

Social Services
Appeal Board

Annual Report
2013-2014





**MINISTER OF
FAMILY SERVICES**

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2014

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 the Annual Report of the Social Services Appeal Board for the year 2013/2014.

Respectfully submitted,

“Original signed by”

Kerri Irvin-Ross



**Social Services
Appeal Board**

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September 2014

Honourable Kerri Irvin-Ross
Minister of Family Services
Room 357 Legislative Building
Winnipeg Manitoba R3C 0V8

Dear Minister Irvin-Ross:

Attached please find the Annual Report of the Social Services Appeal Board for the fiscal year ending March 31, 2014. 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,

“Original signed by”

Frank Caldwell
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.

Appeal Board Appointees during the 2013/2014 fiscal year:

Chairperson: Louise Plamondon

Vice-chair: Frank Caldwell

Members: Phillip Calver
Valerie Debooy
Eva Dupont
Ron Erickson
Edward Goralski
Jeannette Gougeon
Sanjay Jain
Zanna Joyce
Julie Kading
Mark Koenker
Sara Lazareck
Derek Legge
Annette Niven
Caitlin Stewart

Social Services Appeal Board Staff:

Heather Hamelin, Director
Kim Harrison, Hearing Officer
Linda Bothorel, Administrative Assistant
Karen McKane, Administrative Secretary

Legal Counsel: Allison Fenske

BOARD BIOGRAPHIES – 2013/14

Louise Plamondon, Chairperson

Appointed April 17, 2009

Louise is a retired teacher/administrator who has worked both in rural and urban settings primarily in Manitoba. Her teaching career has provided her with the opportunity to focus on the young people with whom she worked, guiding them along the many facets of their educational path. Since her retirement, she has been involved in various cultural and community activities exercising her leadership skills while assuming various responsibilities.

Frank Caldwell:

Appointed August 15, 2012

Frank worked several years for the local mining company in Thompson, Manitoba before attending university (Bachelor of Social Work, 1980; Masters of Social Work, 2000) and commencing a long career (recently retired) with the City of Winnipeg. Frank worked for many years as a social work supervisor before moving to various community-focused and administrative positions with emphasis on strengthening neighbourhoods and the provision of responsive public services. Frank was active on a variety of Boards, committees and inter-sectoral organizations including Main Street Project, Winnipeg School Division's Migrancy Steering Committee and Nutrition Education, West Broadway Project on Substance Abuse, St. Vital Crime Prevention Project, as well as a Board member of the City's management union.

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. Phillip resigned from the Board at the end of March 2014.

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.

Eva Dupont

Appointed August 15, 2012

Eva is a retired teacher/administrator who has supported and worked in the public education system for many years. As an educator, she has advocated for children, fostered safe and inclusive learning environments for all. She is committed to "giving back to community" in a variety of ways.

Ron Erickson

Appointed August 15, 2012

Ron Erickson has held many different jobs and positions during his career. He was elected as Vice-President of the Manitoba Métis Federation in Brandon in three different elections. He worked in the mental health field on two separate occasions both as a proctor and a psychiatric nursing assistant. He also was employed in the emergency preparedness program with the Manitoba and Ontario provincial governments as a community advisor. Since his retirement he owns a taxi which he operates part-time.

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.

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.

Sanjay Jain

Appointed January 22, 2014

Sanjay is a Project Management Professional (PMP) who also graduated with a Bachelor of Commerce degree from the University of Manitoba and continued his education with a Master of Business Administration (MBA) degree. He is currently employed as a Senior IT Project Manager in the private sector. His dedication in volunteering and serving his community is demonstrated in his ongoing role as coach for youth soccer and hockey. Sanjay's professional service includes lead marketing committee member for PMI Manitoba.

Zanna Joyce

Appointed August 15, 2012

Zanna is an educator in the field of Financial Literacy, operating from the point of view of the coaching style she uses in her additional work as Project Development Coach in her firm Duckwranglers.

This work has enabled her to gain direct experience in working with many communities, from corporate to inner-city, from the environment to the arts, which informs her decision-making with the Social Services Appeal Board.

She has her Bachelor of Arts in Justice and Law Enforcement with additional coursework in Public Administration, Family Studies and Communications.

Julie Kading

Appointed March 25, 2013

Julie is a retired psychiatric nurse with experience in a variety of facilities across three provinces. Since retiring, she has volunteered in the community, mostly in the addictions field. She has been a Director with the Winnipeg Scrabble Club since its inception in 2001.

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. His final term expired in December 2013.

