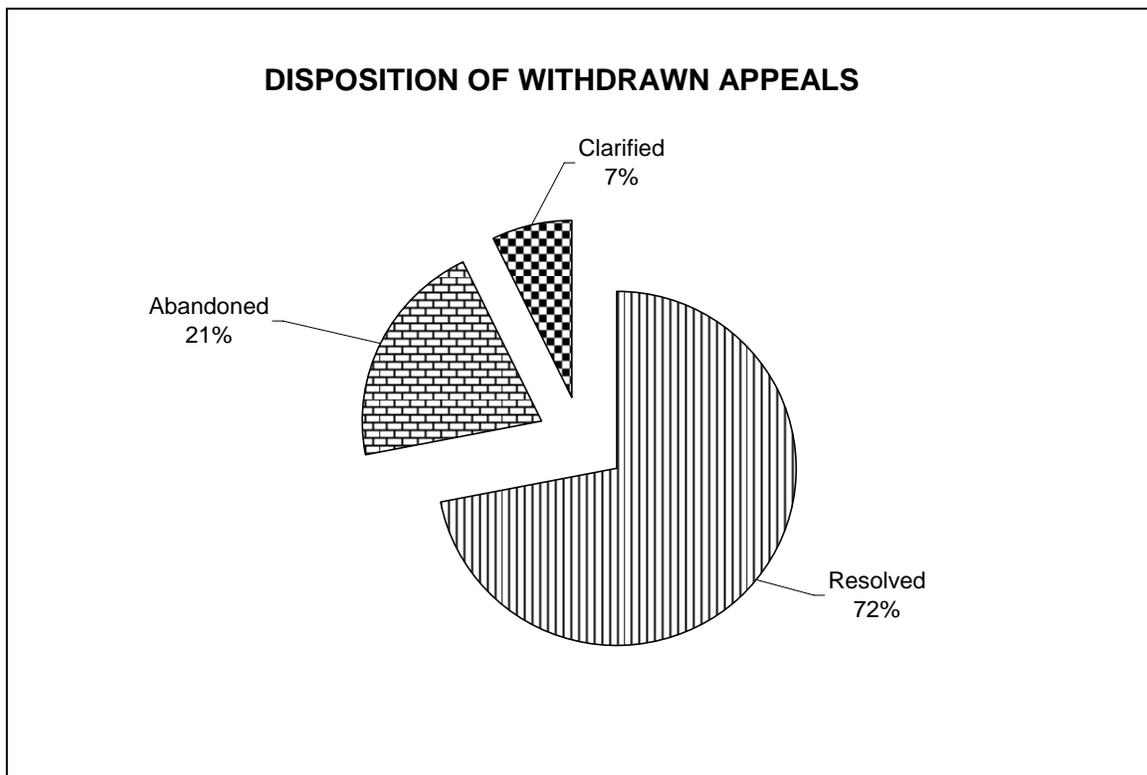
	<u>2005/06</u>	<u>%</u>	<u>2004/05</u>	<u>%</u>
Allowed	74	10	93	12
Dismissed	130	17	146	19
Withdrawn	350	47	365	47
Did not appear	85	11	62	8
Outside jurisdiction	42	6	38	5
Varied	4	1	20	3
Referred Back	9	1	3	0
Still in process	53	7	42	5
TOTAL	747	100	769	*99

*Does not equal 100% due to rounding



Withdrawn appeals:

Resolved ¹	252
Abandoned ²	73
Clarified ³	25



The **350** that were withdrawn combined with the **74** that were allowed result in **424** or **57%** of total appeals whose outcome was in favour of the appellants.

