

Social Services
Appeal Board

Annual Report
2011 – 2012





**MINISTER OF
FAMILY SERVICES AND LABOUR**

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2012

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

Your Honour:

I have the pleasure of presenting herewith the Annual Report of the Social Services
Appeal Board for the year 2011/2012.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jennifer Howard".

Jennifer Howard



Social Services
Appeal Board

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September 2012

Honourable Jennifer Howard
Minister of Family Services and Labour
Room 357 Legislative Building
Winnipeg Manitoba R3C 0V8

Dear Minister Howard:

Attached please find the Annual Report of the Social Services Appeal Board for the fiscal year ending March 31, 2012. According to the *Social Services Appeal Board Act*, proclaimed in February 2002, the Social Services Appeal Board must provide the Minister with an independent Annual Report about its activities.

The Board is proud of its continued efforts to provide a fair and equitable appeal process for the citizens of Manitoba for a wide range of programs and services within its mandate. It also assumes its responsibility to inform, advise, and offer recommendations to the Minister related to matters of social services, programs, and policy issues that come about during appeal hearings.

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

Yours truly,



Louise Plamondon
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 Labour.

Appeal Board Appointees during the 2011/2012 fiscal year:

Chairperson:	Kristine Barr
Vice-chair:	Jany Keenan
Members:	Phillip Calver Valerie Debooy Edward Goralski Jeannette Gougeon Mark Koenker Sara Lazareck George Pelletier Louise Plamondon Dennis Ruggles

Social Services Appeal Board Staff:

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

Legal Counsel: Allison Fenske

BOARD BIOGRAPHIES – 2011/12

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.

Louise Plamondon

Appointed April 17, 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.

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

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 24, 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, 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, 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.

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.

Jeannette Gougeon

Appointed February 9, 2011

Jeannette has retired following a 37½ 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 Labour. The Board reports directly to the Minister of Family Services and Labour.

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 for adult facilities is granted under Section 13 of *The Social Services Administration Act* and under Section 8(5) of *the Child and Family Services Act* for residential care facilities for children.

marketAbilities Program (Eligibility)

The Appeal Board hears appeals regarding the marketAbilities (formerly the Vocational Rehabilitation) 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*.

Community Living 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 2011/12, 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 \$406,500 for an under expenditure of \$41,500.

The board members' per diem payments are paid from salary expenses. In the 2011/12 fiscal year, the amount spent on board per diems was \$67,484.

Actual Expenditures

09-1C Social Services Appeal Board

Expenditures by Sub-Appropriation	Actual 2011/12 \$000	FTE*	Estimate 2011/12 \$000	Variance Over/(Under)
Total Salaries and Employee Benefits	328.3	4.00	365	(36.7)
Total Other Expenditures	78.2	-	83	(4.8)

* 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.

