

Social Services
Appeal Board

Annual Report
2010 – 2011





**MINISTER OF
FAMILY SERVICES AND CONSUMER AFFAIRS**

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

September 2011

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 2010/2011.

Respectfully submitted,

Signature on original

Gord Mackintosh



**Social Services
Appeal Board**

**7th Floor, 175 Hargrave Street
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September 2011

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, 2011. 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,

Signature on original

Kristine Barr
Chairperson



TABLE OF CONTENTS

Board Membership	Page 2
Board Biographies	Page 3
Jurisdiction of the Social Services Appeal Board	Page 7
Financial Information	Page 10
Appeal Activity	Page 11
Requests for Reconsideration	Page 16
Summary of Advisory Activities	Page 17
Selected Overviews and Case Summaries	Page 19
<i>The Social Services Appeal Board Act</i>	Page 25

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 Consumer Affairs.

Appeal Board Appointees during the 2010/2011 fiscal year:

Chairperson:	Kristine Barr
Vice-chair:	Jany Keenan
Members:	Phillip Calver Valerie Debooy Robert Doherty Edward Goralski Jeannette Gougeon Maureen Hemphill (resigned) Mark Koenker Sara Lazareck John Leggat (resigned) George Pelletier Louise Plamondon Dennis Ruggles Andrew Simpson (term expired) Cindy Stroppa (term expired)

Social Services Appeal Board Staff:

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

Legal Counsel:	Allison Fenske
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BOARD BIOGRAPHIES – 2010/11

Kristine Barr, Chairperson:

Appointed January 12, 2005

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 and served until October 2010. He is currently on the Board of Bright Futures School.

Phillip Calver:

Appointed June 24th, 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 17th, 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 17th, 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 17th, 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.

Jeannette Gougeon

Appointed Feb 9th, 2011

Jeannette has retired following a 37 ½ year career as a caseworker in social services. Throughout her career she was active with her union and served in the capacity of delegate, secretary, negotiator, pension and benefit representative, vice-president and president of her component. Upon retirement she was given a Life Membership of the MGEU. She is a board member of the Canadian Paraplegic Association, a member of the Lion Club and an active volunteer in the community.

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 2010/11, the annual budget for the Social Services Appeal Board was \$448,000. This amount was apportioned into \$365,000 for staff and board salaries and benefits, and \$83,000 for operating costs. The actual expenditures were \$410,000 for an under expenditure of \$28,000.

The board members' per diem payments are paid from salary expenses. In the 2010/11 fiscal year, the amount spent on board per diems was \$63,453.

Actual Expenditures*

09-1C Social Services Appeal Board

Expenditures by sub-appropriation	Actual 2010/11 \$000	FTE**	Estimate 2010/11 \$000	Variance Over(Under)
Total salaries and employee benefits	326	4	365	(39)
Total other expenditures	84		83	1

* 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.