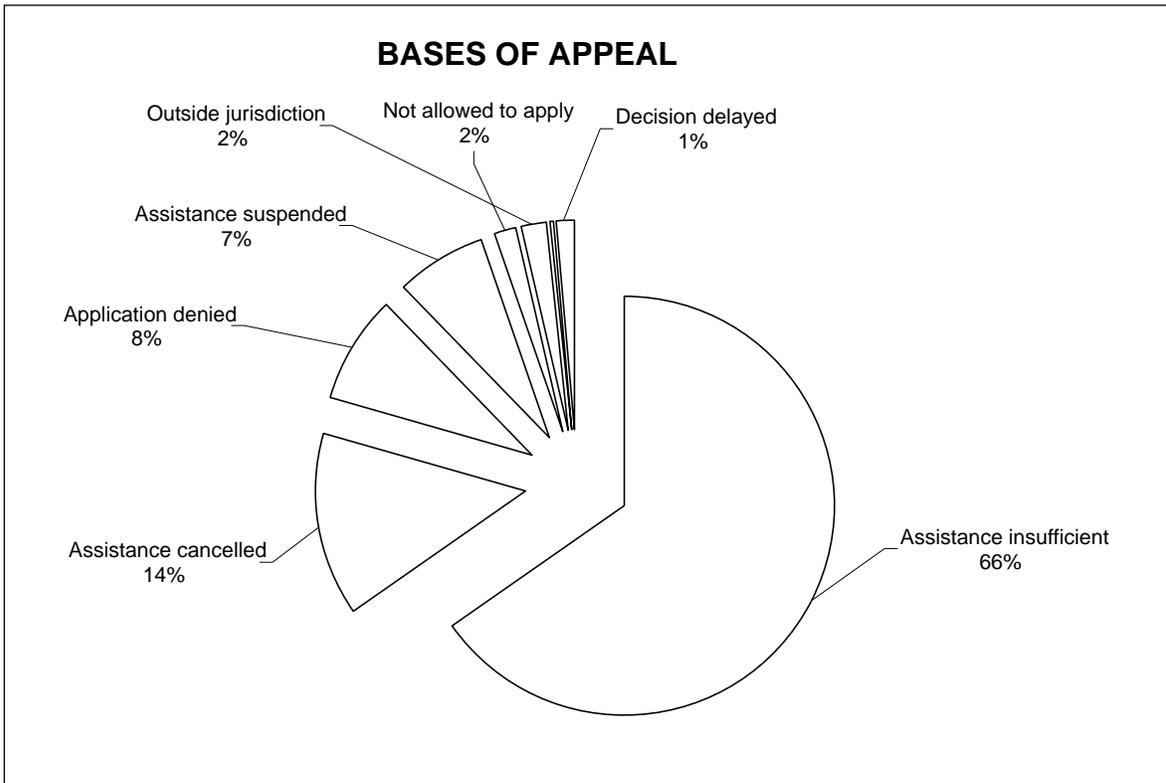
Notes:

- 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 **747** appeals filed during the **2005/06** fiscal year, the bases of appeal were as follows:

Assistance insufficient	488
Assistance cancelled	105
Application denied	62
Assistance suspended	53
Not allowed to apply	13
Outside jurisdiction	14
Assistance varied	2
Decision delayed	10



Allowed Appeals:

For the **2005/2006** fiscal year, there were **74** appeals allowed. Disposition of the allowed appeals was as follows:

Provincial Income Assistance	73
Child Day Care Subsidy	1

Reason for Appeals:

Of the appeals received for **2005/2006**, the most common reasons for filing appeals were as follows:

Medical Eligibility	121
Financial Resources	93
Health Needs	87
Overpayments	67
Shelter Costs	56
Non Cooperation	48
Special Needs	34
Common-Law Union	28
Irresponsible Job Termination	27
Moving Costs	8
Education Needs	8
Sanctions	5

These reasons apply to **582** appeals, or **78%** of the total appeals filed.

Requests for Reconsideration:

	<u>2005/06</u>	<u>2004/05</u>
Total requests received	31	42
From appellant	26	30
From respondent	5	11
Board initiated	0	1

Program breakdown of Reconsideration Requests:

	<u>2005/06</u>	<u>2004/05</u>
Income Assistance	31	39
Municipal Assistance	0	1
Vulnerable Persons	0	2

Disposition of Reconsideration Requests:

	<u>2005/06</u>	<u>2004/05</u>
Requests granted	4	8
Requests denied	22	30
Withdrawn	4	4
Pending	1	0

Of the Requests Granted:

	<u>2005/06</u>	<u>2004/05</u>
Decision Upheld	1	0
Decision Varied	0	1
Decision Overturned	0	4
Request Withdrawn	1	3
Pending	2	0

2005/06 Summary of Advisory Role

The Social Services Appeal Board Act enables the Appeal Board to advise and make recommendations to the Minister about social services provided under the designated Acts. In order to fulfill this mandate, the Board meets on a quarterly basis to discuss issues that have arisen during the course of appeal hearings. In addition, the Board may form ad hoc committees to examine a specific issue in more detail.