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, Health Sciences Centre 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.

Derek Legge

Appointed August 15, 2012

Following his Bachelor of Commerce (Hons) degree from the University of Manitoba, Derek worked in the Human Resources field at Brandon General and Victoria General Hospitals. He then moved into employment equity with both the federal and provincial governments, spending his last 17 years with the Manitoba Human Rights Commission. His outside activities revolve around issues of disability and access.

Annette Niven

Appointed April 30, 2013

Annette was born and raised in The Pas, Manitoba and has lived in several communities such as Leaf Rapids, Churchill, Thompson, Winnipeg, Dauphin and Minitonas. She completed a two-year Administrative Assistant Diploma course, has received her Applied Counselling certificate with honours, and is presently taking the Employment Counsellor Diploma program. She is an active volunteer in her community. She was the recipient of the Aboriginal Volunteer of The Pas and OCN. She has been active on many boards, the Legion Ladies Auxillary, The Pas Métis Association. She has worked in the child welfare field for eight years. She was also the coordinator for the Residential School Survivors program in Dauphin and Pine Creek. She is presently working as an Employment and Training Counsellor for The Manitoba Métis Federation's Métis Employment & Training program.

Caitlin Stewart

Appointed March 25, 2013

Caitlin is a clerk and a mother of three. Caitlin has an avid interest in social justice and public service. She has a Bachelor of Arts in English as well as education in Business Administration. Growing up in the north, and having been a young single parent herself, she tries to bring that perspective to her work with the Board.

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

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 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 Services (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 2013/2014, the annual budget for the Social Services Appeal Board was \$542,000. This amount was apportioned into \$459,000 for staff and board salaries and benefits, and \$83,000 for operating costs. The actual expenditures were \$582,000, an over-expenditure of \$40,000.

The board members' per diem payments are paid from salary expenses. In the 2013/14 fiscal year, the amount spent on board per diems was \$72,225.

09-1C Social Services Appeal Board

Expenditures by Sub-Appropriation	Actual 2013/14 \$000	FTE*	Estimate 2013/14 \$000	Variance Over/(Under)
Total Salaries and Employee Benefits	498	5.00	459	39
Total Other Expenditures	84		83	1
Total Expenditures	582		542	40

* 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.