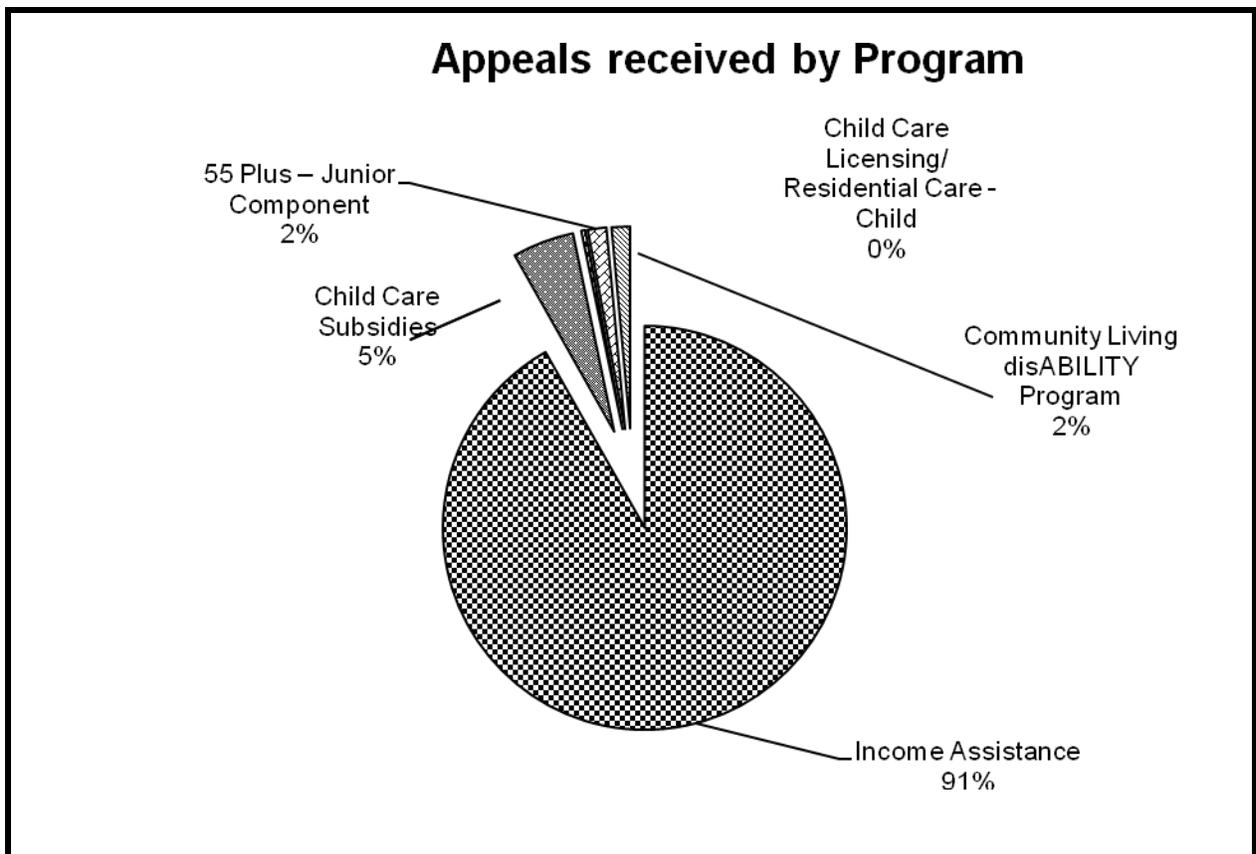
APPEAL ACTIVITY

In the 2011/12 fiscal year, there were a total of 616 appeals filed compared to 553 the previous fiscal year.

Appeals Filed by Program:

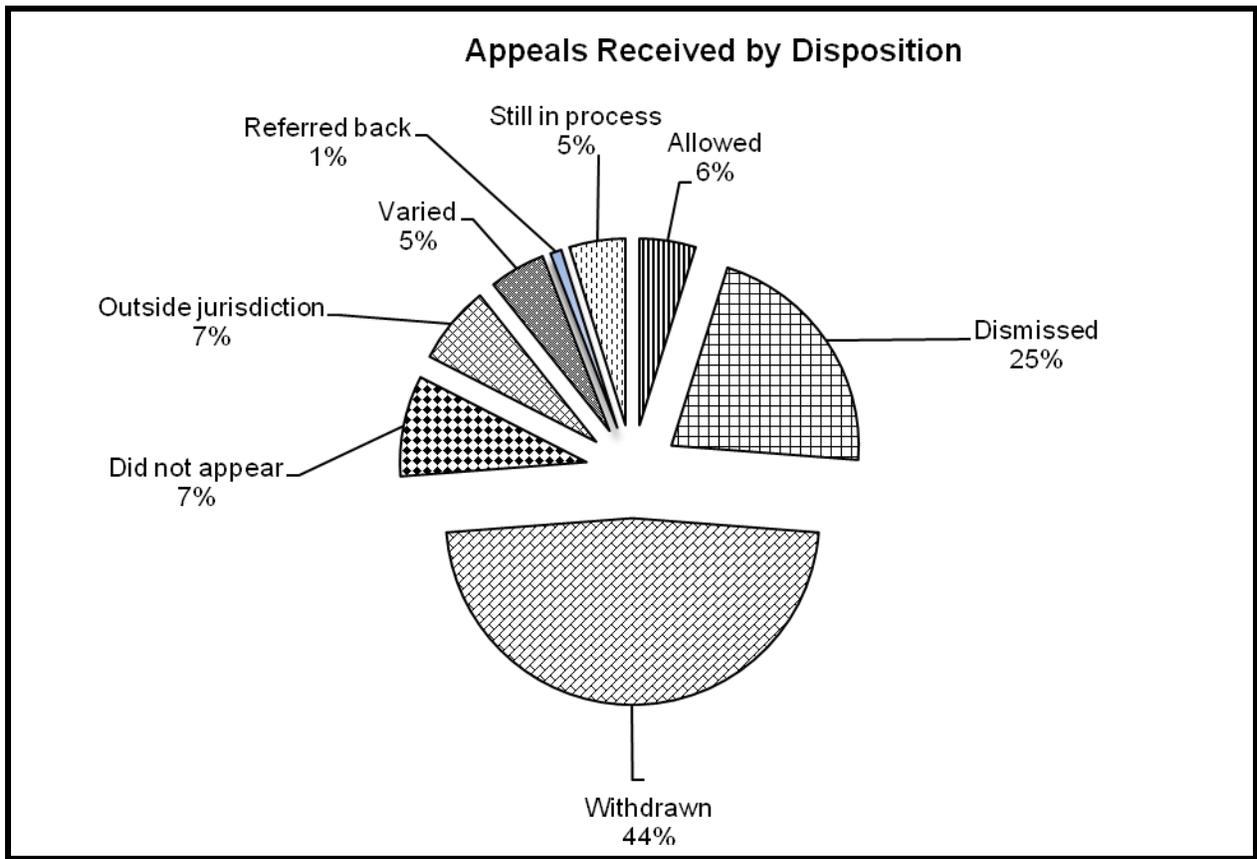
The 616 appeals are broken down by program area are as follows:

Income Assistance	561
Child Care Subsidies	30
Child Care Licensing	2
55 Plus – Junior Component	9
Community Living disABILITY Program	9
marketAbilities Program	3
Residential Care – Child	2



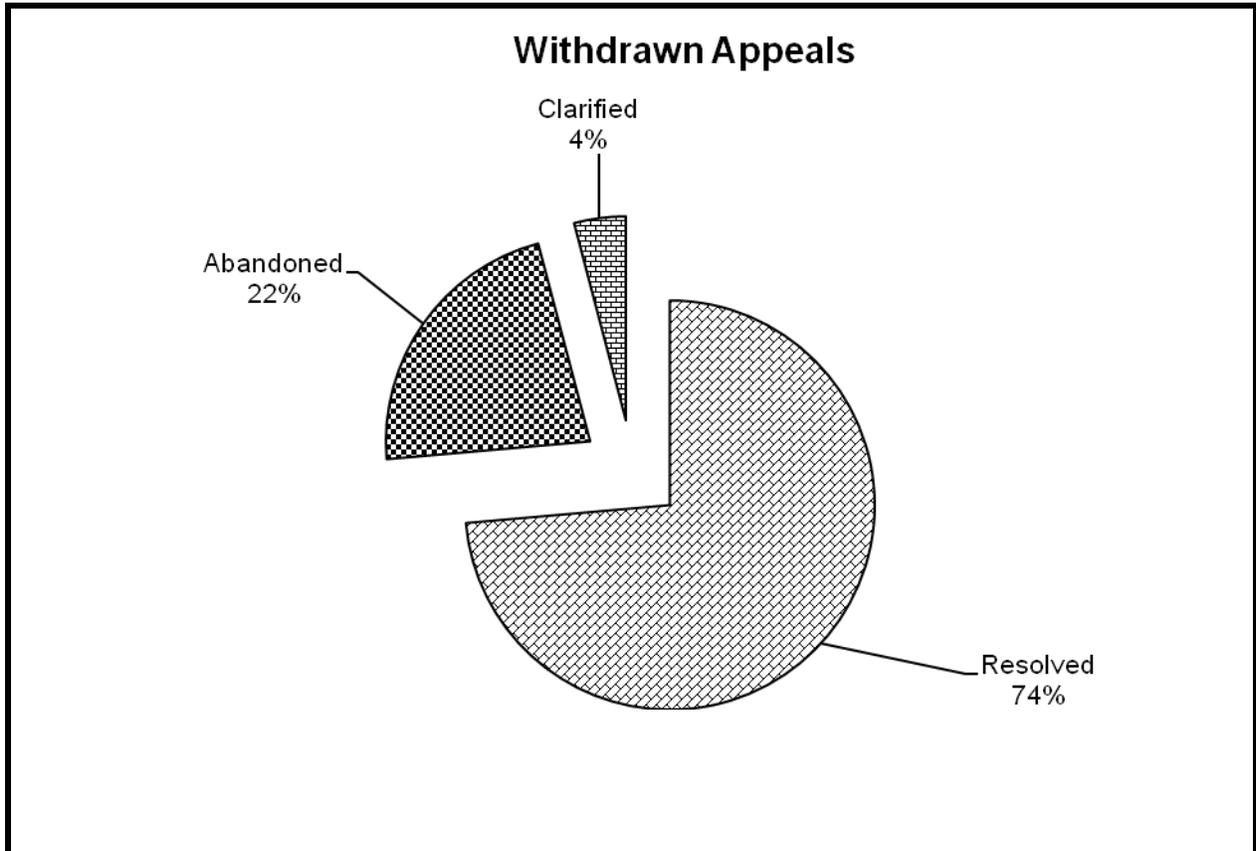
Appeals Filed by Disposition:

	<u>2011/12</u>	<u>%</u>	<u>2010/11</u>	<u>%</u>
Allowed	35	6	27	5
Dismissed	157	25	121	22
Withdrawn	272	44	270	49
Did not appear	44	7	51	9
Outside jurisdiction	41	7	40	7
Varied	28	5	22	4
Referred back	6	1	5	1
Still in process	33	5	17	3
TOTAL	616	100	553	100



Withdrawn Appeals:

Resolved ¹	200
Abandoned ²	61
Clarified ³	11



The 272 appeals that were withdrawn combined with the 35 that were allowed result in 307 appeals or 50% of total appeals whose outcome was in favour of the appellants.

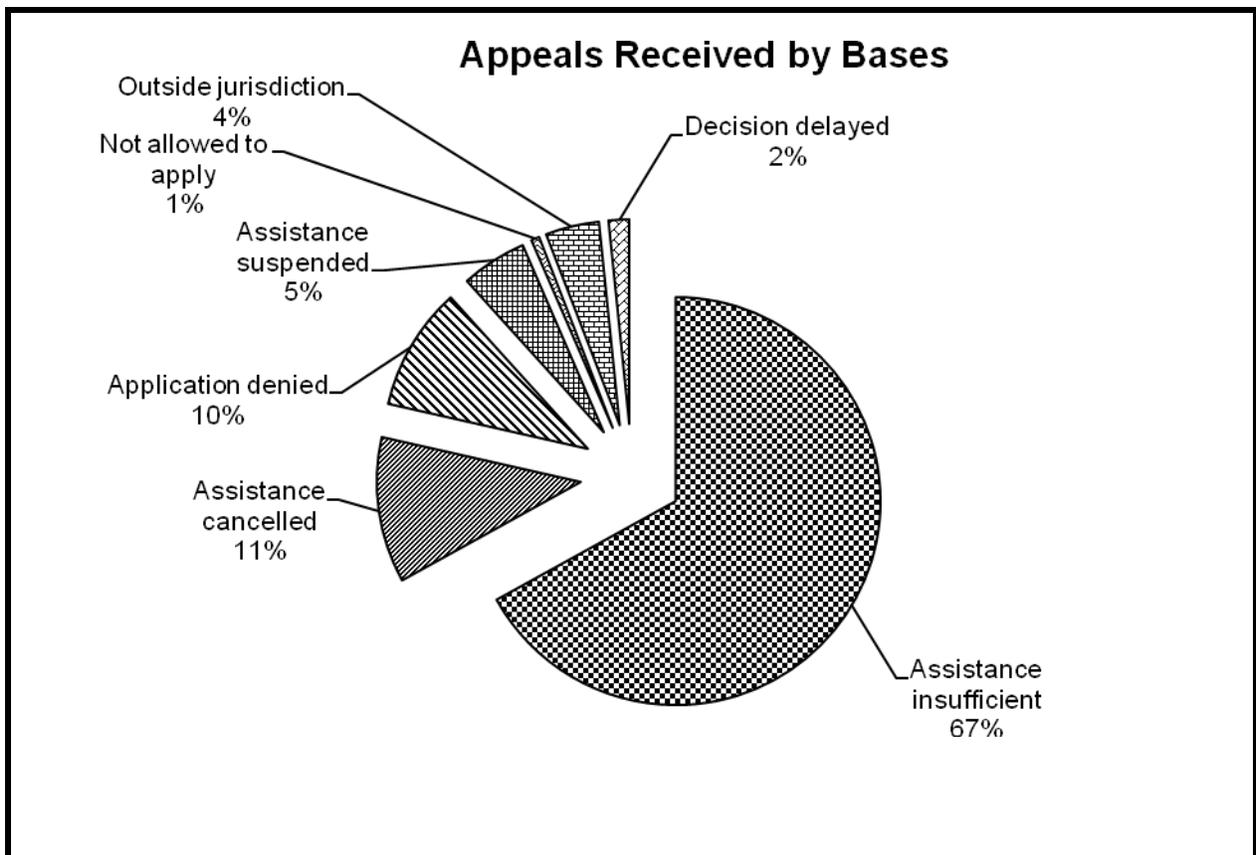
Notes:

- 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 616 appeals filed during the 2011/12 fiscal year, the bases of appeal were as follows:

Assistance insufficient	412
Assistance cancelled	71
Application denied	60
Assistance suspended	32
Not allowed to apply	4
Outside jurisdiction	26
Decision delayed	10
Decision varied	1



Allowed Appeals:

For the 2011/12 fiscal year, there were 35 appeals allowed. Disposition of the allowed appeals was as follows:

Employment and Income Assistance	34
Community Living disABILITY Program	1

Reasons for Appeal*:

Of the 616 appeals received for 2011/12, the most common reasons for filing appeals were as follows:

Medical eligibility	134
Financial resources	40
Health needs	72
Overpayments	34
Shelter costs	46
Non cooperation	34
Special needs	41
Common-law union	21
Irresponsible job termination	11
Basic needs	42

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

These reasons apply to 475 appeals, or 77% of the total appeals filed.

Hearing Activity in 2011/12*

Month	Scheduled	Held
April	38	18
May	40	19
June	36	19
July	24	16
August	29	16
September	45	31
October	31	22
November	36	24
December	49	33
January	47	32
February	41	28
March	55	27
Total	471	285

*May include appeals filed in previous fiscal years.

Of the 616 appeals received, 270 or 44% went to the hearing phase.

REQUESTS FOR RECONSIDERATION

Number of Requests:

	<u>2011/12</u>	<u>2010/11</u>
Total requests received	11	8
From appellant	11	8
From respondent	0	0

Program Breakdown of Reconsideration Requests:

	<u>2011/12</u>	<u>2010/11</u>
Employment and Income Assistance	11	8

Disposition of Reconsideration Requests:

	<u>2011/12</u>	<u>2010/11</u>
Requests granted	1	1
Requests denied	10	6
Withdrawn	0	1

Of the Requests Granted:

	<u>2011/12</u>	<u>2010/11</u>
Decision upheld	0	0
Decision overturned	0	1
Decision varied	1	0

SUMMARY OF ADVISORY ACTIVITIES

Under *The Social Services Appeal Board Act*, the Appeal Board has the responsibility to advise and make recommendations about matters that relate to social services provided under the designated Acts. The Appeal Board met three times during the 2011/2012 fiscal year. The recommendations and issues raised by the Appeal Board this year were as follows:

- The Board raised concerns with the lack of clarity in many of the decision letters sent to recipients of the Employment and Income Assistance Program. The Board provided one example to the Minister of two letters sent to the same recipient on the same day containing conflicting information. The Minister responded that the EIA program had created a Communications Materials Working Group to ensure that all public and participant focused materials were clear and in plain language.
- The Board had concerns regarding the lack of transportation support for people with addictions attending ongoing self-help groups such as Alcoholics Anonymous. The Board was concerned that there appeared to be a lack of consideration for people's unique circumstances, and requested that a greater use of discretion could be applied when requests were received for transportation to attend ongoing support for addictions. The Program has since issued a directive to workers allowing for greater flexibility in determining whether or not to allow funds for a bus pass for addiction recovery.
- The Board also recommended that the Department review the current income levels allowable for the Child Subsidy Program as the Board believes that there have been no allowances made recently for increases in the cost of living. The Minister responded that adjustments to subsidy levels and costs of care were made in 2007, and indexing levels would be given consideration when these levels are reviewed.

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 Cancelled

Appeal Detail: Financial Resources

Decision: Varied

The appellant appealed the cancellation of her income assistance.