The following is a summary of the issues brought to the attention of the Minister during the 2005/2006 fiscal year.

One of the issues brought forward from the Board to the Minister's office concerned how income assistance rates were determined. The Minister informed the Board that there was no systematic review of income assistance rates in relation to inflation or cost of living, or any other relationship to the real cost of goods and services. The Board observed that in some instances the cost of actual services such as utilities, bus passes, and telephones are paid. However, in other situations such as basic needs, shelter costs, and certain special needs items, the allowance has remained unchanged for many years. As a result, the actual buying power of income assistance recipients has been diminished year after year. It is especially troubling to the Board that the province approves a provincial rental rate increase for landlords each year, however, when an income assistance recipient requests that the Department to cover this increase, they are turned down and are forced to use their basic needs allowance to cover the increase in rent.

The Board also made a recommendation to the Minister regarding some of the policies governing monies received by income assistance recipients who had damage deposits returned to them from landlords. The Department had a blanket policy that considered returned damage deposits a resource available for support, and therefore the funds were deducted from their income assistance allowance unless it was to be used immediately for a subsequent damage deposit. The Board had recommended that a liquid asset exemption be applied to returned damage deposits, as in reality, these funds are held by landlords "in trust" while a person is a tenant. The Board was especially concerned about circumstances where the Department had paid the damage deposit on an overpayment basis, recovered the money from the recipient, and then once the damage deposit was returned, deducted the funds once again from their allowance. As a result of the Board's recommendation, the Department made some changes to their policies which allowed for the liquid asset exemption to be applied in situations where a recipient paid a damage deposit from their own resources.

The Board raised a concern regarding the practice of deducting “deemed” income from a person’s income assistance budget in cases where property had been transferred at less than fair market value, or where an income assistance recipient had received a large cash settlement, and spent it rather quickly. The Board brought to the Minister’s attention that the interest rate used to calculate deemed income was to be reviewed on a yearly basis, but it appeared to not have been reviewed for the last several years. The Minister subsequently reviewed and lowered the interest rates for the past few years. This resulted in a small refund to those recipients where deemed income had been collected. In addition the Minister advised that the whole process of assessing deemed income was currently under review.

The Board held a number of appeals this past year involving very large overpayments as the result of common law relationships. The current practice in cases where the Department assesses that a person has been assisted as a sole support parent, but in fact has been living in a relationship with another person, is to assess 100% of the assistance received while in this relationship as an overpayment. While this may be a fair assessment in some cases, it is not fair in situations where the other person has contributed nothing financially to the household, and in fact the assistance recipient has been supporting an extra person with their basic needs, that these funds are routinely recovered as an overpayment. The Board has recommended that only when financial contribution is proven, that an overpayment be assessed.

Several of the issues the Board has discussed with the Minister involve providing benefits for children. For example, the Department has a blanket policy of not providing bus fare for children to attend school. While the Board recognizes that in some instances transportation to schools not within walking distances is the responsibility of the school division, there may be some circumstances such as shared custody, where transportation is needed. The Board therefore recommended that the Directors be given the discretion to make allowances for transportation costs for children to attend school in exceptional circumstances.

The Department policy currently requires that child maintenance orders be pursued when parents are not living together. Usually this involves fathers providing maintenance to single mothers, and any monies received are deducted dollar for dollar from the income assistance budget. The children therefore do not receive any additional financial benefit from the parental contribution. The Board believes that this tends to discourage mothers from pursuing maintenance orders, and fathers from paying or otherwise playing a significant role in their children’s lives. The Board has recommended that the policy allow for some additional benefit to the children involved and understands that the policy is being reviewed.

