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**MINISTER OF  
FAMILY SERVICES AND CONSUMER AFFAIRS**

Room 357  
Legislative Building  
Winnipeg, Manitoba, CANADA  
R3C 0V8

September 2010

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 2009/2010.

Respectfully submitted,

“Original Signed By”

Gord Mackintosh



**Social Services  
Appeal Board**

**7th Floor, 175 Hargrave Street  
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TEL: (204) 945-3003  
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September 2010

Honourable Gord Mackintosh  
Minister of Family Services and Consumer Affairs  
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, 2010. 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 plays an important role in helping to ensure that all Manitobans have access to a fair and equitable appeal process for a range of programs and services, including various financial assistance programs, licensing of child care facilities, programs for persons with disabilities, private adoption agencies and residential care facilities.

The Board continues to watch for trends in appeals coming before us and believe that when we provide you with advice on program and policy issues we are helping to improve the overall system. This document reports the Board's continued work in these areas. I respectfully submit it to your attention.

Yours truly,

“Original Signed By”

Kristine Barr  
Chairperson



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## **BOARD MEMBERSHIP**

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

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

### **Appeal Board Appointees during the 2009/2010 fiscal year:**

<b>Chairperson:</b>	Kristine Barr
<b>Vice-chair:</b>	Jany Keenan
<b>Members:</b>	Phillip Calver Valerie Debooy Edward Goralski Maureen Hemphill Mark Koenker Sara Lazareck John Leggat George Pelletier Louise Plamondon Dennis Ruggles Kalen Schick (resigned) Andrew Simpson 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

## **BOARD BIOGRAPHIES – 2009/10**

**Kristine Barr, Chairperson:**  
***January 12, 2005***

***Appointed***

Kristine is a lawyer with A Woman's Place Domestic Violence Legal Service at Nor'West Co-op Community Health Centre. 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, L.E.A.F., 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.

**Jany Keenan, Vice-Chairperson:**

***Appointed June 7, 2006***

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.

**Dennis Ruggles, Vice-Chairperson:**

***Appointed June 7, 2006***

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

**Phillip Calver:**

***Appointed June 24<sup>th</sup>, 2008***

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

**Valerie Debooy**

***Appointed April 17<sup>th</sup>, 2009***

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

**Edward Goralski**

***Appointed April 17<sup>th</sup>, 2009***

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

**Maureen Hemphill**

***Appointed June 24, 2008***

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**

***Appointed April 18, 2007***

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

**Sara Lazareck**

***Appointed June 24, 2008***

Sara was born and raised in Winnipeg, Manitoba. She is currently employed as a Case Manager with The CODI Outreach Team of The Winnipeg Regional Health Authority, a community mental health program specializing in assisting, treating and advocating for individuals living with both severe and persistent mental illness as well as substance dependence. Sara graduated with her Bachelor of Science from the University of Winnipeg in 1999. She then attained her Bachelor of Medical Rehabilitation in Occupational Therapy from The University of Manitoba in 2004. Her previous experiences with marginalized populations include The Main Street Project, Mobile Crisis Service, 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**

***Appointed May 3, 2006***

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.

**Louise Plamondon**

***Appointed April 17<sup>th</sup>, 2009***

Louise is a retired teacher/administrator who has worked both in rural and urban settings. Her teaching career has provided her with the opportunity to focus on the young people with whom she worked guiding them along their path. Married, she has two wonderful children and has recently lived the joy of becoming a grandmother to a lovely baby girl. She has been involved in various cultural community activities and over the last year has been volunteering with Meals on Wheels.

**Andrew Simpson**

***Appointed June 7, 2006***

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.

## **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 Consumer Affairs. The Board reports directly to the Minister of Family Services and Consumer Affairs.

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 2009/10, the annual budget for the Social Services Appeal Board was \$438,000. This amount was apportioned into \$358,000 for staff and board salaries and benefits, and \$80,000 for operating costs. The actual expenditures were \$413,000 for an under expenditure of \$25,000.

The board members' per diem payments are paid from salary expenses. In the 2009/10 fiscal year, the amount spent on board per diems was \$68,863.

