



**MINISTER
OF FAMILY SERVICES AND HOUSING**

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2009

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

May It Please Your Honour:

I have the pleasure of presenting herewith the Annual Report of the Social Services Appeal Board for the year 2008/2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gord Mackintosh".

Gord Mackintosh



Manitoba



**Social Services
Appeal Board**

**7th Floor, 175 Hargrave Street
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CANADA**

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September 2009

Honourable Gord Mackintosh
Minister of Family Services and Housing
Room 357 Legislative Building
Winnipeg Manitoba R3C 0V8

Dear Minister:

Attached is the Annual Report of the Social Services Appeal Board for the fiscal year ending March 31, 2009. The Social Services Appeal Board is required to produce an independent Annual Report according to *The Social Services Appeal Board Act* which was proclaimed in February 2002.

The Board is proud of its continued efforts to provide a fair and equitable appeal process for the citizens of Manitoba, and continues to carry out its mandate of providing advice to the Minister of Family Services and Housing on program and policy issues that arise through appeal hearings.

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

Yours truly,

A handwritten signature in black ink that reads "Kristine X. Barr." The signature is written in a cursive style.

Kristine Barr
Chairperson



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<i>The Social Services Appeal Board Act</i>	

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 2008/09 fiscal year:

Chairperson:	Kristine Barr
Vice-chair:	Jany Keenan George Dyck
Members:	Phillip Calver Robert Doherty Patrick Fortier Gina Guiboche Marlene Head Maureen Hemphill Mark Koenker Sara Lazareck George Pelletier Dennis Ruggles Kalen Schick Andrew Simpson Cindy Stroppa Audra Taylor

Social Services Appeal Board Staff:

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

Legal Counsel: Lawrie Cherniack

BOARD BIOGRAPHIES – 2008/09

Kristine Barr, Chairperson:

Kristine is a family lawyer with the firm of Chapman Goddard Kagan. She has served as an elected school trustee in the Winnipeg School Division since 1998 and is currently the Chair of the Finance Committee. Kristine co-founded the Teen Talk Program at Klinik Community Health Centre where she previously worked as an educator, peer support coordinator and the provincial "Think Again" teen pregnancy prevention campaign coordinator. She has volunteered with a number of community organizations such as the Manitoba Bar Association, Rainbow Resource Centre, the Women's Health Clinic and the Manitoba Association of Women and the Law. Kristine is committed to human rights and working for social justice.

George Dyck, Vice-Chairperson:

George obtained a B. Sc. in mathematics and physics in 1964, certification in nuclear medicine technology in 1969, certificate in adult education in 1979 and an M. Sc. in physiology in 1981. George was employed as an instructor "C" at Red River Community College for 22 years before retiring in 1998 for health reasons. He was a long-time board and executive member and immediate past president of the Canadian Paraplegic Association (MB) Inc. as well as a board and executive member of Ten Ten Sinclair Housing Inc., board member of the Manitoba Paraplegia Foundation, board and executive member of Canadian Centre on Disability Studies (CCDS), Chair of Handi-Transit Policy Advisory Committee, Chair of the African Task Force of the International Committee of CCDS and editor of the newsletter of the Manitoba OldTyme and Bluegrass Society.

Jany Keenan, Vice-Chairperson:

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.

Phillip Calver:

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.

Robert Doherty:

Currently self-employed – Prairie Testing and Counseling Service. Previous experience includes counselor at Assiniboine Community College and vocational counselor, Westbran. Community involvement includes: Director, Brandon Optimist Club; Director, Brandon Friendship Centre, volunteer of Canadian Diabetes Association, Y.M.C.A and Manitoba Heart and Stroke Foundation.

Patrick Fortier:

Patrick has worked extensively for a variety of departments in the federal public service and has also worked for the Province of Manitoba. He is an active member of the franco-manitoban community, volunteering for many community organizations and sitting on the boards of the Société franco-manitobaine and the Musée de Saint-Boniface. He has a Bachelor of Arts degree from both the Collège universitaire de Saint-Boniface and the University of Manitoba with a major in economics and a minor in history, and is currently completing his master's degree in public administration at the University of Winnipeg.