In some circumstances the Board seeks clarification regarding certain practices of the Department. For example, the policy manual does not specifically address

applications for assistance from post secondary students without sufficient funds to finish their academic year. The Board understands that applications from persons enrolled in post secondary school are routinely denied assistance; however, it was not articulated in the policy and procedure manual why this practice was employed. The Board has written to the Minister asking for clarification on this issue. (See Case Summaries Sample #2)

The Board also asked the Minister to consider broadening the definition of a 'vulnerable person' under *The Vulnerable Persons Living With a Mental Disability Act*. This definition determines which individuals are eligible for support services under the Supportive Living Program and is currently measured using a range of IQ test results. The Board has a concern that this narrow definition leaves some citizens at risk. In particular the Board has concerns where persons with disorders such as fetal alcohol syndrome or autism may have IQ's scoring outside the eligible range, but whose actual functioning levels place them at risk.

Ad Hoc Committees

The Board formed two ad hoc committees:

Medical Panel Review Committee

One of the most persistent topics discussed in the Board's advisory role has been recommendations to change the process by which eligibility for disability is determined. Upon invitation from the Minister a small ad hoc committee was formed to look at the current medical panel process and make some specific recommendations for change. The following is a summary of these recommendations.

- Less emphasis on diagnosis and more emphasis on functionality
- In all medical panels ensure that the third position for a regional representative from Personal Services (i.e. Vocational Rehabilitation, Employment Services, Mental Health, Community Living) always be in attendance
- A form completed by a functional assessor or the applicant which asks specific questions regarding a person's ability to function accompany the physician's medical assessment (A similar form currently is part of the application for Canada Pension Plan Sick Benefits.)

Other recommendations:

- The Department has some discussion with the medical profession with respect to what changes in forms or process would facilitate more accurate and descriptive exchanges of information
- A person should not be denied disability benefits because they do not follow a specific course of treatment, for example:
 - A certain prescribed drug
 - Surgery
 - Opting for alternative or traditional treatments
 - Weight loss or exercise programs
- The sheer numbers and volumes of medical assessments reviewed at each medical panel in Winnipeg is staggering. Perhaps a secondary process for all rejected applications for disability benefits would ensure all applications receive due consideration. We would recommend this secondary process include an interview with the person applying for disability status to determine the impact of the particular condition and what community resources they are involved in. (In cases where a person was previously enrolled with medical eligibility, the benefits should remain in place until the secondary process has been completed.)
- The covering letter to physicians include the criteria for eligibility under Section 5(1)(a). It would also be helpful if a definition of sedentary, light, medium, and heavy work be included in these instructions

Fair Practices Committee

The Appeal Board receives many Notices of Appeal which contain complaints and concerns about how a person has been treated, rather than the amount of income assistance. These types of issues do not fall within the jurisdiction of the Social Services Appeal Board. However, the Board felt that there should be some mechanism through which these types of dispute could be settled. The Board therefore formed an ad hoc committee to determine how other similar type programs dealt with these types of disputes.

The recommendations of the Committee are modeled after a similar program which has recently been put in place in the Workers' Compensation Board and are as follows:

- The Department of Family Services establishes a Fair Practices Facilitator to hear from EIA clients, both urban and rural, who feel they are or have been unfairly treated

- The Fair Practices Facilitator provides advice and counsel to clients
- The Fair Practices Facilitator authorize to make specific recommendations for action at the appropriate level in the Department
- The Fair Practices Facilitator report at the senior management meetings and be directly accountable to the most senior level of the Department. (Deputy Minister)
- The Fair Practices Office be publicized internally and through a public campaign of posters and brochures and toll free number
- The Fair Practices Office be centrally located and follow the Government's Universal Access Design Policy
- The Fair Practices Facilitator be culturally inclusive and sensitive
- The Fair Practices office be a completely independent entity within the Department or the function will be delegated and financed by an appropriate independent agency that already exists
- The Fair Practices Office be housed in a separate building to avoid the perception of bias
- The Fair Practices Facilitator operate as a pilot project

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 its decisions. It is hoped these summaries will provide some assistance for community members in understanding the function of the Board and what to expect when preparing for an appeal before the Board.