The Department advised the Board that the appellant applied for and was enrolled on income assistance in December 2010. She provided current bank statements to verify her financial need and was enrolled under the general assistance category. When the worker was doing a case review, it was learned that the appellant had been the executor of her late husband's estate in 2008. The worker advised the appellant that she was required to provide the Department with documents to show how her late husband's estate was dispersed. The appellant was unable to obtain a statement of disbursements, and she was unwilling to provide the Department with a copy of her credit union statements for that period of time. The Department therefore closed her file due to required documentation not provided. The Department indicated that it was willing to review the appellant's eligibility once she provided the Credit Union statements from November 2008 to August 2009.

The appellant stated that when she applied, she provided 60 days of bank statements and the Department determined her eligibility at that time. When she was asked to provide the disposition sheet, she wasn't able to find it. All she had received from the lawyer was her late spouse's will. Her brother clarified that all things were considered joint between the appellant and her spouse so there was nothing to disperse. When the Department asked for bank records going back to 2008, the appellant attempted to get the information, but had shredded some of her documents. She explained that she hadn't been banking at the Assiniboine Credit Union for three years and didn't understand why information was needed from three years ago to determine her current eligibility. Her brother explained that it was a very stressful time for the appellant and she became very frustrated and asked the Department to leave her alone. Her advocate explained that she was in extreme financial difficulty which was affecting her mental health. The appellant's advocate argued that she proved her financial need at the time of her application and that it was unfair to cancel her assistance based on three year old outstanding information.

The Board determined that the Department has an obligation to consider all financial information to determine eligibility and has the authority under Section 4(4) of The Employment and Income Assistance Regulation to go back five years. In December 2010, the Department used current bank statements to verify the appellant's eligibility. When the Department realized that they didn't obtain all the information at intake, they had a right to request the information and offered to assist the appellant in securing it. Without the requested information, the Department was unable to determine her ongoing eligibility. The Board agreed with the Department's decision to close her file. However, at the hearing, the Board listened carefully to the appellant's explanation of her frustrations and the difficulties that she experienced trying to get the requested information. The Board believed that she made every attempt within her limitations to provide what was requested and that it was a very frustrating time for her. Based on her verbal testimony, the Board determined that the appellant was in serious financial need and needed assistance. As such, the Board varied the decision of the Director and ordered the Department to enroll her and provide her with sufficient time to obtain the documents. The Board did not hear any argument at the hearing that the appellant was unable to get the bank statements from the Credit Union.

Sample #2

Program: Child Care Subsidy

Basis of appeal: Subsidy denied

Decision: Confirmed

The appellant appealed that her application for child care subsidy was denied.

The appellant applied for subsidy in July 2011. Her husband was employed and the appellant was attending school full time. The Department calculated the cost of care based on twelve days per 20 day billing period as the appellant's husband works on a rotating shift basis. The net family income was calculated to be \$31,698.84. The Department allows for a cost of living exemption based on family size. In addition the family was provided with a disability exemption of \$1,560 for a total cost of living exemption of \$20,042.00. This is the exemption which is allowed by the Department to cover the cost of basic needs for a family of that size. Any remaining income, which in this case was \$11,658.84, is considered to be the family's disposable income. Based on a disposable income of \$11,658.84, the Department calculated that the amount of income available to pay child care costs was \$361.34 per billing period. As the actual cost of care was \$288.00 per billing period, the Department determined that the appellant was not eligible for a child care subsidy.

The appellant stated at the hearing that due to the onset of her disability, she had to leave her former employment. The family's income had therefore dropped dramatically, but they had financial obligations which they had to pay despite the reduced income. The appellant has returned to school in order to pursue a new career and provide her family with an improved standard of living in the future. However, while she is not earning an income, the family cannot afford the additional costs of child care. The appellant stated that the family was going further and further into debt and they were in great need of some financial assistance.

At the hearing, the appellant provided some new information to the Department as she had been previously advised that she would be getting some financial aid from Manitoba Student Aid which was included in the subsidy calculation. The appellant recently was informed that she would not be receiving these funds. The appellant also shared that she was spending money on prescription medication that is not covered by the Pharmacare Program. The Department indicated that it would be willing to reassess whether or not this new information would change the family's eligibility for subsidy.

The Board determined that the Department had correctly assessed the appellant's eligibility based on the requirement of the Community Child Care Regulation. The Regulation does not allow a family's actual expenditures or debts to be taken into consideration when calculating a subsidy. The Board was also convinced that the Department had given due consideration to any areas which are of a discretionary nature such as medical expenses. Therefore, the decision of the director was confirmed.