Gina Guiboche:

Currently the Financial Awards Officer with the University College of the North (UCN). Past term position with Manitoba Advanced Education on the implementation team for UCN Five Year Strategic Plan. Community wellness administrator/marriage and family therapist for the Mental Health Department for Opaskwayak Cree Nation. Term Review Committee for Provincial Judicial Appointment Nominees. Board experiences on local, provincial and Canadian levels for education, denomination work. Currently working on her PhD in higher education leadership on-line through the University of Calgary.

Marlene Head:

Member of Opaskwayak Cree Nation near The Pas, Manitoba. Presently employed as a post-secondary counselor with Opaskwayak Educational Authority. Presently holding two Chairperson portfolios: Opaskwayak Cree Nation Child & Family Services, and Opaskwayak Women's Circle (co-founder and member since 1994). Graduated from the University of Manitoba with a bachelor of social work in 2000. Traditional fisherman, trapper, hunter, and gatherer. Former Chairperson of the Opaskwayak Health Authority. Strong advocate for post-secondary students, women, children and the disadvantaged through volunteer and participation in events/activities relating to empowering women and youth, human rights, diabetes, awareness, etc. Happily married for 28 years with four sons and one grandson.

Maureen Hemphill:

A mother of four and grandmother of six who served Manitobans for 20 years as a municipal provincial politician. Also worked as a Registered Nurse; Chairperson for the Assiniboine South School Division; President, M.A.S.T.; MLA for Logan; and Minister of Education.

Mark Koenker:

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:

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, HSC 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.

George Pelletier:

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

Dennis Ruggles:

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 and as a campaign. He was elected to the Seven Oaks School Division in October 2006.

Kalen Schick:

Kalen graduated with an Applied Counselling Certificate at Red River College in June 2009. She has a B.A. in International Development Studies from the University of Winnipeg, and is interested in issues of social justice, capacity building, and community development. She is an active volunteer, and has been involved with many organizations, including L.E.A.F. MB, Welcome Place, W.U.S.C. and Klinik. Kalen is an avid traveler, from volunteering with Habitat for Humanity in Central America to backpacking through Europe.

Andrew Simpson:

Former student at University of Manitoba. Involved in a car accident in December 1974. Hospitalized for two and a half years. Since then he has taught swimming to disabled individuals, studied environmental industries and helped others with physical problems. Volunteered at Oak Hammock Marsh, worked at Lower Fort Garry Nursery and assisted with Elections Canada.

Audra Taylor:

Currently doing graduate studies in social work, administrative and policy stream. Audra was previously employed at the Family Centre of Winnipeg as a Family Support Supervisor in the Family Support Program and Special Needs Family Child Care. She was previously employed as coordinator of The Facts of Life Line. Served as a vice president on the Board of Directors of the Day Nursery Centre and served on the board of the Women's Health Clinic. Currently serves on Wolseley School Parent Council and is a volunteer at Wolseley School. Coordinated first Great Canadian Shoreline Clean-up of Winnipeg Beach. Bachelor degrees in human ecology, family studies. Field placement in social work – Canada Russia Disability Program, social work stream.

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. The Board reports directly to the Minister of Family Services and Housing.

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 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 2008/09, the annual budget for the Social Services Appeal Board was \$442,400. This amount was apportioned into \$358,500 for staff and board salaries and benefits, and \$83,900 for operating costs. The actual expenditures were \$397,300 for an under expenditure of \$45,100.

The board members' per diem payments are paid from salary expenses. In the 2008/09 fiscal year, the amount spent on board per diems was \$60,185.

Actual Expenditures*

09-1C Social Services Appeal Board

Expenditures by sub-appropriation	Actual 2008/09 \$000	FTE**	Estimate 2008/09 \$000	Variance Over(Under)
Total salaries and employee benefits	306.8	4	358.5	(51.7)
Total other expenditures	90.5		83.9	6.6

* Amounts are expressed as thousands of dollars.