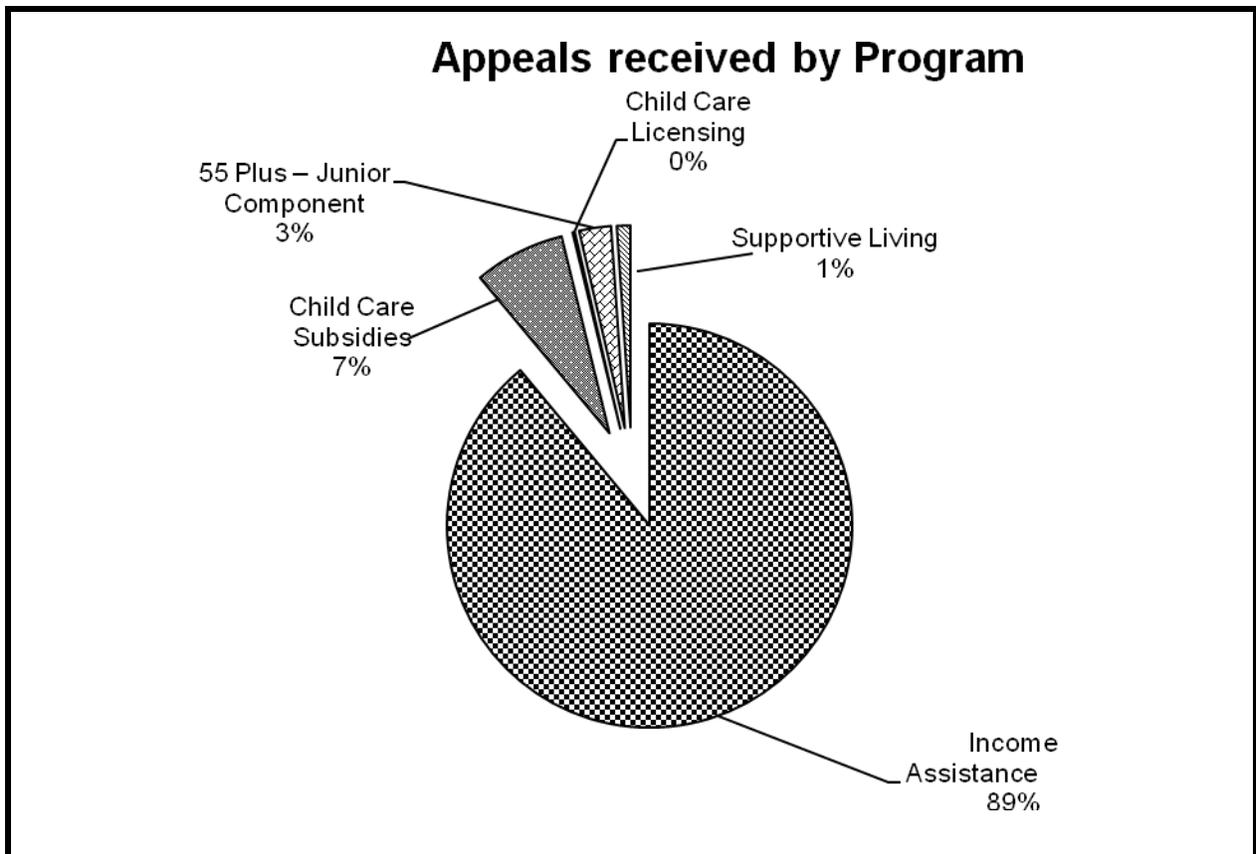
APPEAL ACTIVITY

In the 2010/11 fiscal year, there were a total of 553 appeals filed compared to 606 the previous fiscal year.

Appeals Filed by Program:

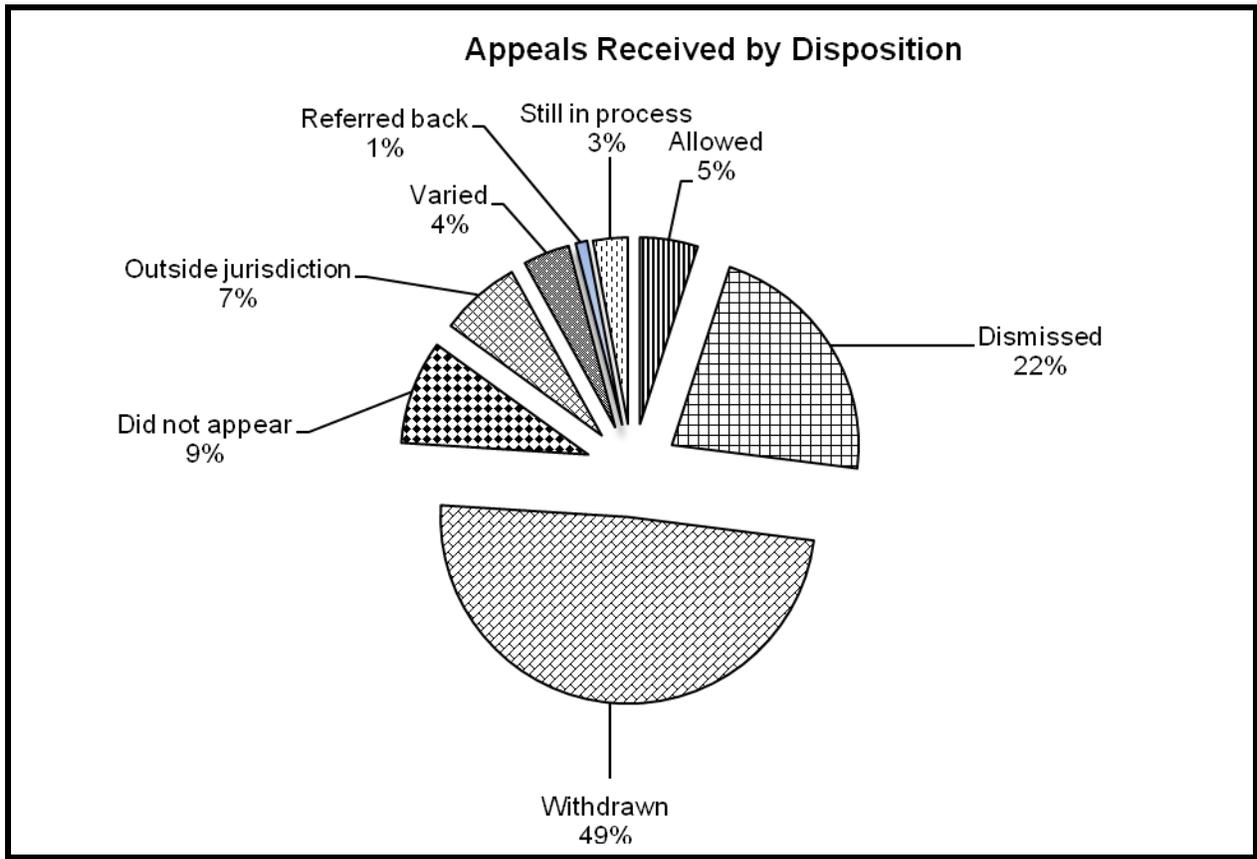
The 553 appeals are broken down by program area are as follows:

Income Assistance	491
Child Care Subsidies	40
Child Care Licensing	1
55 Plus – Junior Component	14
Supportive Living	6
Vocational Rehabilitation	1