### **Actual Expenditures\*** 09-1C Social Services Appeal Board

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<b>Expenditures by sub-appropriation</b>	<b>Actual 2009/10 \$000</b>	<b>FTE**</b>	<b>Estimate 2009/10 \$000</b>	<b>Variance Over(Under)</b>
Total salaries and employee benefits	332	4	358	(26)
Total other expenditures	81		80	1

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\* 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.

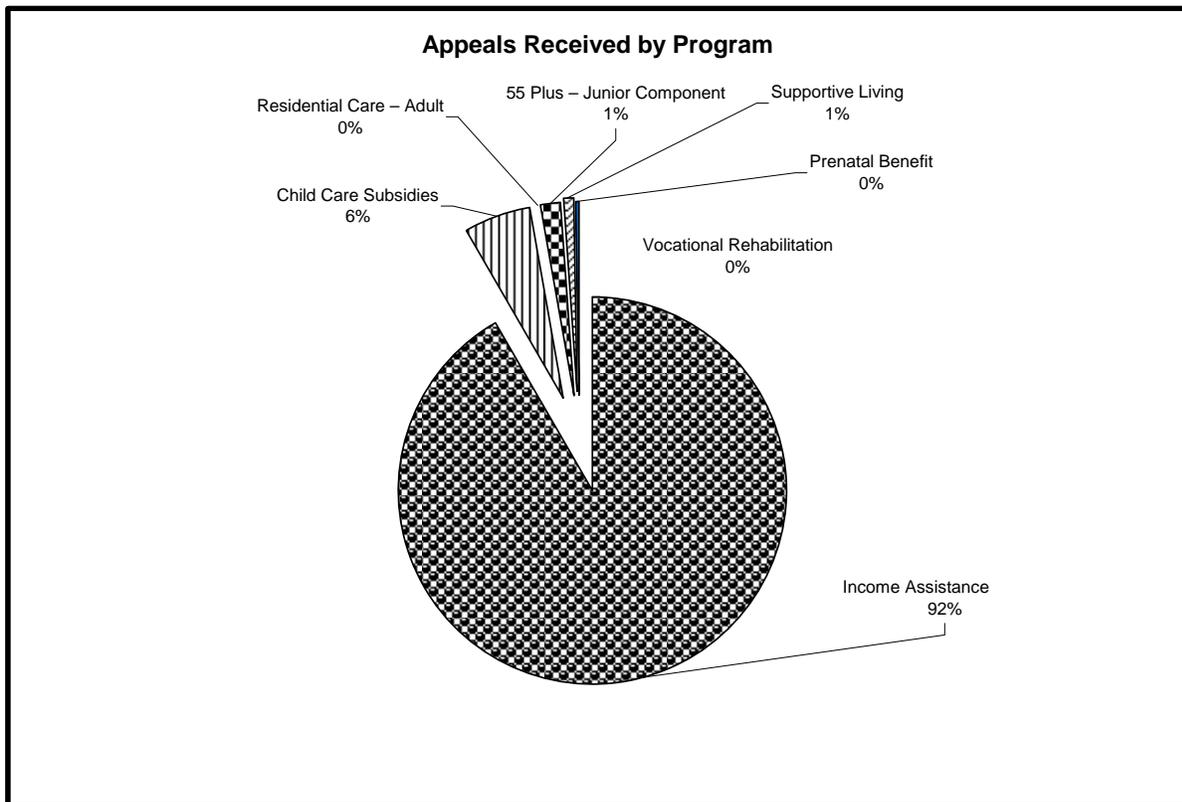
## APPEAL ACTIVITY

In the 2009/10 fiscal year, there were a total of 606 appeals filed compared to 540 the previous fiscal year.