** 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.

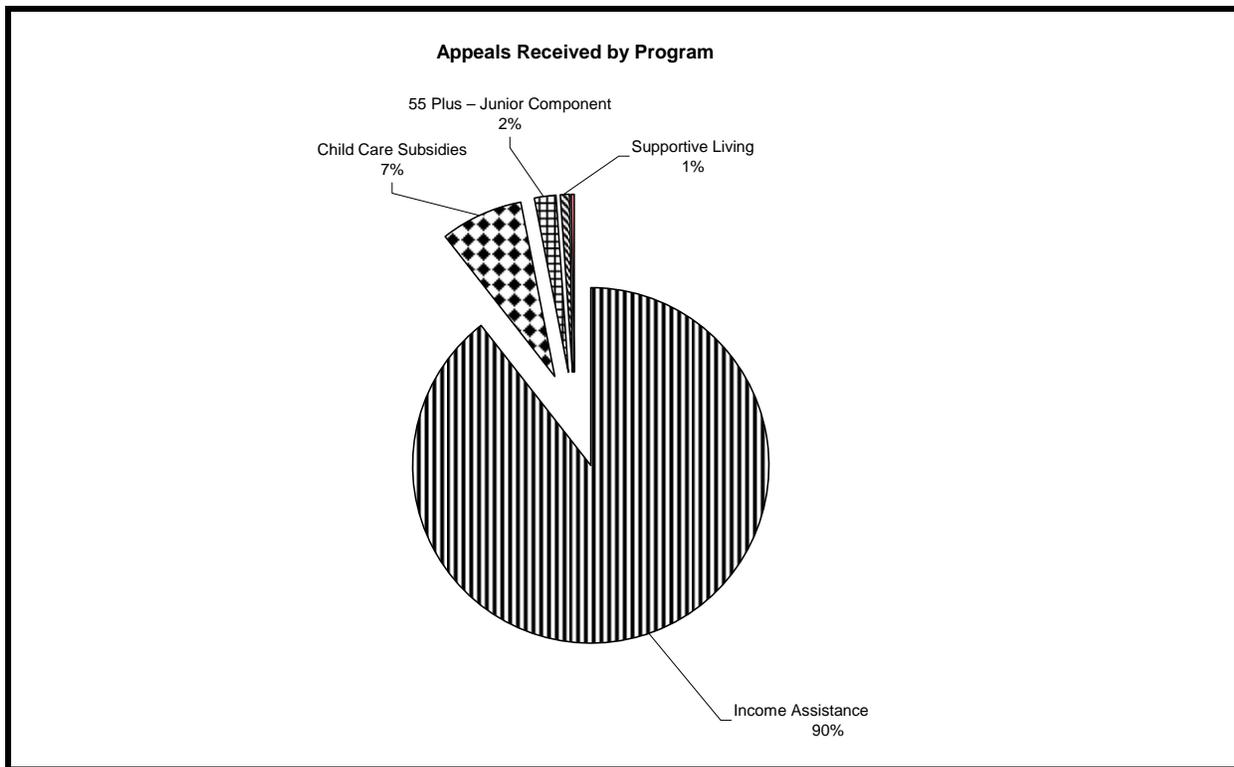
APPEAL ACTIVITY

In the 2008/09 fiscal year, there were a total of 540 appeals filed compared to 599 the previous fiscal year.

Appeals Filed by Program:

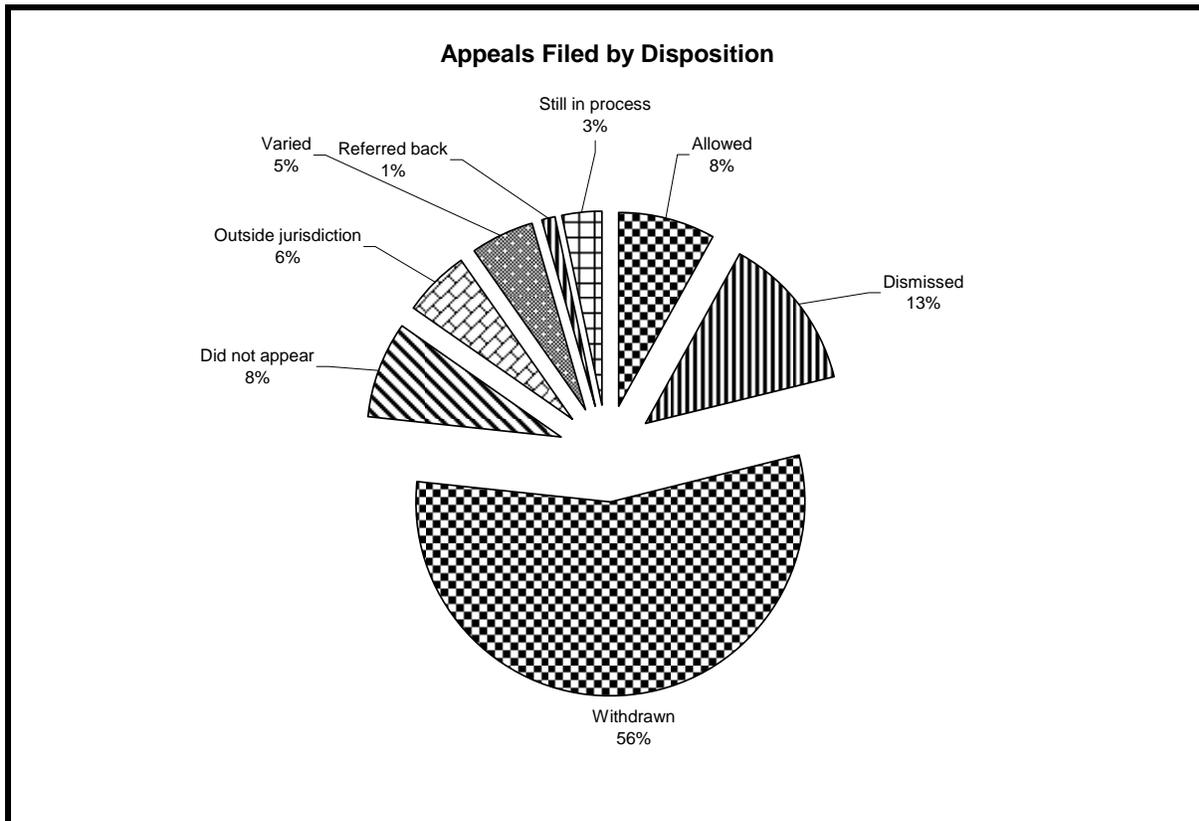
The 540 appeals are broken down by program area are as follows:

Income Assistance	483
Child Care Subsidies	40
Residential Care – Child	1
55 Plus – Junior Component	10
Supportive Living	5
Vocational Rehabilitation	1



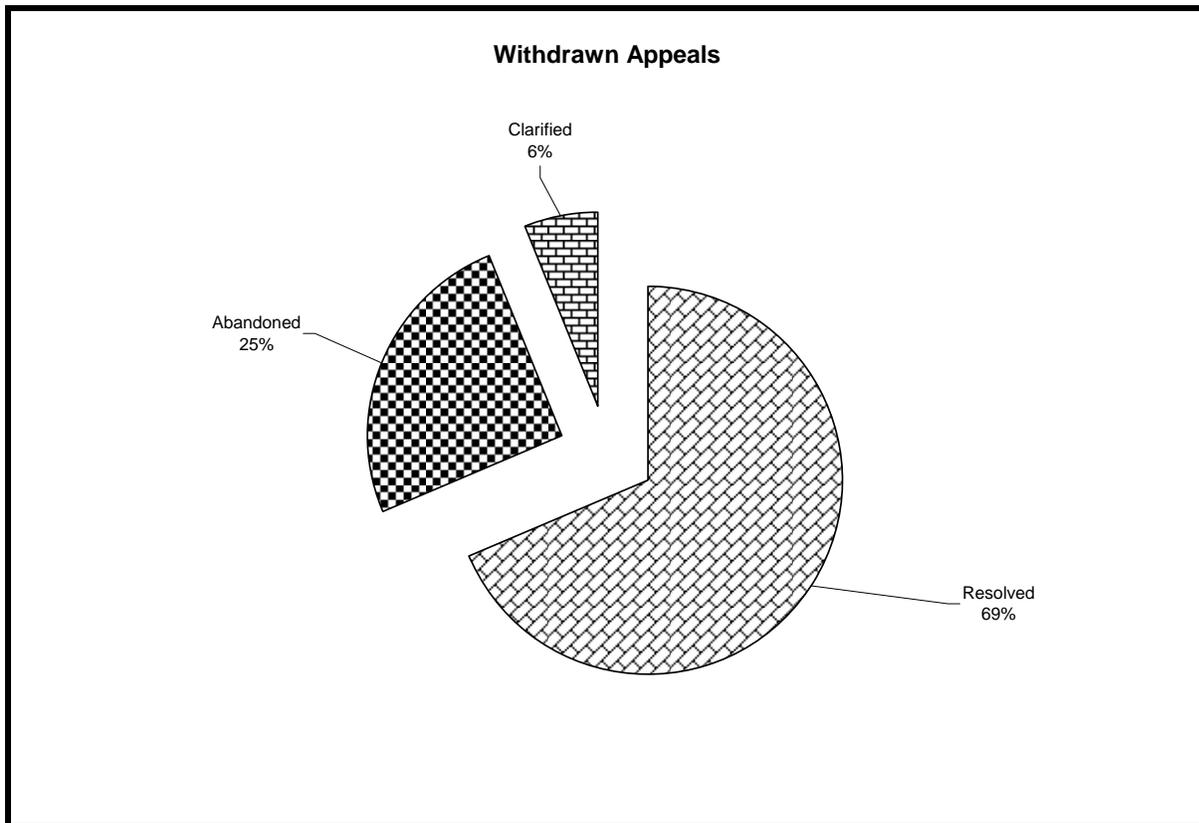
Appeals Filed by Disposition:

	<u>2008/09</u>	<u>%</u>	<u>2007/08</u>	<u>%</u>
Allowed	44	8	59	10
Dismissed	70	13	95	16
Withdrawn	300	56	285	48
Did not appear	43	8	66	12
Outside jurisdiction	30	6	28	4
Varied	29	5	35	5
Referred back	6	1	1	0
Still in process	18	3	30	5
TOTAL	540	100	599	100



Withdrawn Appeals:

Resolved ¹	206
Abandoned ²	76
Clarified ³	18



The 300 appeals that were withdrawn combined with the 44 that were allowed result in 344 or 63% of total appeals whose outcome was in favour of the appellants.

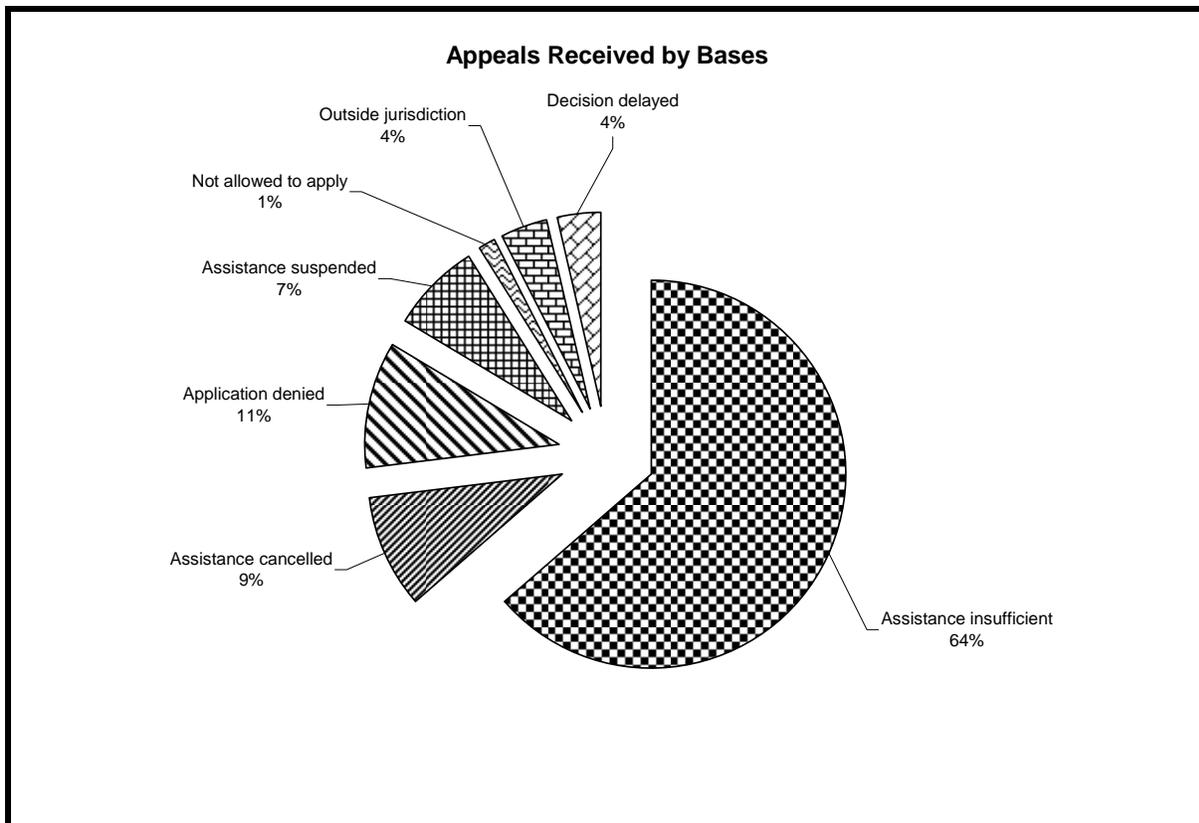
Notes:

- 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 540 appeals filed during the 2008/09 fiscal year, the bases of appeal were as follows:

Assistance insufficient	344
Assistance cancelled	51
Application denied	57
Assistance suspended	40
Not allowed to apply	7
Outside jurisdiction	22
Decision delayed	19



Allowed Appeals:

For the 2008/09 fiscal year, there were 44 appeals allowed. Disposition of the allowed appeals was as follows:

Employment and Income Assistance	43
Supportive Living	1

Reasons for Appeal:

Of the 540 appeals received for 2008/09, the most common reasons for filing appeals were as follows:*

Medical eligibility	100
Financial resources	50
Health needs	54
Overpayments	43
Shelter costs	47
Non cooperation	20
Special needs	37
Common-law union	10
Irresponsible job termination	15
Basic needs	24

These reasons apply to 400 appeals, or 74% of the total appeals filed.

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

REQUESTS FOR RECONSIDERATION

Number of Requests:

	<u>2008/09</u>	<u>2007/08</u>
Total requests received	17	22
From appellant	12	17
From respondent	5	5

Program Breakdown of Reconsideration Requests:

	<u>2008/09</u>	<u>2007/08</u>
Employment and Income Assistance	13	22
Child Care Subsidy	3	0
55 Plus	1	0

Disposition of Reconsideration Requests:

	<u>2008/09</u>	<u>2007/08</u>
Requests granted	4	3
Requests denied	12	17
Withdrawn	1	2

Of the Requests Granted:

	<u>2008/09</u>	<u>2007/08</u>
Decision upheld	0	1
Decision varied	3	1
Decision overturned	1	1
Request withdrawn	0	0
Pending	0	0

SUMMARY OF ADVISORY ACTIVITIES

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. The Board met in its advisory capacity three times during the 2008/2009 fiscal year.

The recommendations and issues raised by the Appeal Board this year were:

As the rate of gasoline had climbed steadily during the 2008/2009 fiscal year the Board was concerned that the mileage allowed for transportation was not sufficient to cover the actual cost of gasoline. The Board recommended that the Department develop a system to periodically review the amount allowed for transportation, or to reimburse the actual cost.

The Board also raised a concern with the minister that persons who were signing an assignment of benefit form when applying for Canada Pension Plan Disability Benefits were being asked to sign a blank form and in many instances they were never given copy of the form after the blanks had been completed.

The Board made a number of recommendations regarding changes to the medical eligibility assessment process. These included:

- a more proactive approach to receiving the self-report portion of the medical assessment package,
- eligibility for persons engaged with the Vocational Rehabilitation Program have automatic eligibility until the conclusion of their plan,
- expanding the criteria for eligibility to include persons who are capable of employment only if the proper supports are in place.

The Board has asked the Department to develop clear guidelines concerning how funds that are borrowed are treated as there does not seem to be a consistent approach to how these funds have been treated.

A number of changes to department policies have come about this year which had formerly been recommended by the Board. Among these are:

- additional assistance for shelter costs in the form of the Manitoba Shelter Benefit and the Portable Housing Benefit,
- extension of health benefits after case closure for single parents and persons with disabilities who leave assistance for employment,
- funding for speech communication devices.

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 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: Special needs denied
Decision: Director's decision rescinded

The appellant appealed the Department's decision to deny her request for reimbursement of school supplies for her two children during the 2007-2008 school year.