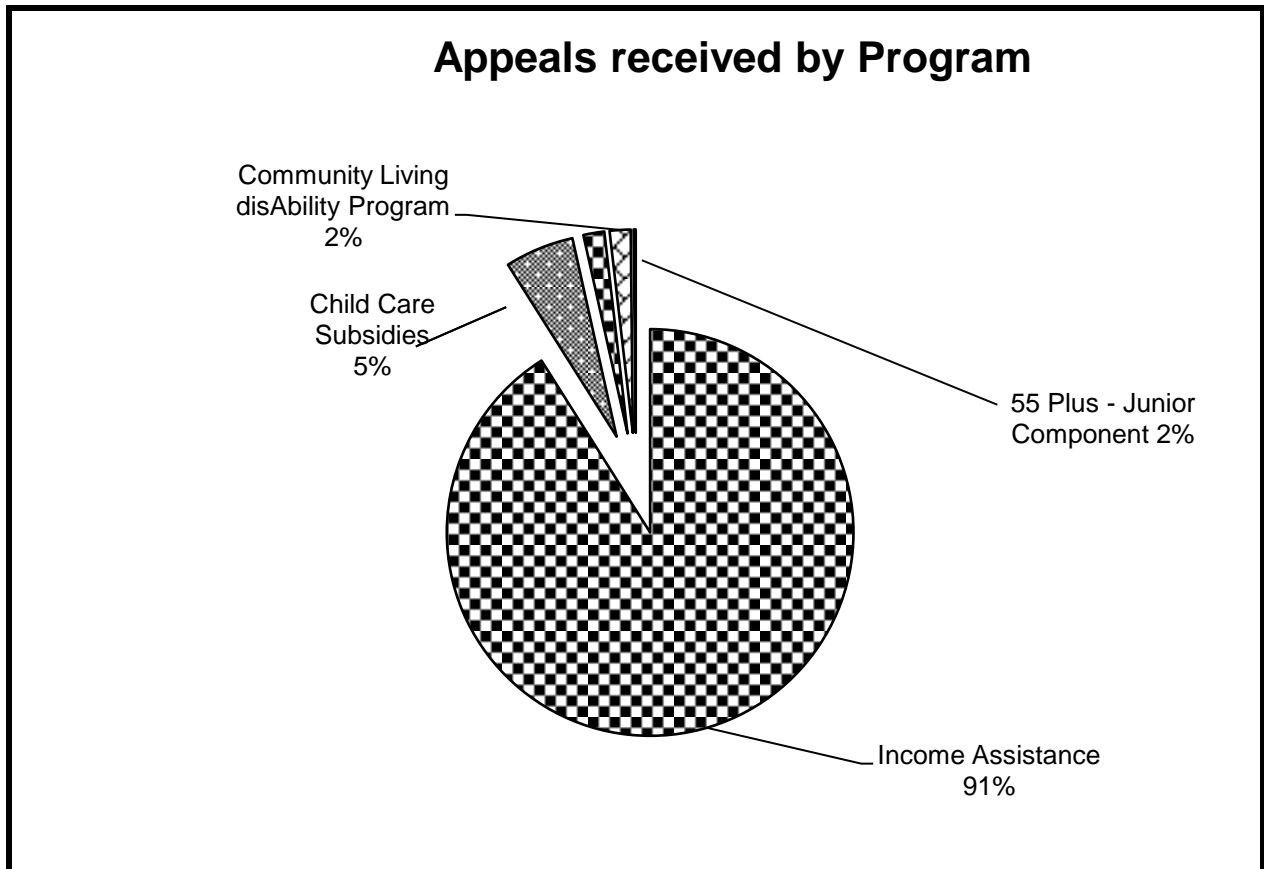
APPEAL ACTIVITY

In the 2013/14 fiscal year, there were a total of 602 appeals filed compared to 615 the previous fiscal year.

Appeals Filed by Program:

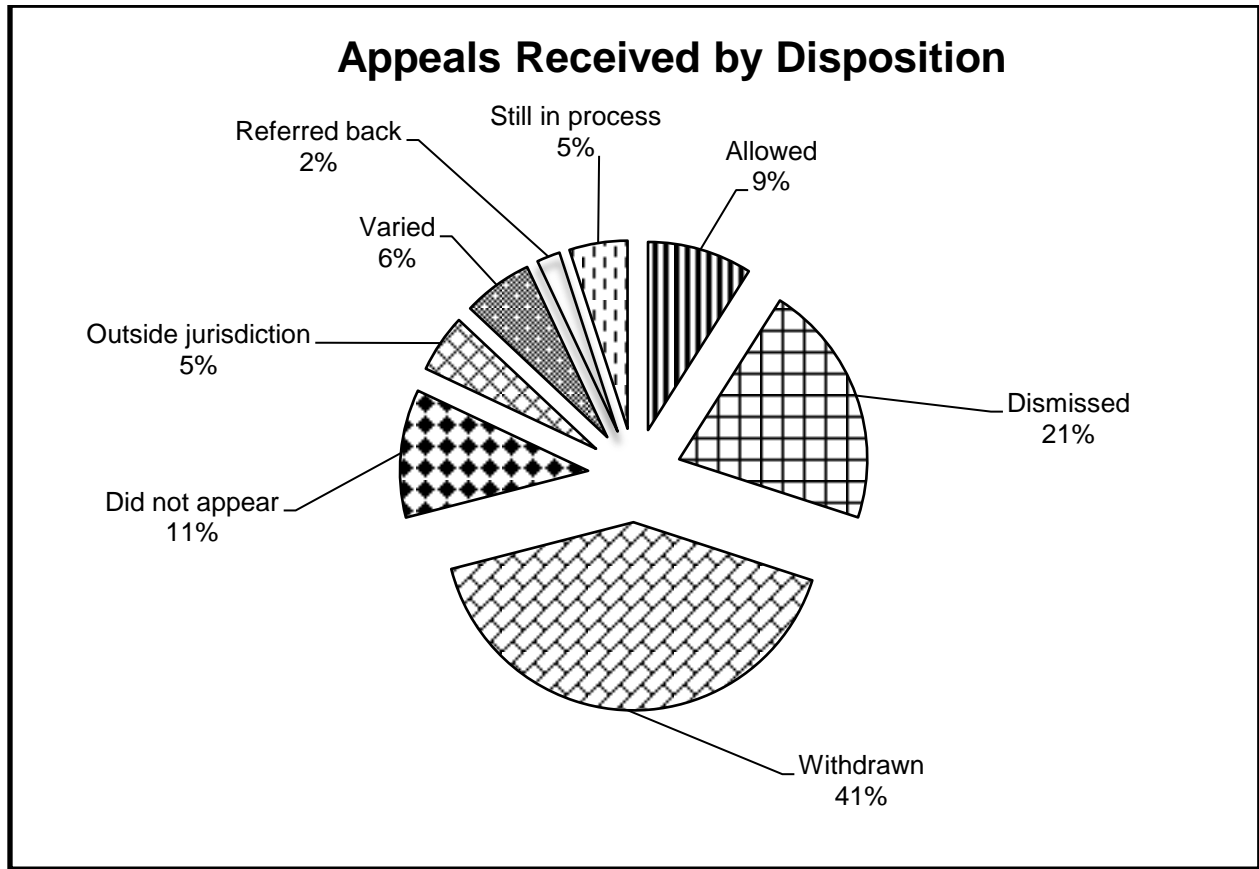
The 602 appeals are broken down by program area are as follows:

Employment and Income Assistance	548
Child Care Subsidy	33
55 Plus – Junior Component	10
Community Living disABILITY Program	10
Prenatal Benefit	1



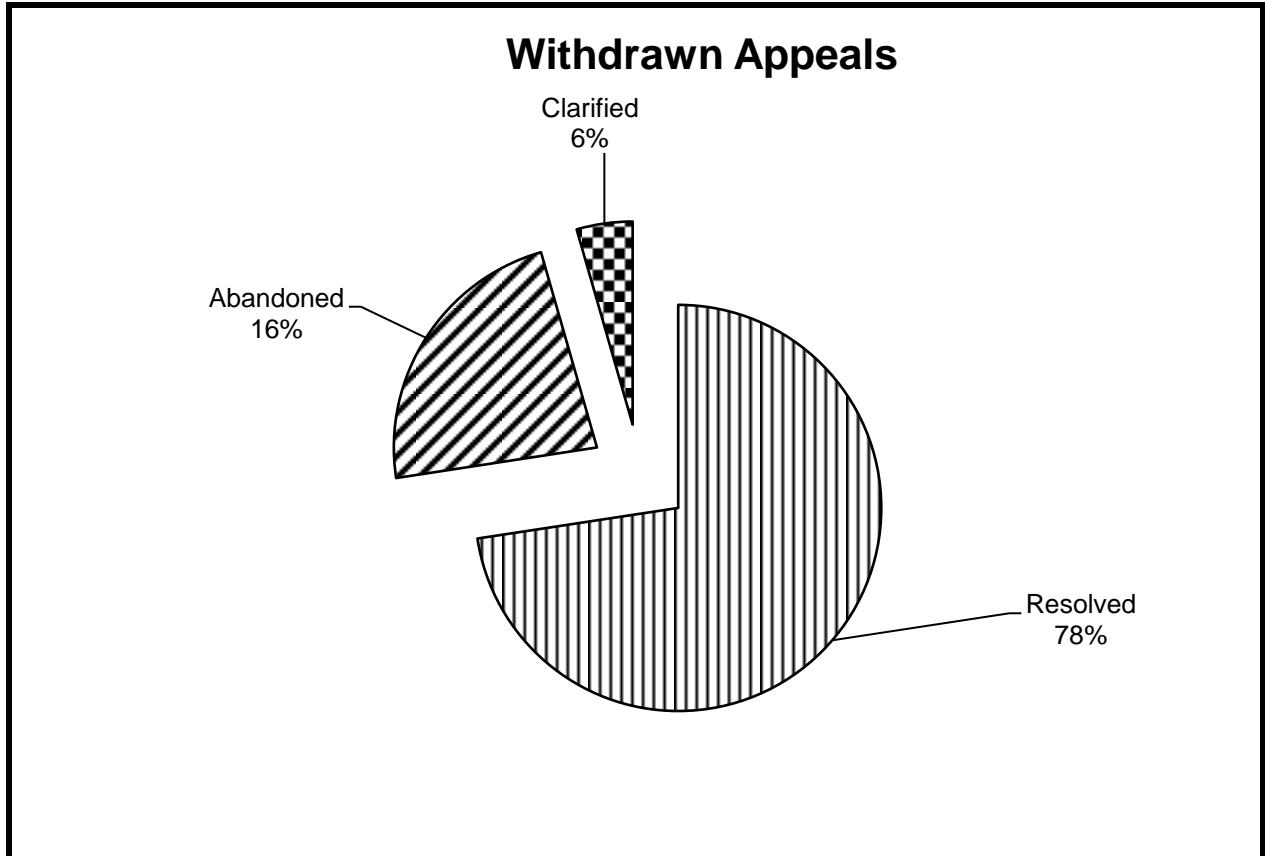
Appeals Filed by Disposition:

	<u>2013/14</u>	<u>%</u>	<u>2012/13</u>	<u>%</u>
Allowed	52	9	26	4
Dismissed	125	21	131	21
Withdrawn	252	41	298	49
Did not appear	69	11	52	8
Outside jurisdiction	28	5	35	6
Varied	34	6	32	5
Referred back	10	2	3	1
Still in process	32	5	38	6
TOTAL	602	100	615	100



Withdrawn Appeals:

Resolved ¹	197
Abandoned ²	41
Clarified ³	14



The 197 appeals that were withdrawn combined with the 52 that were allowed result in 249 appeals or 41% of total appeals whose outcome was in favour of the appellants.

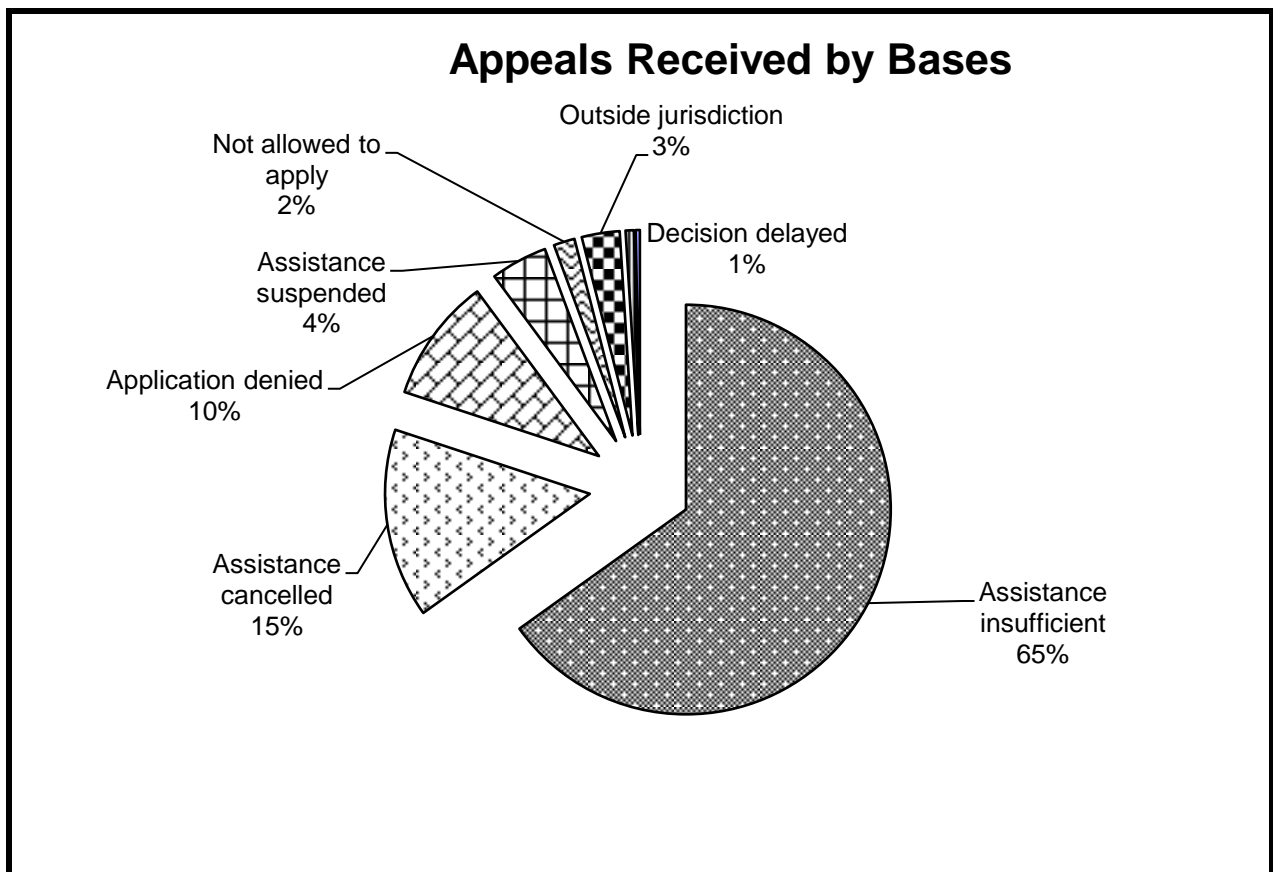
Notes:

- 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 602 appeals filed during the 2013/2014 fiscal year, the bases of appeal were as follows:

Assistance insufficient	392
Assistance cancelled	90
Application denied	59
Assistance suspended	27
Not allowed to apply	10
Outside jurisdiction	18
Decision delayed	4
Decision varied	2



Of the 602 appeals received, 290 or 48% went to the hearing phase.