### Appeals Filed by Program:

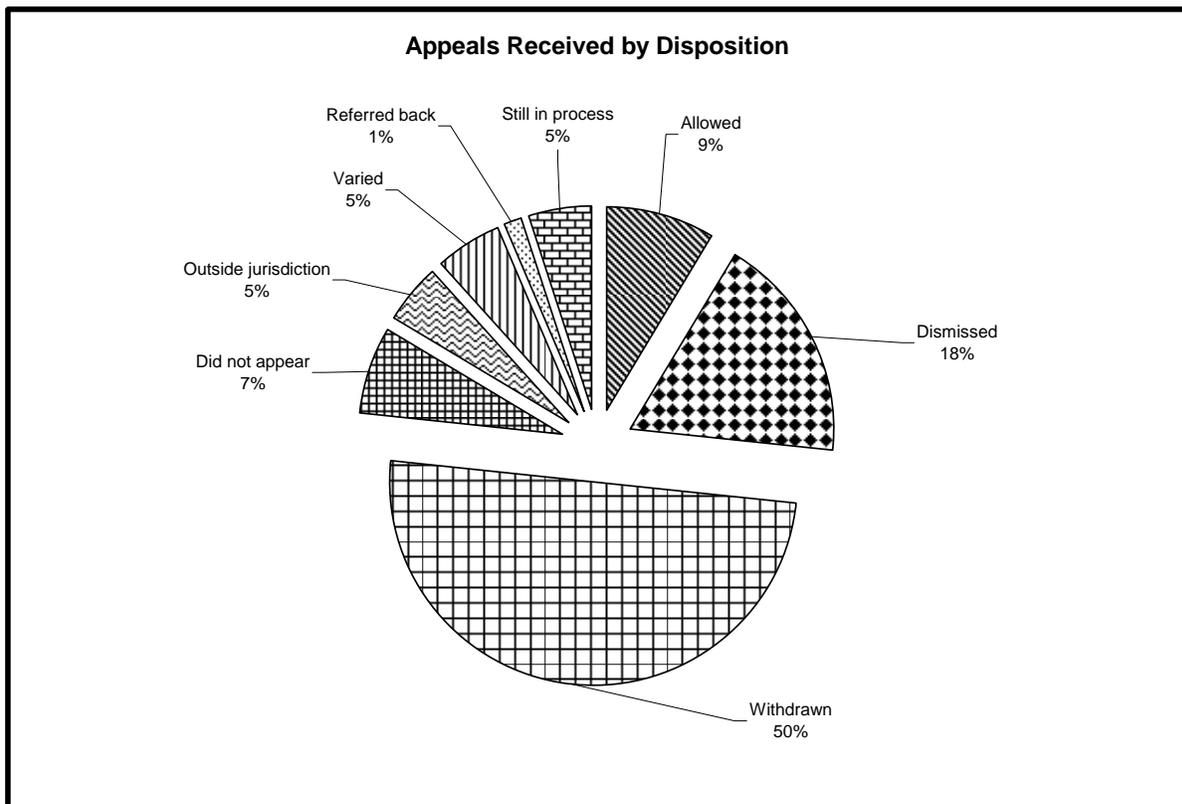
The 606 appeals are broken down by program area are as follows:

Income Assistance	555
Child Care Subsidies	34
Residential Care – Adult	1
55 Plus – Junior Component	9
Supportive Living	5
Prenatal Benefit	1
Vocational Rehabilitation	1