Sample # 3

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Cancelled

Basis Detail: Work expectations not met

Decision: Confirmed

The appellant appealed that his income assistance was cancelled. The appellant had been on and off income assistance since April 1999. He attended the Department's Steps to Independence Program from August 2010 to April 2011. This program is designed to assess and address the barriers a person is facing to becoming gainfully employed. During this period of time, issues such as medical restrictions, addiction, and caring for his mother were addressed. In May 2011, the Department referred him to the Work Readiness Program to develop skills which would assist him with his job search.

The appellant signed an Action plan in May 2011 which stated that he agreed to attend the Work Readiness Program (WGRP) on a daily basis and that if he was let go, or quit the program, he may not be eligible for income assistance benefits. He was expected to attend the program Monday to Friday from 8:30 to noon and apply for three jobs each day. He started the program on May 30th and within the first week began to have problems with his attendance and meeting his job search expectations. The program had him sign a written warning that he would meet his attendance requirement. The program noted that the appellant advised that he was going to talk to his worker, as he felt the program was taking too much time away from his responsibilities at home. On July 20th, 2011 the appellant showed up to the program at 10:45 and the program closed his file.

The appellant stated that he believed that he was unjustly terminated from the program and from income assistance. He felt that due to his responsibilities at home, he had justifiable reasons for his absences and lateness. He stated that his mom had very poor health and required someone to help her in the mornings. Their apartment had bedbugs, and they were required to prepare it for spraying once a month. This required a great deal of preparation in the mornings before the spraying, and in the evenings after the spraying. In addition, his mother had to be moved to a hotel for 48 hours due to her health conditions.

The Board reviewed all the information and determined that the Department had sufficient justification to cancel the appellant's income assistance. The Board was persuaded that the appellant's history did not demonstrate that he was seriously trying to work with the Employment and Income Assistance Program towards becoming self-sufficient. It appears to the Board that he was only attempting to meet the work expectations to the degree that he could still continue to collect benefits, but not fully engaging in real efforts to become gainfully employed. The Board concluded that the appellant was let go from the Work Readiness Program after repeated warnings and that he had not complied with the conditions of his Action Plan. Therefore, the decision of the Director was confirmed and the appeal was dismissed.

Sample #4

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Insufficient

Basis Detail: Medical Eligibility (Disability Benefits)denied

Decision: Rescinded (allowed)

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

The appellant applied for income assistance in January 2010. In October 2010, she was granted six months of medical eligibility. In July 2011, the appellant submitted a medical assessment form from her doctor which stated that her primary diagnosis was rheumatoid arthritis, and this was considered to be a permanent condition. In the section regarding work activity, the doctor had not checked off either 'able to work' or 'unable to work', but in the 'able to work' section, he had checked off 'temporary limitation of functions' and under 'unable to work' he had stated the time period to be uncertain. The doctor had also commented that 'patient is suffering from polyarthralgias causing her to be unemployable'.

The appellant also completed the self-assessment form, where she indicated that she had 'a lot of difficulty' with walking, lifting, and household tasks. The appellant commented that she used a wheelchair when needed. She had also checked off that she had some difficulty with sitting, standing, carrying, reaching, bending, personal needs, seeing, concentrating, sleeping, going into the community, and using public transportation. The only areas where the appellant had no difficulty were bowel and bladder habits, hearing, speaking, remembering, and breathing.

The appellant further explained that she experienced joint pain which began in her wrist in October 2009 and had now spread to the rest of her body. She stated that the pain was constant and that it moved around her body. She indicated that she took plaquinil, hydromorph contin, and dilaudid for her pain. She stated that on some days she was not able to walk and on other days she was unable to lift a cup.

The medical panel that reviewed this information stated that the objective information from the x-ray and bone scan did not substantiate that the appellant was disabled from all work. The director's designate who reviewed the information found the appellant to be ineligible for disability benefits, stating that medical condition did not preclude employment.