*May include appeals filed in previous fiscal years.

Allowed Appeals:

For the 2013/14 fiscal year, there were 52 appeals allowed, 51 for the Employment and Income Assistance program and 1 for the Community Living disABILITY Program.

Reasons for Appeal*:

Of the 602 appeals received for 2013/14, the most common reasons for filing appeals were as follows:

Medical eligibility	104
Financial resources	53
Health needs	70
Overpayments	40
Shelter costs	43
Non cooperation	42
Special needs	28
Common-law union	21
Work expectations not met	13
Basic needs	48

These reasons apply to 462 appeals, or 77% of the total appeals filed.

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

Hearing Activity in 2013/2014*:

Month	Scheduled	Held
April	29	19
May	37	23
June	44	27
July	39	20
August	41	23
September	51	31
October	37	20
November	40	28
December	28	15
January	44	32
February	40	22
March	31	17
Total	461	277

Of the 602 appeals received, 233 or 39% went to the hearing phase.

*May include appeals filed in previous fiscal years.

REQUESTS FOR RECONSIDERATION

Number of Requests:

	<u>2013/14</u>	<u>2012/13</u>
Total requests received	13	15
From appellant	12	12
From respondent	1	3

Program Breakdown of Reconsideration Requests:

	<u>2013/14</u>	<u>2012/13</u>
Employment and Income Assistance	13	15

Disposition of Reconsideration Requests:

	<u>2013/14</u>	<u>2012/13</u>
Requests granted	1	1
Requests denied	8	14
Withdrawn	2	0
Requests pending	2	0

Of the Requests Granted:

	<u>2013/14</u>	<u>2012/13</u>
Decision upheld	0	1
Decision overturned	0	0
Decision varied	0	0
Decision pending	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 2013/2014 fiscal year. The recommendations and issues raised by the Appeal Board this year were as follows:

Damage Deposits for Hotels

The first issue was with respect to paying damage deposits for persons who are moving into accommodations classified as a “hotel”. The Board was advised by Income Assistance staff that they do not ever pay for damage deposits when a person is moving into a hotel. The rationale provided to the Board was that persons living in a hotel do not have the protection of *The Residential Tenancies Act*. The Board raised this issue to the Minister as it believed that the Employment and Income Assistance Program had been misinformed regarding this practice. The Board is of the understanding that anyone who is residing in a hotel and paying rent on a monthly basis does have the same rights and responsibilities as a person in a regular apartment block. The Board felt it is important to get this policy clarified and the information shared with all Employment and Income Assistance workers.

Children in Care

The Board believed that there was a policy gap concerning the amount of rent allowed for persons who have children in the care of a Child and Family Services Agency. The current policy addresses situations where children are in care and there are reunification plans in place. However, in circumstances where the children are in care and there are no plans for reunification, but the children have regular visitation, the Employment and Income Assistance Program does not allow additional rent to ensure that the home is suitable for these visitations to take place. The Board felt that there should be a provision for an appropriate rental allowance in situations where children are regularly visiting the home of a biological parent even when there are no plans for reunification.

Information Sharing with Student Aid

The final issue relates to situations where a person on income assistance is going to school and obtaining financial assistance through Manitoba Student Aid. It is the Board's understanding that currently there are no mechanisms in place to electronically cross reference persons receiving funds from both Employment and Income Assistance and Manitoba Student Aid. The Board is aware that the program does these types of automatic cross referencing with other income assistance programs. The Board believes that an electronic match with Manitoba Student Aid would both benefit income assistance recipients in avoiding unnecessary overpayments due to misunderstandings, and save the program money by not duplicating someone's benefits in error.

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 that these summaries provide some assistance to community members in understanding the function of the Board and what to expect when preparing for an appeal.

Sample #1

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Insufficient

Appeal Detail: High Protein Diet Allowance Denied

Decision: Confirmed (dismissed)

The appellant appealed that his request for a high protein diet allowance was denied.

The Department indicated that the appellant's physician had submitted a request for a high protein diet allowance, but the doctor had not submitted a diagnosis of a condition for which a high protein therapeutic diet was recommended and had also not provided verification that the appellant required greater than 100 grams of protein daily. The doctor had stated that the appellant required a high protein diet allowance in order to be able to purchase fresh fruit, fresh meat, and fresh vegetables. The doctor also stated that this diet was needed to treat a significant iron deficiency.