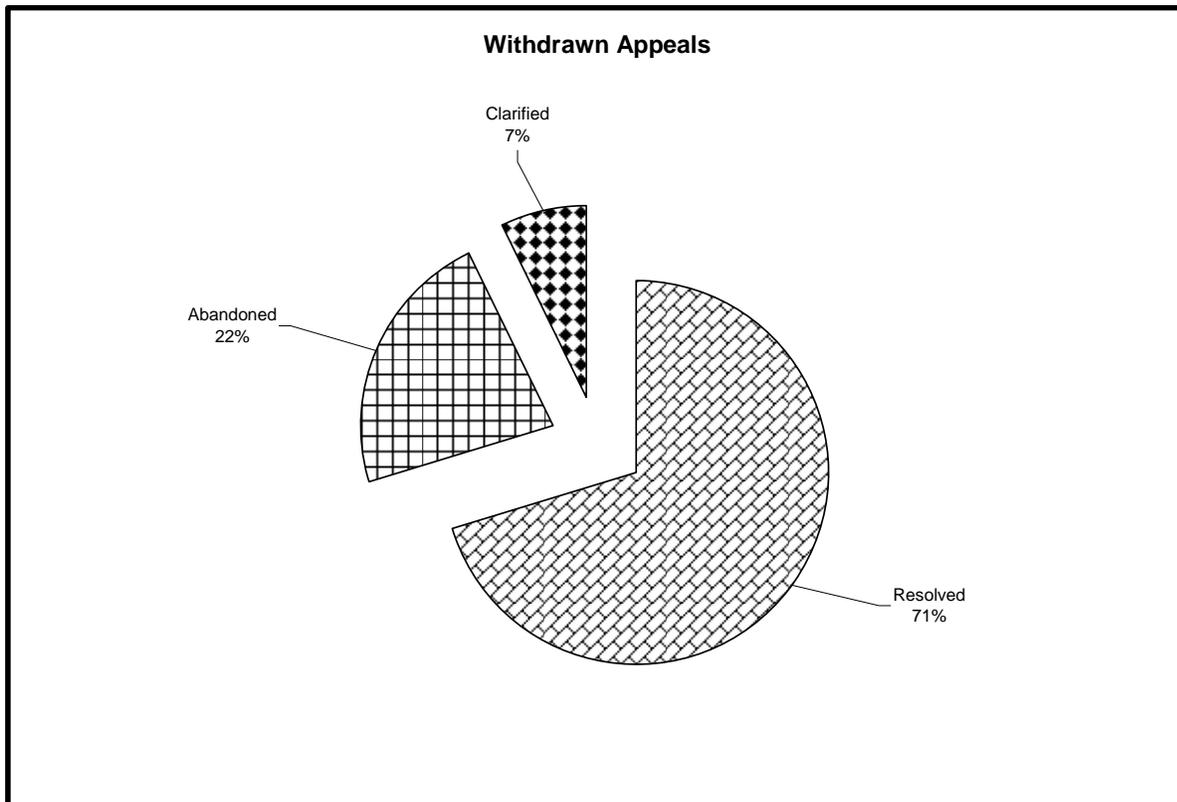
## Appeals Filed by Disposition:

	<u>2009/10</u>	<u>%</u>	<u>2008/09</u>	<u>%</u>
Allowed	52	9	44	8
Dismissed	109	18	70	13
Withdrawn	303	50	300	56
Did not appear	42	7	43	8
Outside jurisdiction	30	5	30	6
Varied	31	5	29	5
Referred back	9	1	6	1
Still in process	30	5	18	3
<b>TOTAL</b>	<b>606</b>	<b>100</b>	<b>540</b>	<b>100</b>



## Withdrawn Appeals:

Resolved <sup>1</sup>	213
Abandoned <sup>2</sup>	68
Clarified <sup>3</sup>	22



The 303 appeals that were withdrawn combined with the 52 that were allowed result in 355 or 59% of total appeals whose outcome was in favour of the appellants.