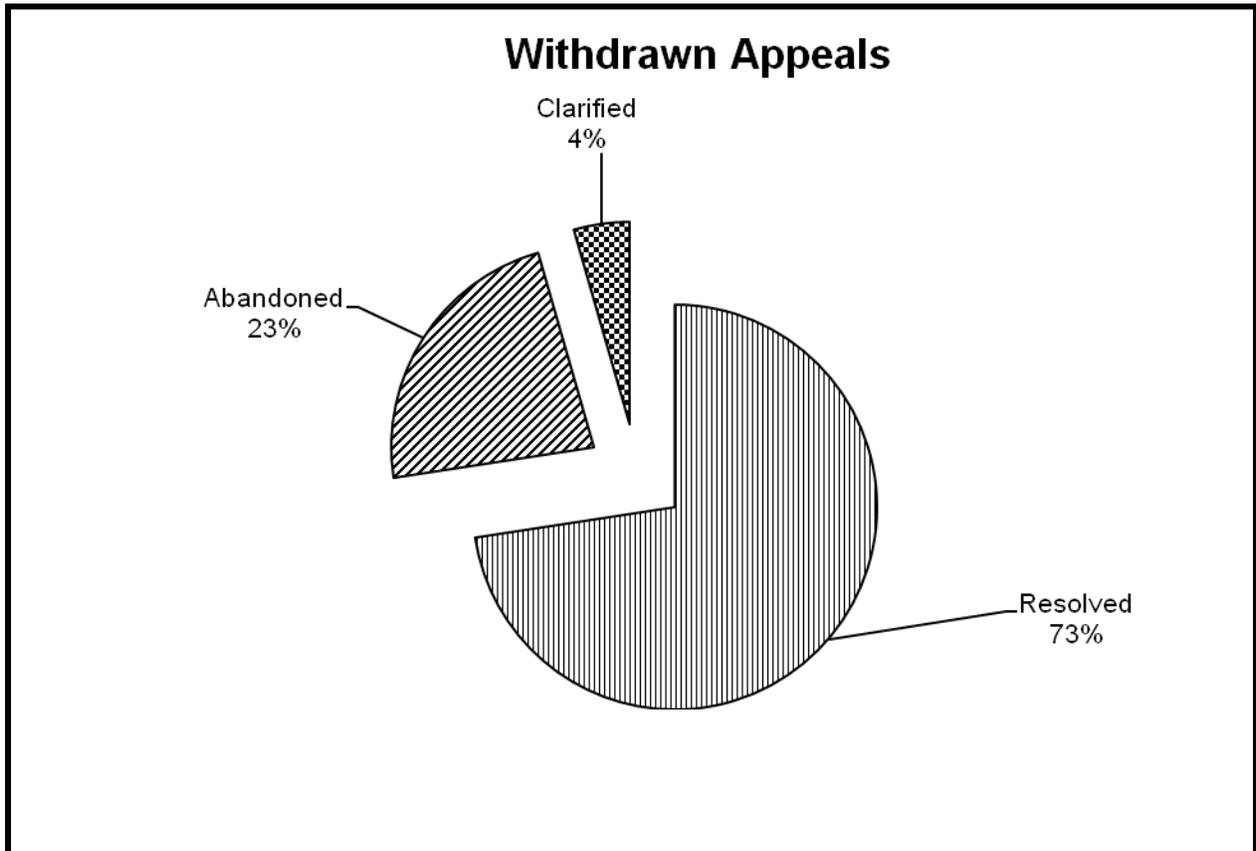
Appeals Filed by Disposition:

	<u>2010/11</u>	<u>%</u>	<u>2009/10</u>	<u>%</u>
Allowed	27	5	52	9
Dismissed	121	22	109	18
Withdrawn	270	49	303	50
Did not appear	51	9	42	7
Outside jurisdiction	40	7	30	5
Varied	22	4	31	5
Referred back	5	1	9	1
Still in process	17	3	30	5
TOTAL	553	100	606	100



Withdrawn Appeals:

Resolved ¹	196
Abandoned ²	62
Clarified ³	12



The 270 appeals that were withdrawn combined with the 27 that were allowed result in 297 or 54% of total appeals whose outcome was in favour of the appellants.

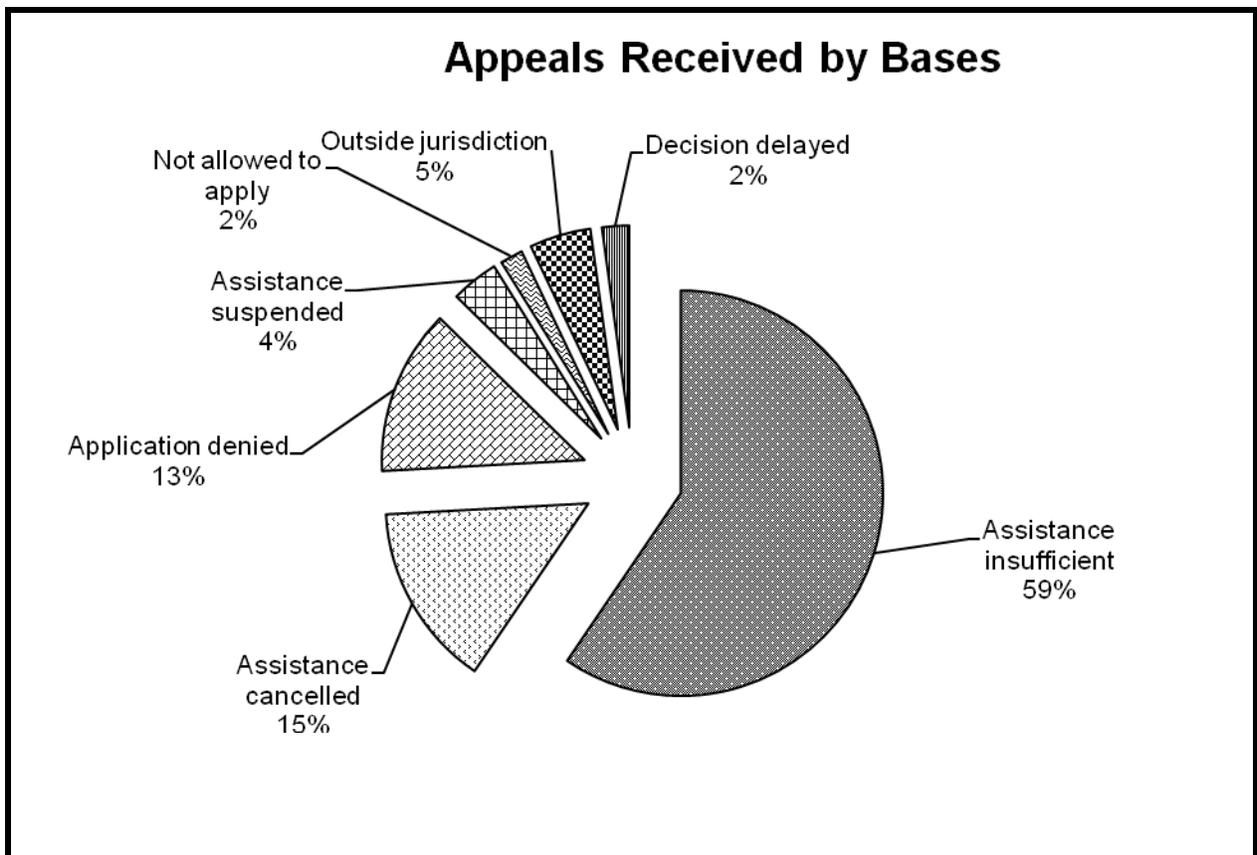
Notes:

- 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 553 appeals filed during the 2010/11 fiscal year, the bases of appeal were as follows:

Assistance insufficient	329
Assistance cancelled	81
Application denied	73
Assistance suspended	21
Not allowed to apply	10
Outside jurisdiction	27
Decision delayed	12



Allowed Appeals:

For the 2010/11 fiscal year, there were 27 appeals allowed. Disposition of the allowed appeals was as follows:

Employment and Income Assistance	27
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Reasons for Appeal:

Of the 553 appeals received for 2010/11, the most common reasons for filing appeals were as follows:*

Medical eligibility	89
Financial resources	48
Health needs	50
Overpayments	23
Shelter costs	28
Non cooperation	54
Special needs	55
Common-law union	10
Irresponsible job termination	23
Basic needs	31

These reasons apply to 411 appeals, or 74% of the total appeals filed.

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

Hearing Activity in 2010/2011*

<u>Month</u>	<u>Scheduled</u>	<u>Held</u>
April	36	19
May	38	15
June	23	12
July	33	23
August	42	20
September	38	25
October	37	25
November	37	24
December	19	7
January	22	12
February	39	23
March	40	26
TOTAL	404	231

*May include appeals filed in previous fiscal years.

Of the 553 Appeals received, 231 or 42% went to the hearing phase.

REQUESTS FOR RECONSIDERATION

Number of Requests:

	<u>2010/11</u>	<u>2009/10</u>
Total requests received	8	24
From appellant	8	23
From respondent	0	1

Program Breakdown of Reconsideration Requests:

	<u>2010/11</u>	<u>2009/10</u>
Employment and Income Assistance	8	24

Disposition of Reconsideration Requests:

	<u>2010/11</u>	<u>2009/10</u>
Requests granted	1	4
Requests denied	6	19
Withdrawn	1	1

Of the Requests Granted:

	<u>2010/11</u>	<u>2009/10</u>
Decision upheld	0	2
Decision overturned	1	1
Pending	0	1

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 2010/2011 fiscal year. The recommendations and issues raised by the Appeal Board this year were as follows:

- The Board had concerns regarding how the Child Care Subsidy Program calculated eligibility for self-employed applicants. The program bases eligibility on their previous year's income tax return. This works for persons whose income is fairly consistent from year to year, but appears to be unfair to persons whose circumstances have changed and who have incurred a substantial decrease in their income. The Board understands that for anyone who is an hourly employee, their eligibility for child care subsidy is based on their current circumstances, and the Board believes that the subsidy program must develop the capacity to assess self employment income based on actual current circumstances in situations where expenses have increased drastically, or the number of hours the person is able to work has changed, or any other circumstance that could cause a significant drop in income.
- The Board had concerns about the amount allowed for specific special needs items, such as the cost of a bed. The Board notes that the amount of \$150 allowed in the Winnipeg region has remained unchanged for numerous years and appears to be unrelated to the actual cost of buying a new bed. The Board believes that it is imperative that the amount allowed for special needs items are reflective of their actual replacement cost, and recommends that a process be established to periodically review and update the amounts provided for special needs items.
- The Board had concerns about the implementation of new initiatives such as the Rewarding Volunteer Work Benefit. There does not appear to be a comprehensive communications strategy in place to advise potential recipients when a new benefit is available. The Board had two appellants file appeals because they missed out on months of this benefit strictly because they were not aware of the benefit and therefore did not apply for it. From the facts established at these hearings, the appellants met all the necessary qualifications to be eligible for the program.