The appellant's advocate argued that three separate physicians had requested a high protein diet allowance for the appellant. She stated that although the appellant is receiving the nutritional supplement Ensure, he needed an increase in his food allowance in order to increase his mechanical intake of food and to treat his chronic anemia. The Ensure supplement did not address the appellant's need for increased iron in his diet, he needed to increase his consumption of red meat. The advocate stated that the regulation and policy specifically allows for the addition of a special diet allowance when prescribed by a duly qualified medical practitioner, and therefore the appellant's situation would warrant approval of the funding. It is the appellant's position that the Department erred in that they did not consider parts of the legislation or their own policy.

The Board determined that the Director was correct in denying the request for the therapeutic diet allowance.

Section 6(2) of The Employment and Income Assistance Regulation states:

Notwithstanding any other provision of this regulation, where an applicant or recipient requires a special diet by medical prescription, the monthly basic allowance may be exceeded by an amount approved by the minister.

The Employment and Income Assistance Manual outlines what the amounts approved by the Minister are in Section 18.4.2. This section contains a list of specific therapeutic diets for specific medical conditions, and a monthly amount to be added to the diet when a physician or other medical professional has prescribed the specific therapeutic diet for the treatment of the listed medical conditions. This section of the administrative manual specifically states that the standard therapeutic diet labeled “high protein/high calorie” is a diet requiring more than 100 grams of protein daily. As the physician had not stated that the appellant has a medical condition which is to be treated with greater than 100 grams of protein daily, it does not fit the category of a standard therapeutic diet.

The Department had recently created a new Special Diet request form to try to guide physicians and dieticians to the specific information needed in order for special diet funds to be added to the budget. Therefore the Director and the Board could not approve a special diet allowance amount for the treatment of anemia or significant iron deficiency as this was not a therapeutic diet allowance that had been approved by the Minister. It was the Board’s interpretation of the legislation that the Director does not have the discretion to approve a high protein diet allowance unless there is a specific medical condition that requires more than 100 grams of protein per day. Therefore the decision of the Director was confirmed.

Sample #2

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Insufficient

Appeal Detail: Medical Eligibility

Decision: Varied

The appellant appealed that her medical eligibility under Section 5(1)(a) had been denied.

The appellant submitted a medical assessment report from her doctor that stated her primary diagnosis was back pain causing problems bending and walking fast. The assessment also listed secondary diagnoses of swollen feet and knees, no strength, trouble walking, balance problems, cannot sit for too long, sleep and concentration problems, overactive bladder and diarrhea. The doctor commented that “The appellant walks very slowly and has problems sitting for an extended period of time”. The doctor commented that the appellant had been referred to a psychiatrist in 2007 due to dysthemia (chronic depression). Currently, the appellant is taking medications to treat anxiety and depression, insomnia and GERD. In the section regarding work activity, the doctor had not checked off either “able to work” or “unable to work” but had checked off permanent limitations of functions and written in “probably permanent”. The doctor commented that what is functionally preventing the appellant from working is sore back, tiredness, sore ankles, knees, and problems with her balance and concentration; cannot lift anything; fibromyalgia.

The medical panel concluded that the appellant was not eligible for medical disability, and that she would probably benefit from weight loss and physiotherapy. The panel felt the appellant could be employed at a job that did not require heavy lifting or walking fast.

At the hearing the appellant stated that she did not feel she was able to work due to her constant fatigue and her inability to sleep. She also stated that she experiences a great deal of pain. She stated that she can only do her housework in short spurts of about 30 minutes and then she is totally played out and must rest. She stated that she tried to do some volunteer work but it left her completely exhausted so she had to quit. She stated that she cannot sleep at night because of the pain she has, and she stated that she is unable to turn off her mind enough to get any sleep. She stated she feels that her depression has improved as before she was never able to leave her home, but over the past winter, she was able to go out a few times. She stated that the fibromyalgia affects every part of her body, her bladder, bowels, concentration, muscles, joints, and her memory. She stated that she is always in pain and that the doctor told her there was no cure for it. She stated that if she falls down she is unable to get herself off the ground and must get assistance from another person. The appellant stated that she is tired all the time, and does not have the energy to do anything. The appellant also stated that she still occasionally has panic attacks. She stated that she cannot carry her groceries herself and must get a friend to carry them for her.