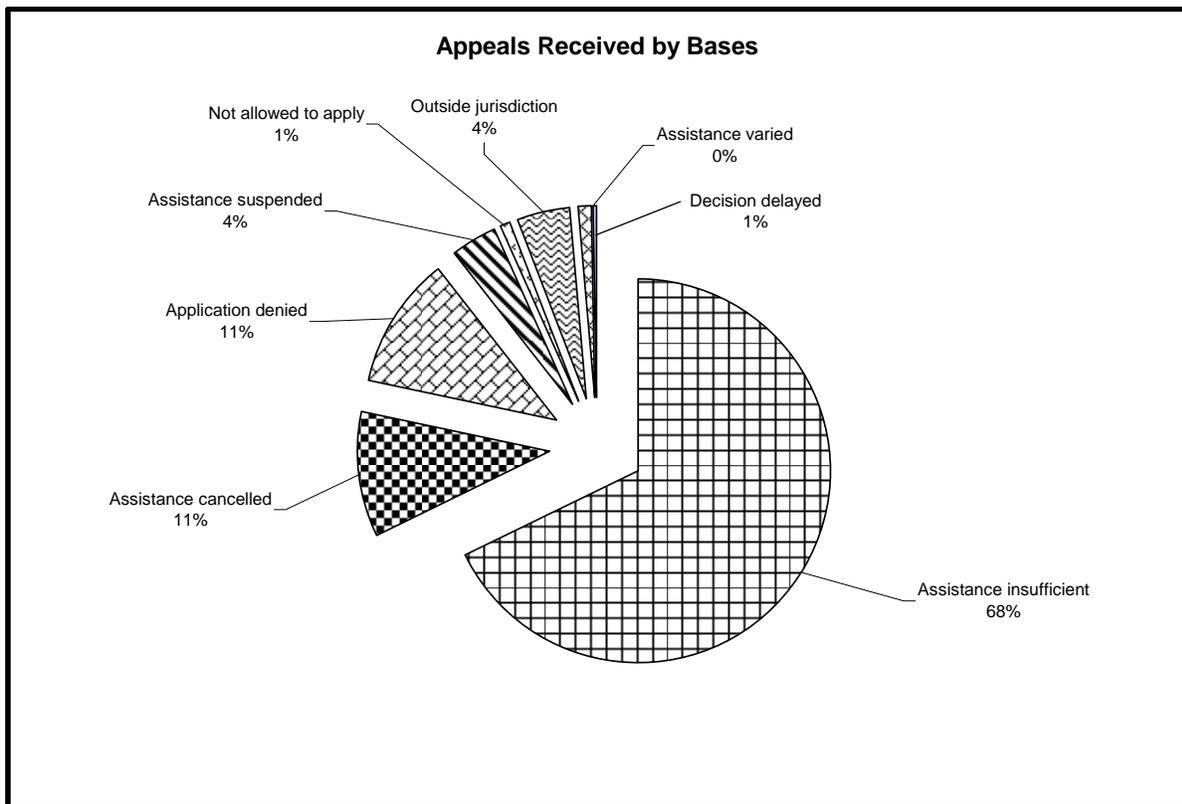
### **Notes:**

- <sup>1</sup> A **resolved** appeal means that some action was taken by the Department to address the concerns raised in the appeal.
- <sup>2</sup> 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.
- <sup>3</sup> A **clarified** appeal means that an explanation by the Department caused the appeal to be withdrawn.

## **Bases of Appeal:**

Of the 606 appeals filed during the 2009/10 fiscal year, the bases of appeal were as follows:

Assistance insufficient	411
Assistance cancelled	64
Application denied	67
Assistance suspended	23
Not allowed to apply	5
Outside jurisdiction	27
Decision delayed	8
Assistance varied	1



## **Allowed Appeals:**

For the 2009/10 fiscal year, there were 52 appeals allowed. Disposition of the allowed appeals was as follows:

Employment and Income Assistance	52
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## **Reasons for Appeal:**

Of the 606 appeals received for 2009/10, the most common reasons for filing appeals were as follows:\*

Medical eligibility	107
Financial resources	57
Health needs	56
Overpayments	49
Shelter costs	48
Non cooperation	28
Special needs	50
Common-law union	15
Irresponsible job termination	24
Basic needs	31

These reasons apply to 465 appeals, or 77% of the total appeals filed.

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

## **REQUESTS FOR RECONSIDERATION**

### **Number of Requests:**

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	<b><u>2009/10</u></b>	<b><u>2008/09</u></b>
<b>Total requests received</b>	24	17
From appellant	23	12
From respondent	1	5

### **Program Breakdown of Reconsideration Requests:**

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	<b><u>2009/10</u></b>	<b><u>2008/09</u></b>
Employment and Income Assistance	24	13
Child Care Subsidy	0	3
55 Plus	0	1

### **Disposition of Reconsideration Requests:**

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	<b><u>2009/10</u></b>	<b><u>2008/09</u></b>
Requests granted	4	4
Requests denied	19	12
Withdrawn	1	1

### **Of the Requests Granted:**

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	<b><u>2009/10</u></b>	<b><u>2008/09</u></b>
Decision upheld	2	0
Decision varied	0	3
Decision overturned	1	1
Request withdrawn	0	0
Pending	1	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 2009/10 fiscal year. The recommendations and issues raised by the Appeal Board this year were as follows:

- The Board had concerns that the Department considered a person to be in a common-law relationship effective the first day that a person's partner moved into their residence. This criterion affects eligibility in both The Employment and Income Assistance Program and Child Care Subsidy Program. The Board did not believe that this was fair, and that some period of residency together was required before a couple would be considered common-law. This concern was also raised by the Ombudsman's Office in their review of The Employment and Income Assistance Program (EIA). Recently the EIA program has implemented some positive changes to allow for a three-month period of time before a person must have their eligibility assessed as a common-law couple.
- The Board recommended that the Child Care Subsidy Program consider implementing additional exemptions for families who have multiple births, as there are additional costs involved when families have twins, triplets, etc.
- With respect to the Employment and Income Assistance Program, the Board had some concerns respecting the Health Services Program. Specifically, the Board saw a number of appeals regarding the amount the Department would pay for an optical exam. The standard rate paid by the Department during the 09/10 fiscal year was \$35. Several appellants who researched multiple service providers found that the lowest available eye exam in Winnipeg was \$65, and that most eye exams had an actual cost of at least \$70. The Board recommended that the Department increase its rates to be in line with the actual cost. The Department has since raised its rate to \$40.
- With respect to physiotherapy treatment, the Board had concerns that physiotherapy treatment was specifically listed in the Employment and Income Assistance Regulation as a covered service, however, persons in need of physiotherapy are advised to ask their doctor for a referral to a hospital where physiotherapy is provided under their Manitoba health coverage. There appeared to be no consideration for persons who required physiotherapy services which were not available in a hospital setting, or did not live within a reasonable distance of a hospital which provided these services.

The Board also recommended that the EIA program develop some plain language information about what coverage was available under the Health Services Program, and what the processes were to access these benefits.

- The final issue raised by the Board was with respect to the EIA program's requirement that EIA recipients must apply for their CPP benefits at age 60. The Board believes that persons on income assistance should have the same options as every other Canadian who has the option to apply at age 65.

## **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 & Income Assistance**

**Basis of Appeal: Income Assistance Insufficient**

**Appeal detail: Medical Eligibility Denied**

**Decision: Confirmed**

The appellant appealed that his medical eligibility was denied effective October 1, 2009. That decision was based on the insufficient information provided to the Medical Panel that did not meet the criteria for enrollment under the medical category in accordance with Section 5(1) of *The Employment & Income Assistance Act*.

### ***Section 5(1) 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; or*

The Department advised that the appellant submitted a Medical Assessment report in August 2009 that was dated May 2009 and indicated that he had dislocated his left elbow in December 2008. The information did not indicate any surgery dates and did not outline any medications for pain. The doctor indicated a temporary limitation of functions and that the appellant would not be able to use his left arm at work. Based on that information, the Medical Panel determined that the appellant did not meet the criteria in accordance with Section 5(1) as his condition would not preclude him for doing some type of employment to earn an income sufficient to meet his basic needs.

The appellant explained that he dislocated his left elbow in December 2008. At the time of the injury he was taking pain medication and there was a possibility of surgery but no surgery has been scheduled to date. His Self Report explained that he has trouble lifting, carrying and reaching with his left arm. He was able to volunteer at Siloam Mission with cooking and wiping tables as long as he used his right arm and didn't have to lift heavy objects with his left arm. His arm was getting

better until recently when he was hit by a car and that accident has also aggravated his back. At the hearing he provided an appointment date with the Pan Am Clinic for November 19, 2009 at which time he will have his elbow assessed for surgery.

In this case, the Board concurred with the Department's decision to deny medical eligibility. The doctor stated that his condition was temporary and the condition of his left arm would not prevent him from doing some type of work and therefore he did not meet the criteria. The appellant's testimony at the hearing did not convince the Board that he was unable to work in some capacity. On that basis, the Board confirmed the decision of the Director. The appellant was encouraged to provide updated medical information for review.

## **Sample #2**

**Program: Employment & Income Assistance**

**Basis of Appeal: Income Assistance Insufficient**

**Appeal detail: Basic Needs**

**Decision: Rescinded**

The appellant appealed that he wasn't receiving his full entitlement to basic needs assistance while residing at a homeless shelter. The Department verified with the shelter that he stayed there sometimes. Based on that information it was determined that the appellant was in a Room and Board (B&R) situation and was not entitled to any funds to purchase food. He received \$66.40 for basic needs and \$25.00 for the job seekers allowance. The appellant explained that he could not always eat at the shelter and he requested his full entitlement of basic needs in the amount of \$195.00.