- The Board recommended that the Department review its current agreement with the Manitoba Dental Association. Currently, the agreement with the Manitoba Dental Association stipulates that a root canal can be covered by Health Services only if the procedure is required on an anterior (front) tooth. The Board believes that dental coverage should also include coverage for posterior teeth in order to promote overall dental health to income assistance recipients.
- The Board has noted to the Minister that many of the Department's letters to its program recipients is difficult to understand and specific examples of this have been forwarded. The Minister has responded that a Plain Language Working Group has been established to improve the Department's communication to the general public. In addition, all print information materials, including program decision letters are being reviewed for plain language.
- The Board raised a concern that all Employment and Income Assistance decisions which denied eligibility for health services such as optical, dental, and orthotic footwear were not advised of their right to appeal these decisions. The Department is currently reviewing these processes.
- The Board had questions about the process used to determine whether or not a prescription drug would be approved and paid for by the Department. The Board requested and received a presentation by a representative from the Provincial Drug Program. After receiving this information, no recommendations were put forward to the Minister, but the Board will continue its discussions in this area.

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 Transportation

Decision: Varied

The appellant appealed the Department's decision to deny his request for taxi funds for medical appointments in Swan River.

The Department explained that the appellant lives in a remote community and since 2008 has travelled to Swan River by taxi three times a week for dialysis. The cost of these trips was in excess of \$2600.00 a month. In reviewing his situation, the Department noted that the town has a Handi Transit van that he could access at a lesser cost to the Department. In accordance with Section 22.3.1 of the Employment & Income Assistance Manual, the appellant is obligated to access the most economical medical transportation available. On September 7, 2010 he was notified by phone that he would be required to travel by Handi Transit van effective September 10, 2010. On September 17, 2010, Handi Transit advised the Department that they would no longer transport the appellant to Swan River due to his ill-mannered behavior. In addition, the appellant advised the Department that riding in the Handi Transit van was very uncomfortable and painful before and after his treatments. The Department suggested he work out the differences with Handi Transit and offered to provide funds to purchase appropriate cushions to alleviate his discomfort. In order for the appellant to attend his ongoing treatments, the Department provided him with \$150.00 for each trip so he could arrange for private transportation until the Handi Transit issues could be resolved.

The appellant explained that he tried taking the Handi Transit van as requested. He has had back and lung surgery and it is painful to ride in the Handi Transit van as the seats are not as comfortable as the taxi seats. He never feels well after his dialysis treatment and it is extremely uncomfortable and painful riding home in the van. Regardless of the disagreement he has had with the Handi Transit van driver, it is not a form of transportation that meets his needs. He has been using the \$150.00 to pay a friend to drive him each trip but that person is leaving town until spring and he has not been able to find anyone else to drive him. At the hearing he provided a letter from his doctor confirming his medical conditions and the resulting stress and anxiety created by the situation.

The Board determined that based on the appellant's explanations about his medical conditions he should continue to be approved for the taxi to Swan River at that time. He provided medical confirmation that he had major back surgery and lung surgery and that he has pain, stress and anxiety. The Board acknowledged that accessing the least costly method of transportation is required but the Board believed that the decision was made too quickly by the Department to change his method of transportation. The Board determined that some transition time should have been allowed for the appellant to follow up with the Department's offer to provide funds for cushions to alleviate his physical discomfort. The Board agreed that the appellant had an obligation to follow up with the Department's offer to purchase cushions and to try and resolve the situation with the Handi Transit authorities. As such, the Board varied the decision of the Director and ordered the Department to provide funds for the taxi transportation from December 1, 2010 to March 31, 2011. This time period would give the appellant an opportunity to resolve his differences with Handi Transit and to pursue any modifications to the seating required to accommodate his physical conditions.

Sample #2

Program: Employment & Income Assistance

Basis of Appeal: Income Assistance Insufficient

Appeal detail: Newborn allowance

Decision: Rescinded

The appellant appealed the amount that she received for her newborn allowance.

The appellant was expecting her second child. Her first child was born in Alberta 8½ years ago. The appellant was a single parent and had moved several times, from multiple provinces and cities since her son was born. She stated she did not have any of the baby needs or a crib from the time when her son was a baby. She is relatively new in the city and does not have any friends or family who could support her. She stated she tried to accumulate as much of her needs as possible through second hand stores and community resources, but there are still many things that she needs such as a crib, undershirts, and a bunting bag.

The Department originally advised the appellant via letter dated January 11, 2010 that she was eligible for a newborn allowance of \$75 plus \$150 for a crib/bed. The Department sent the appellant \$150 for the crib. Subsequent to sending this letter, the worker clarified the Department's policy and was informed that the appellant was not eligible for the crib funds and therefore should have only been eligible for \$75. As the appellant had already received the \$150, which is greater than the \$75 she was eligible for, no further funds would be issued. The worker stated that in exceptional circumstances such as fleeing an abusive relationship or a house fire the Department may issue the \$250 newborn allowance for second or subsequent children.

The Department's policy regarding newborn allowances is in Section 21.1.3 of the Employment and Income Assistance Administrative Manual. It states:

Newborn assistance may be authorized on an "as required" basis within the first three months of the birth of a child. Assistance may be up to \$250.00 for the first-born child and up to \$75.00 for each subsequent child. Assistance is intended to provide items necessary for a newborn such as a crib and layette. These provisions also apply to adoptions and to each child in the case of multiple births.