The appellant and her lawyer explained that in September 2007 her file was closed due to an alleged common-law relationship. The appellant filed an appeal and was awaiting a hearing. She required school supplies for her children in September but was not in receipt of any assistance at that time and she purchased the supplies herself. At a hearing in March 2008, the Board determined that she was not living in a common law relationship, her file should not have been closed and she was entitled to receive income assistance back to July 2007. After the appellant won her appeal, she requested funds of \$200.00 for school supplies to which she would have been entitled in September 2007. The Department denied that request. The appellant argued that if the Board determined she was entitled to assistance in September 2007, then she should be entitled to receive funds for school supplies during that time period. If she hadn't been erroneously closed in September 2007, she would have gotten the standard letter from the Department advising her of her right to request the special needs funds as she has every school year.

The Department explained that the appellant's request was denied based on a number of factors. The Department explained that the need for the school supplies had passed, reimbursement is not allowed without prior approval and the payment of the back benefits ordered by the Board only included shelter and basic needs and did not include special need requests.

The Board allowed this appeal and determined that she was entitled to receive the funds for school supplies. A previous board determined that the appellant's file should never have been closed which means her file would have been open in September 2007 when she needed the supplies which she had received every school year. Secondly, the Board noted that based on the Employment & Income Assistance Administration Manual, Section 21 – Special Needs, it states that school supply funds can be issued annually. Therefore, the Board determined that the

appellant's request shouldn't be limited to the beginning of the school year. Thirdly, the Board did not believe the need for the school supplies had passed because she incurred the cost when her file was erroneously closed and her children were still attending school at the time she made the request. The Board also believed that basic needs and special needs are part of income assistance.

Sample #2

Program: Child Day Care Subsidy

Basis of Appeal: Subsidy insufficient

Decision: Director's decision confirmed

The appellant appealed that her application for child care subsidy for her triplets was denied based on the net family income.

The Community Child Care Standards Act establishes income levels for subsidy which is based on a formula which allows for a cost of living exemption based on family size, rather than actual expenses. All income coming into the family unit is considered available to meet living expenses including child care costs. For residents who reside north of the 53rd parallel, an additional exemption from income is allowed to compensate for increased cost of living.

The appellant reported a gross family yearly income of \$65,082.24. The Act allowed for an exemption for living costs of \$28,757. Based on the remaining non-exempted income, the formula for subsidy calculates that the family should be able to contribute \$1,136.12 for their children's care in each 20 day billing period. As the actual cost of care is \$1,008, the program determined that the appellant was not eligible to receive a subsidy.

The appellant stated at the hearing that she believes that the Child Care Program should factor in an additional exemption for families who have had a multiple birth, as there are additional costs to these families that should be factored in such as multiple purchases of cribs and clothing. The appellant stated that although there is no imminent need for medical attention, they must travel to Saskatoon for the children's doctor's appointments and incur extra costs.

The Department indicated that the current legislation and policies do not allow for an additional exemption in the instances of multiple births.

In this case, the Board confirmed the decision of the Director in accordance with the legislation, regulations, and policies and dismissed the appeal. The Board did not feel they had the jurisdiction to change the current legislation, regulation, and policies, but they did note that they would consider this issue in their advisory capacity to the Minister of Family Services and Housing.

Sample #3

Program: Employment and Income Assistance
Basis of Appeal: Income assistance insufficient
Appeal Detail: Assessment of overpayment
Decision: Director's decision rescinded

The appellant filed an appeal that an overpayment in the amount of \$237.57 was assessed against her for funds she received in September 2008.

The appellant's son was apprehended by Child and Family Services (CFS) on August 28, 2008. The Department was notified immediately. The Department's cut off for any changes to September benefit cheques was on August 24, 2008. Therefore, it was too late for the Department to deduct the child's portion of the assistance from September benefits. Child and Family Services informed the Department that they only expected the apprehension to last a couple of days, and that the child should be home before September 1, 2008.

On September 16, 2008, CFS advised the Department that they would not be returning the child to the home in the foreseeable future. Therefore on September 20, 2008, the Department assessed an overpayment for the portion of September's income assistance that was provided for the child's portion of the basic needs.

At the hearing, the appellant stated that she was never advised that she would have to repay any of the income assistance she received for her son if he was not returned to her care before the end of September. Therefore, she used some of the funds she received for his needs that included boots, ski pants, and a supply of Pull-ups.