*The Employment and Income Assistance Act* states that 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.

In accordance with The Employment and Income Assistance Regulation, Schedule A Section 1(c), a person enrolled in the general assistance category is entitled to \$195 in basic needs. Section (g) of this section states that "where a recipient by living arrangement does not require one or more of the basic necessities included in the basic allowance, the amount may be apportioned in accordance with the terms authorized by the director:"

It appeared to the Board that the Department denied the appellant food money because the shelter provided some meals and therefore he didn't need the basic needs funds for food. However, the Board determined that a homeless shelter is not a B&R situation in that food is not guaranteed every day. In accordance with the above legislation, the appellant was entitled to receive an allowance for food as it would be essential to his health and well being. On that basis, the Board rescinded the decision of the Director and ordered the Department to provide the appellant with basic needs funds back to the day of his initial enrollment.

### **Sample #3**

**Program: Child Care Subsidy:**  
**Basis of appeal: Subsidy Insufficient**  
**Decision: Referred Back**

The appellant is appealing the amount of child care subsidy she receives.

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

The appellant explained that her parent contribution of \$199.95 is too high. The appellant is a single parent of one child and is having trouble paying bills and student loan payments. She often has to borrow money and has pawned items in the past to make ends meet. She explained that although she receives child maintenance those monthly payments are sporadic. She explained that she has financial hardship.

The Department explained that the appellant's yearly income of \$23,053.80 included her earned income and monthly child maintenance payments that she reported. Additional exemptions of \$10,429.00 for head of household and \$5,164.00 for the first dependent child were applied in accordance with the regulations. It was determined that her parent contribution would be \$199.95. In accordance with the regulations the Department is not able to allow additional exemptions for high rent costs or debt repayment such as student loans. The Department reported at the hearing that they were not aware that her maintenance payments were sporadic and they agreed to average out her actual maintenance payments and recalculate her subsidy back to the date of her application.

In this case, the Board referred this matter back to the Department for review. The Board considered the new financial information presented and the Department's willingness to recalculate her subsidy entitlement. The decision to refer back would guarantee the appellant would receive a better rate of subsidy effective the date of her application which would alleviate her financial hardship.

## **Sample #4**

**Program: Employment and Income Assistance**

**Basis of Appeal: Income Assistance Insufficient**

**Basis Detail: Amount for rent insufficient**

**Decision: Varied**

The appellant appealed the amount she was allowed in her Employment and Income Assistance budget for rent.

The appellant is a single parent with three children. The home that she lives in does not include any utilities. Therefore the program's guideline rate for four people is \$351 a month. The rent at the home where the appellant and her children live is \$675.

The appellant has signed a form which requests the program to send the actual amount of her rent each month to her landlord and gives permission to the Department to deduct the \$324 excess rental amount from her benefits each month.

The appellant stated that she is not receiving her monthly National Child Benefit cheque because she has only recently regained custody of her children and she had to reapply. She has been advised she will receive about \$700 a month, but she is not sure when she will get her first cheque. The deduction of the \$324 has been causing her a significant financial hardship.

The Department has developed a rental guideline schedule in the Employment and Income Assistance Administrative Manual which provides workers with the amount of allowable rent depending on family size and whether or not utilities are included in the rent. The guidelines in Section 19.1.1 indicate that for four persons the basic rental amount is \$351 per month. The guidelines also state that in exceptional circumstances an amount up to the actual rent can be approved.

The Department has not increased the income assistance shelter rates for a considerable length of time. However, the Department has implemented a rental supplement called the Manitoba Shelter Benefit for low income Manitobans. This benefit is available to anyone enrolled in the disability category, or adults without dependent children. It is assumed by the Board that persons with dependent children are not eligible for the Manitoba Shelter Benefit as they are in receipt of the National Child Benefit. These funds are exempted by the EIA program and can be used to pay excess rent.