Sample #1

Program: Employment and Income Assistance
Basis of appeal: Income Assistance Insufficient
Appeal Detail: Medical Transportation
Decision: Allowed

Case Details

The appellant was enrolled under the disability category and received a monthly bus pass in his budget for medical appointments from 2001 to 2004. As his monthly medical appointments decreased, he was not eligible for a bus pass and was provided with bus tickets to attend medical appointments. The appellant argued that he still required a monthly bus pass as he attended the Addictions Foundation (AA) three times a week, which he confirmed with supporting documents. The Department advised that bus passes to attend AA meetings are approved on a short term basis (six months to one year) and denied his request as he had received a bus pass for three years and was attending AA during that period as well. The Department determined they had supported his attendance at AA meetings during that time and could see no justification in approving another bus pass.

Decision

A person on income assistance is entitled to receive assistance with the cost of transportation to medical appointments. When the cost of providing bus tickets exceeds the cost of a monthly bus pass, the Department provides the participant with the funds to purchase a monthly bus pass. The Board determined that regardless of the fact that the appellant attended AA meetings with the monthly bus pass that was issued for medical appointments; he should be entitled to a monthly bus pass based strictly on the basis of attending AA meetings. In reaching their decision, the Board considered the documentation that was provided from the man's AA sponsor that confirmed that he attends three times a week which would justify a bus pass. On that basis, the Board allowed the appeal for a period of six months and advised the appellant that he would be

required to provide verification of his ongoing participation in order to be approved for an extension.

In the past year there have been numerous discussions and legal opinions concerning the jurisdiction of the Board to make decisions under Section 5(2) of The Employment and Income Assistance Regulation. This section of the Act states;

Notwithstanding any other provision of this regulation, where the minister or the person or persons authorized by the minister is informed and believes that an applicant, a recipient, or the dependants of the applicant or recipient continue to lack the basic necessities, the minister or the person or persons authorized by the minister, in accordance with terms that may be prescribed by the minister, may make such further provision as will ensure that basic necessities are provided.

The following case is an example where the Social Services Appeal Board determined that although they had the jurisdiction to hear this particular case, they did not have the authority to allow the appeal under section 5(2) of the regulation.

Sample #2

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Denied

Appeal Detail: Education Needs

Decision: Dismissed

Case Details

This appeal involved a person who had been approved through the Vocational Rehabilitation Services Program (VRDP) for funding for a two year program in another province. The VRDP had agreed to provide tuition, books, and transportation costs as well as \$5,000 per year for board and room. The appellant was appealing that her Employment and Income Assistance benefits would not continue while she was attending school in another province. The Department indicated that their legislation cannot provide assistance to anyone who is not a resident of Manitoba.

Decision

The Employment and Income Assistance Act sets out the Provision of Things and Services in Section 2, which states

Subject to this Act and the Regulations, the Government of Manitoba may take measures to provide to residents of Manitoba those things and services that are essential to health and well-being, including a basic living allowance, an allowance for shelter, essential health services and a funeral upon death.

The Employment and Income Assistance Policy and Procedure Manual further states:

6.7.11 PARTICIPANT LEAVES THE PROVINCE

Participants who move outside of Manitoba become ineligible for assistance, effective on the first of the month following their departure from the province.

Participants who have not moved their residence outside of Manitoba, but who are out of the province for a period exceeding 30 consecutive days, become ineligible for assistance effective the 31st day of their absence. Upon their return to the province, participants may apply for assistance through the regular intake process.

Under section 5(2) of the Regulation, the Minister or the Minister's designate may authorize continued eligibility for temporary absences from the province in excess of 30 days on a special case basis. The amount of assistance provided depends upon the participant's needs during this period. Circumstances which warrant special consideration include medical treatment, rehabilitation, a family crisis or other situations in which the participant's prolonged absence from the province is determined to be justified.

Therefore, in this specific case, the appellant was no longer going to reside in Manitoba, and would be eligible to apply for income assistance in the province in which she would reside. Although the Minister does have the authority to grant assistance in special circumstances, the Board itself does not have this specific jurisdiction. The Board concluded that the director's decision to deny continued assistance after the appellant left the province was made in accordance with the legislation and policies and that they did not have the jurisdiction to review the Minister's decision.