The Board determined that in cases where the first and second child are born many years apart, and especially when the mother had moved from another province, it is unreasonable to expect that they would still be in possession of their firstborn child's baby clothes, crib, bedding, etc. The policy states that these items are "necessary for a newborn". It is vital that the newborn child has a safe crib which meets regulations in order to ensure the safety of that child. Therefore the Board found that in the appellant's particular circumstances it was reasonable to provide her with the newborn allowance for a first child in the amount of \$250. Therefore the decision of the director was rescinded and the Department was ordered to provide the appellant with the full \$250 newborn allowance.

Sample #3

Program: Child Care Subsidy:

Basis of appeal: Subsidy Insufficient

Decision: Referred back

The appellant appealed that her child care subsidy was insufficient.

The appellant is a self-employed real estate agent. A portion of her income is derived from managing the office for another real estate agent, and a portion of her income is derived from commission from the sale of homes.

Initially the Department had calculated her subsidy eligibility for the period of October 4th, 2010 to October 28, 2011 based on the amounts reported on her 2009 income tax assessments for both self-employment and employment earnings. The calculation indicated that the maximum cost of care was \$336.00 per twenty day period and that the province would be responsible for \$86.93 and the appellant would be required to pay the remaining \$249.07.

The Department later revised this decision and based the calculation on last year's reported tax assessment of self employment earnings, plus the wages from the employment form indicating what the appellant would be receiving for managing the office. The Department assessed these earnings as regular waged employment rather than self employment.

At the hearing, the appellant clarified that the hourly amount she received for managing the office for another real estate agent was in fact part of her self-employment income. The appellant stated that she is invoicing for her services and does not receive a paystub for these services. When she filed her income tax, this income would in fact be reported as self-employment income. The appellant stated that she disagrees that the 2009 income tax assessment forms the basis of estimating her income for the upcoming 12 months as her circumstances have changed significantly. She stated that in 2009, the real estate agency did not require payment of many fees which she is now required to pay. As a result her actual net income has dropped significantly from the previous fiscal year. The appellant requested that her subsidy calculation be based on her year to date information which would provide a much more accurate picture of her current ability to pay for her daughter's child care costs.

The Department stated that they would be willing to reassess her eligibility based solely on the self-employment earnings from the 2009 income tax return, but also noted that policy dictates that all self-employment income must be calculated based on the previous year's income tax. Thus, policy dictates her subsidy calculation cannot be based on her year-to-date information for 2010.

The Board determined that the Department must recalculate the appellant's earnings based solely on self-employment income for the 2009 tax assessment year. Therefore the Board referred this matter back to the Department for re-calculation. In addition, because of the unusual nature of both her income and expenses, the Board would request that the Director of Provincial Services review this calculation to determine if the appellant's current circumstances warrant any special consideration outside of the regular policy. The Board believed that when a person's income has changed significantly from the previous year, there needs to be provision for their subsidy eligibility to be calculated based on their current circumstances regardless of their source of income.

The Board had a concern with the lack of flexibility to review a self-employed person's current circumstances when they have situations where their income drops significantly. This concern was forwarded to the Minister for review.

Sample #4

Program: 55 Plus-A Manitoba Income Supplement

Basis of Appeal: 55 Plus benefits denied

Decision: Confirmed

The appellant filed an appeal that her application for the 55 Plus Program-A Manitoba Income Supplement was denied.

Each fiscal year a new application for 55 Plus benefits must be completed based on a person's income in the previous calendar year. A single person is not eligible for 55 Plus benefits if their income has exceeded \$9,746.40. For the year 2009 the appellant's net family income was \$12,551.09 and the program therefore found the appellant ineligible for the income supplement. The maximum benefit available under the program is \$161.80 per quarter.

At the hearing the appellant stated that her present circumstances have drastically changed since last year and that her current sources of income are \$210 per month from the Manitoba Shelter Benefit and \$259.97 from her Canada Pension Plan for a total of \$469.97.

According to the *Income Supplement for Persons Not Eligible for Old Age Security Benefits, (55 Plus) Regulation*:

- 3 Net family income for the tax year immediately preceding the benefit year for which application is being made, shall be family income less the following deductions.
 - 5(1) Benefits payable to an eligible applicant for the entire benefits year will be based on:
 - a) the applicant's marital or common-law relationship status at the time of application; and
 - (b) the income information for the previous year of the applicant and his or her spouse or common-law partner.

The Board has determined that the Department had appropriately calculated the appellant's eligibility for the 55 Plus program. The 55 Plus regulation does not have any provision to calculate eligibility based on a person's present circumstances, except in clause 2(4) which grants the Minister such discretion. However the Social Services Appeal Board does not have the jurisdiction to exercise the Minister's discretion. Therefore the decision of the Director was confirmed.

The Social Services Appeal Board Act

(Assented to July 6, 2001)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

DEFINITIONS AND PURPOSE

Definitions

1 In this Act,

"appeal board" means the Social Services Appeal Board referred to in section 3; (« Commission d'appel »)

"designated Act" means

- (a) *The Adoption Act*,
- (b) *The Community Child Care Standards Act*,
- (c) *The Employment and Income Assistance Act*,
- (d) *The Social Services Administration Act* or a regulation under that Act,
- (e) *The Vulnerable Persons Living with a Mental Disability Act*,
- (f) any other Act or regulation designated as a designated Act in the regulations; (« loi désignée »)

"designated officer" means a person who has authority under a designated Act to make a decision or order for which there is a right of appeal under the designated Act to the appeal board, or the person to whom that authority is delegated; (« fonctionnaire désigné »)

"minister" means the minister appointed by the Lieutenant Governor in Council to administer this Act; (« ministre »)

"panel" means a panel of the appeal board. (« comité »)

S.M. 2004, c. 42, s. 50.