The appellant had a friend with her at the hearing and she stated that what she had observed over the years was that the appellant had good days and bad days. She had some days where she is not feeling well enough to do anything at all, and other days where she is able to very slowly go for a short walk. She stated that every day is a constant battle to keep going.

Section 5(1) of *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 determined that the medical assessment form did not contain sufficient information to establish medical eligibility under Section 5(1)(a) of *The Employment and Income Assistance Act*. However, the Board did determine that based on the verbal information provided by the appellant and the Board's observations and interaction with the appellant it had been convinced that the appellant was unable to earn a living sufficient to meet her basic needs due to the combination of her physical and mental health. The Board believed that the appellant's constant fatigue, her pain, and her inability to concentrate for any length of time would make it impossible for her to sustain gainful employment even in a sedentary position. Therefore the decision of the Director

was varied and the Board ordered that the appellant be enrolled under Section 5(1)(a) effective the date of the hearing for a period of twelve months.

Sample #3

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Cancelled

Appeal Detail: Income exceeded eligibility

Decision: Confirmed (dismissed)

The appellant appealed that his income assistance file was closed.

The appellant had applied for income assistance benefits on August 15, 2013. At that time, he was working part-time. He was required to submit his earnings on a monthly income declaration form at the end of each month in order to determine his eligibility for the following month. When the appellant submitted his earnings for the month of October, they totaled \$851.34. When his eligibility was calculated, the program determined that as his earnings were more than 135% of his income assistance budget of \$605, he was not eligible for any assistance for the month of November.

Unfortunately, the appellant left his employment prior to November 1, 2013, and therefore he did not receive any employment income in the month of November to meet his basic needs. The appellant stated that he has had to give up a lot of things like his phone, cable and internet as he cannot afford these things when he is not working. He stated that he had to dip into his retirement savings plan, and often goes to food banks to eat. The appellant also stated that he does not understand why the Department closed his file as it is a lot more hassle to have to apply again for December 1, 2013.

The Board determined that the Department correctly determined that the appellant was not eligible for November income assistance based on the amount of employment earnings he received. The program provided the allowable Rewarding Work allowance to increase his budget, but his earnings were more than 135% of this increased amount. In accordance with Section 8(6) of The Employment and Income Assistance Regulation, all gross income that is more than 135% of the costs of basic necessities is considered a financial resource. As 135% of \$605 is \$816.75, the appellant had an income carry forward of \$34.59. When the income assistance file was closed, the income carry forward amount got wiped out, and when the appellant reapplied in December, no previous income would affect his December benefits. Therefore the Board confirmed the decision of the Director.

Sample #4

Program: Employment and Income Assistance

Basis of Appeal: Income Assistance Insufficient

Appeal Detail: Request for Start-up allowance denied

Decision: Confirmed (dismissed)

The appellant appealed that his request for a start up grant was denied.

The appellant stated that when he moved from Winnipeg, he left all his belongings behind. When he returned to Winnipeg in February 2013 he requested a “start up” allowance from his worker. The appellant stated that he has never received a start up allowance and therefore he believes he should be eligible for one. The appellant stated that he read this in a pamphlet.

The Department stated that start-up allowances are provided only in very specific circumstances, and the appellant’s circumstances do not qualify for these funds.

Section 21.1.3 of The Employment and Income Assistance Administration Manual states;

Where participants cannot find furnished accommodations, as required, a one-time allowance of up to \$500.00 may be authorized in accordance with regional guidelines approved by the District Director for the purchase of essential household furnishings, including beds and bedding if required, to:

- a recently separated, sole-support parent who is unable to obtain marital property;
- a new sole-support parent leaving the parental home who is unable to retain available furniture;
- a person with a disability leaving an institution or parental home who is unable to retain available furniture; or
- participants whose household items are accidentally destroyed, e.g., in a fire.

The Department stated that the appellant is not eligible as he is currently living in a furnished room, and also his circumstances do not fit any of the outlined circumstances. The appellant had lived on his own in the past, and the Department does not provide funds to replace household items that have been abandoned. The appellant also was assessed for eligibility for a bed and bedding and he was provided with \$52 for his bedding allowance in September 2013. He was not eligible for a bed as one was provided in February 2012 and they are only provided once every seven years.

The Board determined that the appellant does not meet the criteria set forth for eligibility for a “start-up” allowance. This allowance is not something every person on assistance is eligible for. It is a special allowance provided in only very specific circumstances. The appellant was living in a furnished room, and he had previously been in a self-contained unit with his own belongings including furniture. Therefore the Board confirmed the decision of the Director and the appeal was dismissed.

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.