Sample #3

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Denied

Appeal Detail: Financial Resources

Decision: Dismissed

Case Details

This case involved a young man who was enrolled in a post secondary program at a private school as a full time student. He had applied for funding through the Federal and Provincial Student Loan programs and had been granted a total of \$13,545. Of this amount, \$11,000 was used towards tuition. The appellant had exhausted the remaining funds and applied for income assistance in December 2005. The appellant indicated that he had been actively seeking part time employment, and was willing to continue to do so until he found a job. The Department indicated that they do not provide income assistance to full time employable students and denied his application for income assistance.

The Department could not point to any specific legislation or policies which specifically stated that full time students could not be assisted as general assistance recipients under section 5.1 of *The Employment and Income Assistance Act*. The Department indicated that full time students were required to apply for all available funding from other programs, and that this funding was usually sufficient to support the student while they attended school. In addition, the Department indicated that all general assistance recipients must be available to accept any and all available employment or employment enhancement measures, and a full time student would not be able to meet this criterion.

Decision

The Board upheld the Department's decision to not enroll the appellant as the Board agreed that the appellant would not be available to accept any and all available employment. However, the Board also indicated to the Minister that they believed the Department's policies should be more specific on how to process applications from full time students, and that perhaps it could be possible to be enrolled in school and meet modified work expectations in certain circumstances.

Sample #4

Program: Employment and Income Assistance (EIA)

Basis of Appeal: Income Assistance Insufficient

Appeal Detail: Medical Eligibility

Decision: Allowed

Case Details

This case involved a person who had been enrolled under the medical category of income assistance, and appealed the Department's decision to change his enrollment to general assistance. At the time of enrollment, the appellant had been undergoing an intensive therapy for treatment of Hepatitis C. This treatment is known to be very debilitating, and always grounds for enrollment in the medical category. Once the treatment was completed the Department requested a new medical form which indicated that he had type II diabetes, hypertension, short term memory problems, insomnia and sleep disturbance. The medical form also mentioned the Hepatitis C treatment. It was clarified at the hearing that it would be a few more weeks before tests could be taken to indicate if the Hepatitis C treatment had been successful. In addition the medical indicated partial tear of biceps tendon and chronic low back problems. The doctor indicated in his assessment that the patient was ambulatory and apart from his illnesses should be capable of gainful employment.

The appellant indicated that he also suffered from anxiety and had difficulty being around people. He indicated that he had been on anti-depressants, but did not like the side effects. He also indicated he had an infection in his feet, but was unable to take any medication for the feet as it would be too hard on his liver functioning.

The appellant indicated that he had tried sedentary employment in his occupational field but because of his short-term memory problems he was let go. He indicated that memory loss was a common side effect to the Hepatitis C treatment, and that some people recover from it and others do not.

Decision

Clause 5(1)(a) of *The Employment and Income Assistance Act* specifically states:

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 dependents, if any; or...

In reviewing this appeal the Board believed that the appellant had numerous medical issues which put restrictions on his employability. He was restricted from doing manual labour due to physical problems, but in addition the anxiety, sleep problems, and especially short term memory problems also prevented him from doing sedentary work. Therefore, the Board did not feel that he would be capable of earning a living sufficient to meet his basic needs and the Board allowed his appeal for a period of six months.

Sample #5

Program: Employment and Income Assistance
Basis of Appeal: Income Assistance Insufficient
Decision: Dismissed

The following case illustrates the *reconsideration process*, and therefore the details on the case are intentionally brief.

Case Details

This appeal involved a woman who had several issues under appeal including the amount she received for basic needs, the calculation of her earnings exemption, a request for a bed for her son, and the calculation of her T5 income statement. The appellant had brought copies of various sections of *The Employment and Income Assistance Act* and Regulations as well as excerpts from the EIA Policy and Procedure Manual to the hearing. She presented an enormous amount of information to the Board and often jumped from topic to topic in her presentation. Her son had recently turned 18 and her categorical eligibility had changed from sole support parent to general assistance. As she was referring to sections of the regulations she would often read from sections which pertained only to persons with disabilities. With respect to the calculation of the work exemption, the appellant had calculated that she should have been eligible for benefits, but the Department determined that her earnings were in excess of her income assistance budget by 135%, and was therefore no longer eligible for assistance. With respect to her request for a bed for her son, the appellant indicated that although her son had now turned 18 and was no longer in her budget, she could have made this request while he was still a minor and would have been entitled to receive the bed then. The Department indicated that her son was eligible to apply for assistance in his own right and could be entitled to the bed on his own file.