Purpose

2 The purpose of this Act is to give Manitobans a fair, impartial and informal appeal process from decisions relating to various social services and programs.

APPEAL BOARD

Social Services Appeal Board

3 The Social Services Advisory Committee, which was established under *The Social Services Administration Act*, is continued under this Act as the Social Services Appeal Board.

Members

4(1) The appeal board is to consist of 15 members appointed by the Lieutenant Governor in Council.

Who can be a member

- 4(2) The members of the appeal board must, in the opinion of the Lieutenant Governor in Council,
- (a) be representative of the regional, economic and cultural diversity of Manitoba;
 - (b) be knowledgeable about social services and programs under designated Acts; and
 - (c) not be employees under the control of a minister responsible for a designated Act.

Two-year terms

- 4(3) Each member is to be appointed for a term of two years, and may be reappointed for two further two-year terms.

Reappointing a member

- 4(4) A member who has served for three terms may be reappointed for a further term, but only if at least one year has passed since the end of his or her last term.

Member continues to hold office

- 4(5) A member continues to hold office until he or she is reappointed, a successor is appointed or the appointment is revoked.

Remuneration and expenses

- 5 The members of the appeal board are to be paid remuneration and expenses at rates set by the Lieutenant Governor in Council.

Chair and vice-chair

- 6(1) The Lieutenant Governor in Council must designate one of the members of the appeal board as chair and one or more members as vice-chairs.

Duties of vice-chair

- 6(2) A vice-chair has the authority of the chair if the chair is absent or unable to act, or when authorized by the chair.

Staff

- 7 Any employees required to enable the appeal board to carry out its responsibilities may be appointed in accordance with *The Civil Service Act*.

Responsibilities of the appeal board

- 8 The appeal board has these responsibilities:
- (a) to hear and decide appeals under designated Acts;
 - (b) at the minister's request, to advise and make recommendations about matters that relate to social services and programs in Manitoba;
 - (c) on its own initiative, to advise and make recommendations to the minister about social services provided under the designated Acts;
 - (d) to perform any other duties assigned to it by an Act or regulation or by the minister.

Procedural rules

- 9 The appeal board may establish its own rules of practice and procedure and must make them available to the public.

Posting information about appeals

- 10 A designated officer must post information about the right to appeal to the appeal board, and about the appeal process, in a visible public location in any office in which decisions are made that can be appealed under a designated Act.

PANELS OF THE APPEAL BOARD

Board to sit in panels

11(1) The appeal board must sit in panels of three members when hearing appeals.

Assigning members to panels

11(2) The chair is to assign members to sit on panels.

Chair of panel

11(3) The chair or a vice-chair is to preside over a panel, or the chair may designate another member of the appeal board to preside.

Who is not eligible to be a member of a panel

11(4) A member of the appeal board is not eligible to sit on a panel if he or she

- (a) is a relative of a party; or
- (b) is not able to be impartial and independent about the outcome of the appeal.

Quorum

11(5) A quorum for a panel is the three members referred to in subsection (1).

Jurisdiction of panel

11(6) In considering and deciding an appeal,

- (a) a panel has all the jurisdiction of the appeal board and may exercise the board's powers and perform its duties; and
- (b) a decision of a majority of the members of a panel is the decision of the appeal board.

APPEAL TO THE APPEAL BOARD

Filing an appeal

12(1) A person who has a right to appeal a decision or order to the appeal board under a designated Act may commence an appeal by filing a notice of appeal with the board.

Time limit for filing

12(2) A notice of appeal must be filed within 30 days after the date of the decision or order, unless the designated Act specifies a different time limit.

Extending the time limit

12(3) The appeal board may extend the time limit for commencing an appeal, and may do so either before or after the time limit expires.

Reasons

12(4) A notice of appeal must be in writing and must state the reasons for the appeal.

Parties

13(1) The parties to an appeal are the person who has a right to appeal to the appeal board and the designated officer under the designated Act.

Parties to be present

13(2) The appellant and the designated officer or a delegate of the designated officer must be present at the hearing or, if subsection 19(2) applies, must be able to communicate with each other and the appeal board simultaneously.

Advocates

14 At the appellant's request, another person may communicate with the appeal board at any time on the appellant's behalf and may be present with the appellant at the hearing.

Notice to the designated officer

15(1) On receiving a notice of appeal, the appeal board must promptly give a copy of it to the designated officer.

Designated office must forward documents

- 15(2) On receiving the notice of appeal, the designated officer must promptly give the appeal board
- (a) all of the documentary evidence on which the designated officer made the decision or order being appealed;
 - (b) any documents that the designated officer is specifically required to provide to the board under the designated Act; and
 - (c) any other documents the designated officer thinks might be relevant to the appeal.

Hearing date

16(1) For each appeal, the appeal board must arrange the earliest possible hearing date. The hearing must not be commenced more than 30 days after the board receives the notice of appeal, unless the board at the request of the appellant, grants an extension.

Notice

16(2) Unless the parties agree to a shorter period of notice, at least six days before the hearing the appeal board must give the parties written notice of the date, time and place of the hearing.

Parties may examine evidence

17 The appeal board must give each party a reasonable opportunity to examine and copy any information that has been submitted to the board for the purpose of the hearing.