At the hearing, the appellant explained that her condition is caused by her immune system attacking the connective tissue in her joints. And that one of the medications she takes is to suppress the immune system. The other medication she takes to control the pain, but that a side effect of the medication is that it makes her very fuzzy and she feels awful from the medication. The appellant was visibly emotional as she described the sharp pain that she experienced and how it affected every aspect of her daily life. She stated that she could not do a desk job as on many

days, she cannot hold a pen in her hand, she cannot type, and she cannot sit or stand for any length of time. She stated that she had been to a physiotherapist who had shown her exercises to build up the muscles to compensate for her weak joints, and that doing the exercises hurt a lot. She stated she would like to return to school some day, but right now she would not be able to get to class and then to sit in class. She stated that getting to either a job or to school would be a challenge for her as her whole body felt like glass and every little bump in the road caused her extreme pain.

The appellant's family stated that the doctor's report must be interpreted to mean that the appellant cannot work right now, but that the condition is treatable and can go into remission. The doctor was hopeful that her inability to work was temporary, but that at this time, she was unemployable.

The Employment and Income Assistance Act states that in order to be eligible for disability benefits, you must be 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

The Board reviewed the information and determined that the appellant did meet the eligibility criteria under Section 5(1)(a) of *The Employment and Income Assistance Act*. The Board concluded that the medical assessment form provided the Department with a diagnosis as well as the doctor's opinion that the appellant was not employable at that time. The appellant's self-assessment explained how her condition affected her functioning on a day to day basis. The Board determined that due to the appellant's constant pain, the side effect of her pain medication, and the unpredictable effects on her day to day functioning (i.e. needing a wheelchair, not able to hold a pen) that the appellant would not be able to earn a living sufficient to meet her basic needs. Therefore, the Board rescinded the decision of the Director and ordered the Department to enrol the appellant under Section 5(1)(a) of the EIA Act.

Sample # 5

Under *The Social Services Appeal Board Act*, the appellant or the Department may apply for a reconsideration of the Board's decision. The following example demonstrates a Request for Reconsideration initiated by an appellant.

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance insufficient

Basis Detail: Medical Eligibility Denied

Decision: Confirmed (dismissed)

The appellant had filed an appeal whereby she was found medically ineligible under Section 5(1)(a) of *The Employment & Income Assistance Act*. At the original hearing, the appellant and her advocate explained that she had fibromyalgia and Lupus. She was trying different medications to stabilize her condition. Her symptoms included fatigue, blurry vision, memory loss, pins and needles in her fingers and toes, headaches and dizziness, rashes and itching, and stiffness. She had widespread body pain and trouble standing and walking. She requested six months of medical eligibility to stabilize her condition. She also expressed a desire to attend school or training.

The Department denied the appellant's application for medical eligibility based on the medical information submitted from the doctor that said she had a temporary limitation of functions for three to six months. The report did not state that she could not work. As such, the Department denied her application for medical eligibility.

The Board concurred with the Department's decision based on the medical information submitted, in that it did not state that she could not work. The Board also considered the fact that if the appellant could attend school, she would be capable of working and therefore did not meet the eligibility criteria as outlined in Section 5(1)(a) of the Act. Her appeal was dismissed.

The appellant submitted a Request for Reconsideration on the basis that the Board's decision was not consistent with the legislated criteria that defines medical eligibility. The appellant argued that the Board relied on testimony that was taken out of context and that the appellant's desire to attend school or training in the future did not mean that she was currently capable of earning a living to support herself. Therefore, the Board's reasons for denying medical eligibility was not relevant to eligibility under Section 5(1)(a).

The Board reviewed the Reconsideration request and agreed that the question of law raised was sufficient to justify scheduling a new hearing for the appellant.

At the Reconsideration hearing, the Board reviewed the original decision of the Department, the Order of the original panel, and the appellant's current eligibility under Section 5(1)(a). The original documentation that had been reviewed by medical panel was reviewed by the Board; the appellant gave testimony, and the appellant brought a witness who was a person who also had fibromyalgia.

Based on the evidence received at the second hearing, the Board determined that the director had made the correct decision based on the information submitted to medical panel at that time. The Board also determined that it had made an error in citing its reasons for its decision, but that the Order itself was not to be overturned. However, the Board also found that based on the testimony of the appellant and the witness, it had been convinced that the appellant was not capable of earning a living sufficient to meet her basic needs, and therefore the Board ordered the Department to enrol her under Section 5(1)(a) of *The Employment and Income Assistance Act*. Consequently, a new Order of the Board was issued that varied the decision of the director and ordered that the appellant be enrolled under the disability category for a period of eight months.

C.C.S.M. c. S167
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.