In the appellant's particular circumstance, the Board found that there were exceptional circumstances that would warrant providing the appellant with an amount of rent above the guideline rental rates until she is in receipt of the Child Tax Credit. The Board felt that as all other single parents had the resource of their child tax credit available to them to pay excess rent, the appellant should be allowed some discretion in the amount allowed for shelter costs. Once the appellant is in receipt of her Child Tax Credit she will be able to use those funds towards her excess rental amount. Therefore the decision of the Director was rescinded and the Department was ordered to pay the full rental amount until the appellant began receiving her Child Tax Credit.

**Sample #5** *The following is an example of a reconsideration request*

**Program: Employment and Income Assistance**

**Basis of Appeal: Income Assistance Insufficient**

**Basis Detail: Medical eligibility denied**

**Decision: Varied**

The appellant filed an appeal that her income assistance benefits were insufficient and stated in her Notice of Appeal, "Decision that ineligible for benefits under Section 5(1)(a). Attached to the Notice of Appeal was a decision letter dated July 17<sup>th</sup>, 2008. At the hearing, the appellant's advocate requested that her medical eligibility be backdated to November 2007 which was the date when she originally applied for income assistance.

The appellant had submitted medical information in December 2007 that outlined chronic muscle pain, hypothyroid, dyspepsia, decrease in concentration, asthma and chronic neck and shoulder pain. Based on that information, the Director had denied her application for medical eligibility on January 3, 2008 as the medical panel determined that those conditions would not preclude some type of sedentary employment. On July 7, 2008, additional information was submitted that outlined myofascial pain, decreased concentration, migraines and asthma. The Department denied her application again believing that the conditions outlined would not preclude sedentary employment. The Department had noted that while her application listed a brain injury as a result of a motor vehicle accident, there was no specific information provided about this condition and how it affected her ability to be employed.

The advocate argued that the appellant's combined medical conditions do meet the legislated criteria for enrollment under the medical category in that she is not able to earn an income sufficient to meet her basic needs and her condition will last for longer than 90 days. The appellant's advocate argued that the combined medical conditions, plus the fact that she was referred to a muscle specialist was sufficient to determine that she met the criteria. Further, the Department had an obligation to request more information from the muscle specialist at the time. Ms. Johnson explained that due to the appellant's condition and personal situation, she did not appeal this decision. The doctor said she was not able to work but did not specifically identify a length of time. A Self Report dated May 16, 2008 indicated that she had attended the Manitoba Brain Injury Association for support. Ms Johnson argued that the Department should have given this information more consideration and Ms C. should have been found eligible.

At the hearing, the appellant presented new medical information to the Board about the appellant's medical condition which demonstrated much more definitively than the previous medical assessment reports that the brain injury along with the other medical conditions left the appellant unable to earn a living sufficient to meet her basic needs.

The Board carefully considered all the written and verbal information presented at the hearing, and concluded the following:

When the Board rendered its decision, they denied the request to backdate the decision to December 2007, as this was not requested in the Notice of Appeal.

The Board also upheld the Director's decision to deny medical eligibility in July 2008, as the Board believed that the medical information submitted to the Department at that time was not sufficient.

The Board was convinced from the information submitted at the hearing that the appellant met the eligibility criteria under Section 5(1)(a) of *The Employment and Income Assistance Regulation*.

Therefore the decision of the Director was varied and the Board ordered that the appellant be enrolled in the disability category effective the following month.

The appellant filed a request for reconsideration stating that the Board failed to consider relevant evidence in making its decision to not order the Department to enroll the appellant for the period of July 2008 to May 1 2009. When the panel reviewed this request and the decision letter the panel felt that it could not determine whether the information presented by the appellant at the hearing was or was not taken into consideration for that particular period of time. Therefore the panel granted the request for reconsideration.

A new hearing was held to take another look at the period of July 2008 to May 1, 2009. The new panel upheld the original panel's decision and specifically stated in their reasons for decision:

*The Board has determined that when a decision of the Department is appealed, only the information which the Department had available to them at the time that the decision was made should be taken into consideration by the Board. Should the Chair admit into evidence new information at the hearing, then that information should only be considered by the panel as of the day it was reviewed. Similarly if the Board is convinced primarily by verbal testimony at the hearing, then the Board would be "making a decision that the Director could have made" as of the date that the verbal evidence was heard*