Powers and duties of the board

18 The appeal board must inform itself fully of the facts concerning each appeal. For that purpose, the board

- (a) may require the attendance of witnesses and the production of documents in addition to the witnesses called by the parties and the documents produced by the parties; and
- (b) has the powers of a commissioner under Part V of *The Manitoba Evidence Act*.

Hearing process: rules of evidence do not apply

19(1) The appeal board is not bound by the rules of evidence that apply to judicial proceedings.

Hearing by teleconference

19(2) A hearing may be held by means of a conference telephone call, or by another method of communication that permits the appeal board and the parties to communicate with each other simultaneously.

Closed hearing if appellant requests

19(3) The hearing is to be closed to the public if the appellant asks for it to be closed; otherwise it is to be open to the public.

Adjournment

19(4) The appeal board may adjourn a hearing when it considers it appropriate to do so.

ORDER OF THE APPEAL BOARD

Order of the board

- 20(1) Unless the designated Act states otherwise, after a hearing the appeal board may, by written order,
- (a) confirm, vary or rescind the order or decision of the designated officer;
 - (b) make any order or decision that the designated officer could have made; or
 - (c) refer the matter back to the designated officer for further consideration by the designated officer in accordance with any direction of the appeal board.

Reasons

- 20(2) The appeal board must give written reasons for its order.

Time limit for making order

- 20(3) The appeal board must make its order within 15 days after the hearing ends.

Order given to the parties

- 20(4) The appeal board must give the parties a copy of the order and inform them of their right to appeal a question of law or jurisdiction to The Court of Appeal.

Method of giving the order

- 20(5) The order must be given to the parties personally or by regular lettermail or by another method acceptable to the appeal board and the parties.

Order must be given effect

- 21 A designated officer must give effect to the order of the appeal board.

Reconsideration of the order

- 22(1) At the request of a party to the appeal or on its own initiative, the appeal board may reconsider all or part of its order and may confirm, vary, suspend or rescind its order.

Time limit for making request

- 22(2) A written request for a reconsideration, stating the reasons for the request, must be filed with the appeal board within 30 days after the date of the board's order.

Time limit for deciding request

- 22(3) The appeal board must, by order, make a decision as to whether an order will be reconsidered, within 15 days after the date the request for a reconsideration is filed.

Reasons

- 22(4) The board must give written reasons if it decides not to reconsider an order.

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

- 23(1) Any party to the appeal before the appeal board may appeal the board's order to The Court of Appeal on any question involving the board's jurisdiction or on a point of law, but only after obtaining leave to appeal from a judge of The Court of Appeal.

Time limit

- 23(2) An application for leave to appeal must be made within 30 days after the date of the appeal board's order, or within any further time that a judge allows.

Parties

23(3) The parties to the appeal before the appeal board, and the appeal board, are entitled to be heard on the application for leave to appeal and on the appeal itself.

Order of Court of Appeal

24 The Court of Appeal may

- (a) quash, vary or confirm the order of the appeal board; or
- (b) refer the matter back to the appeal board for further consideration in accordance with any direction of the Court.

REGULATIONS

Regulations

25 The Lieutenant Governor in Council may make regulations

- (a) designating Acts or regulations for the purpose of the definition "designated Act" in section 1;
- (b) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Act.

ANNUAL REPORT

Annual report

26 Within six months after the end of the government's fiscal year, the appeal board must provide the minister with a report about the board's activities during that fiscal year. The minister shall lay a copy of the report before the Legislative Assembly within 15 days after receiving it if the Assembly is sitting or, if it is not, within 15 days after the next sitting begins.

PROTECTION FROM LEGAL ACTION

Protection from legal action

27 No action or proceeding for damages may be brought against the appeal board or any member of the board because of anything done or omitted in good faith

- (a) in the performance or intended performance of a duty under this Act; or
- (b) in the exercise or intended exercise of a power under this Act.

TRANSITIONAL

Transitional: definitions

28(1) *In this section,*

"former Act" means *The Social Services Administration Act, R.S.M. 1987, c. S165; (« ancienne loi »)*

"former designated Act" means *a designated Act as it read immediately before the coming into force of this Act. (« ancienne loi désignée »)*

Appeals already commenced

28(2) *Where on the day this Act comes into force an appeal under a former designated Act to the Social Services Advisory Committee under the former Act has been commenced but not finally disposed of, the appeal shall be continued and completed in accordance with that former designated Act as if this Act had not come into force.*

CONSEQUENTIAL AMENDMENTS

29 to 32

NOTE: These sections contained consequential amendments to other Acts that are now included in those Acts.

33

NOTE: This section contained consequential amendments to *The Social Services Administration Amendment Act*, S.M. 2000, c. 31, and is not yet proclaimed.

34

NOTE: This section contained consequential amendments to *The Vulnerable Persons Living with a Mental Disability Act* that are now included in that Act.

C.C.S.M. REFERENCE AND COMING INTO FORCE

C.C.S.M. reference

35 This Act may be cited as *The Social Services Appeal Board Act* and referred to as chapter S167 of the *Continuing Consolidation of the Statutes of Manitoba*.

Coming into force

36(1) This Act, except section 33, comes into force on a day fixed by proclamation.

Coming into force: section 33

36(2) Section 33 comes into force on the day *The Social Services Administration Amendment Act*, S.M. 2000, c. 31, comes into force.

NOTE: S.M. 2001, c. 9, except section 33, was proclaimed in force February 18, 2002.