Decision

The Board reviewed all the information submitted by both parties and concluded that all of the Department's decisions had been made in accordance with the legislation and the appeal was dismissed on all issues. The Board also determined that the issue concerning the T5 was not within the jurisdiction of the Board and referred the appellant to the proper channels.

Request for Reconsideration

The appellant filed a request for reconsideration indicating that she believed that the appeal Board prevented relevant evidence from being presented because the Department's report was not page numbered and she had difficulty locating specific pages during the hearing. She also believed that the Board was too friendly with the departmental representatives. Further, she was not able to access any type of legal representation or advocacy and felt that she was at a distinct disadvantage at the hearing. She also indicated in her request for reconsideration that she believed *The Employment and Income Assistance Act* was not followed in the decision and that there were 'secret' policies that were being followed and not being shared with her as the appellant. Lastly, she felt the panel did not reflect the diversity of the Board as all members of the panel were male. Again this appellant made numerous quotations of legislation in her submission.

Board's Review of the Request

The panel that reviewed this request granted the request on several points. It was agreed that the amount of paper shuffling that occurred at the hearing trying to find the relevant passages was distracting to both the Board members and the parties to the hearing.

Secondly, although the Board does not believe that there was any type of personal or overly familiar relationship between the Board members and the Department staff, they understood how the appellant may have perceived this bias.

The panel also strongly holds a belief that any person who wishes to have representation at a hearing should be entitled to have this representation. In fact the Board has made this recommendation to the Minister's office on several occasions. The appellant had submitted proof to the Board that she had indeed made several attempts at securing some representation, but was unsuccessful.

Although the selection of an all-male panel was the result of a statistical anomaly in the Board's rotation schedule, the panel was sympathetic that this situation could be perceived by a female appellant as a type of bias.

The panel did not agree that the legislation had been improperly interpreted or ignored, but the reconsideration was granted based on the above information. The Board also approved that a new panel preside over the new hearing.

The Reconsideration Hearing

A new panel sat to hear the reconsideration hearing. This involves both parties presenting the arguments anew. The panel then makes a new decision independent of the first panel's decision. In this particular case the panel that heard the reconsideration hearing came to the same conclusion as the original panel and upheld the decision of the original panel.

Sample #6

Program: Child Care Subsidy Program
Respondent: Provincial Services
Basis of Appeal: Subsidy Insufficient
Decision: Dismissed

Case Details

The appellant was a single parent who was employed full time as a health care aide. She worked six days per week, and her one day off was on Friday. She had her children enrolled in a full time day care that operated Monday to Friday, and she placed her children into private care on Saturdays and Sundays. In order to maintain her day care space she had to pay for all five days, Monday to Friday. She was appealing that her subsidy would not pay the cost of care for Fridays as she was not working on this day.

The Department indicated that the cost of the appellant's private care was taken into consideration when calculating the subsidy amount; however, they could not pay for care for days in which the appellant was not working. The appellant had mentioned at the hearing that she had approached other health care agencies about casual work on Fridays, and the Department had indicated that if she did work on a Friday, she could submit this information to her subsidy advisor and the cost of care for that day could be covered.

Decision

The Community Child Care Standards Regulation states in section 40(3) :

For the purpose of determining the number of days of care during a billing period for which subsidy may be granted under this regulation, the individual needs of the applicant, or the applicant's spouse, shall be determined on the basis of the number of days that

(a) a single widowed, divorced or separated applicant is gainfully employed or is actively seeking employment

The regulation also explains other reasons for care such as education, looking for work, or for social/emotional developmental reasons.

As the appellant's subsidy application listed employment as her reason for care, she was only eligible for the cost of care for days for which she was actually working. Therefore, the Board concurred with the Department's decision that they had correctly assessed the eligible number of days of care per billing period and the appeal was dismissed.