According to Section 20(1) of *The Employment and Income Assistance Act*

Where the government has provided or paid assistance or any income assistance or general assistance to or for a person, if the assistance or income assistance or general assistance, or any part thereof, would not have been provided or paid except for

- a. a false statement or misrepresentation made by the person; or
- b. an error;

the government may recover from the person, or his executors or administrators, or his spouse, or the executors or administrators of his spouse, and, if the person is an infant, his parent or guardian or any person legally liable to pay his expenses, the amount of that assistance or income assistance or general assistance or that part thereof as a debt due and owing from the person to the Crown.

In this situation, no false statement was made, therefore the section of the Act that could be applied would be Section 20(1)(b). The Department's Administrative Manual Section 24.3.1, states:

Overpayments resulting exclusively from administrative error shall not be subject to recovery except in cases where the director or designate is of the opinion that the participant clearly recognized that incorrect payments had been made. (This policy became effective October 1, 1985.)

The intention of this policy is to avoid creating a hardship for participants through the recovery of overpayments to which they in no way contributed. It must be considered that these participants received the overpayments in good faith if there are no facts to suggest they were aware that the assistance they were receiving was more than their entitlement.

Overpayments due to administrative error usually involve one of the following situations:

- a. failure of staff to act on information received or known;
- b. error in calculation;
- c. staff oversight (e.g., failure to make an age adjustment or delete a dependant turning 18 from the budget);
- d. staff error in judgment or interpretation of relevant legislation or policies;
- e. inability of the automated payment system to respond to reported changes in participant circumstances.

The appellant received assistance for the month of September for her son because the cut off date had already passed for any change to September benefits. She was not advised that she would be required to return a portion of September's assistance if her son was not returned by a certain date. The appellant required a portion of her son's income assistance funds to purchase him clothing.

The Board allowed this appeal as the overpayment occurred due to the inability of the automated system to respond to reported changes in the appellant's circumstances late in the month. There was no evidence to support that the appellant made a false statement or misrepresentation to receive more assistance to which she was entitled.

Sample #4

Program: Employment and Income Assistance
Basis of Appeal: Income assistance insufficient
Appeal Detail: Medical eligibility
Decision: Director's decision rescinded

The appellant appealed that her medical eligibility under Section 5(1)(a) of *The Employment and Income Assistance Act* had been denied.

The Department's Medical Panel reviewed the appellant's medical information which stated her diagnosis as myofacial pain syndrome, anxiety, depression and vitamin B12 deficiency. The doctor did not indicate either, 'able' or 'not able' to work, but in the "able to work" section checked off "*permanent limitation of functions*" and in the "not able to work" section, he wrote, "*constant pain, myofacial pain syndrome, depression, anxiety.*"

The appellant had been receiving medical benefits for several years and she stated that her condition had not improved. She had tried numerous medications to assist her to deal with the pain, depression, and anxiety, but everything she tried led to serious side effects. The appellant referred to her diagnosis as fibromyalgia and immune deficiencies; however the doctor did not use those terms. The appellant had attempted to complete a training program and successfully completed the classroom portion of the program but due to her health problems was not able to function in the practicum portion. The appellant indicated that her depression is the result of a combination of constant pain and some personal tragedies.

Section 5(1)(a) states:

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;

Based on the above legislation, the Board allowed this appeal as they were persuaded by the written and verbal information that the appellant did not have the capacity to earn a living sufficient to meet her basic needs and therefore met the criteria. The Board felt that the Department reached their conclusion that she was capable of sedentary employment based largely on the fact that she participated in an educational program. The Board was not convinced that the ability to attend school automatically means that a person is capable of employment. The fact that the appellant was unable to complete her practicum needed to be given significant weight in determining whether or not the appellant was capable of competitive employment.

Although the Department did not submit any previous medical assessment forms, the Board also put weight on the verbal information at the hearing that the appellant's medical condition has not improved over the years and has in fact gotten worse with the addition of depression, ear infections, and migraines. The Board believed that the appellant had significant barriers both physically and mentally and the Board thinks that a proper assessment should be completed to determine what, if any, types of employment would be suitable for her. Therefore, the Board rescinded the decision of the Director and allowed the appeal.