

Social Services
Appeal Board

Annual Report
2014-2015

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**MINISTER OF
FAMILY SERVICES**

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2015

Her Honour the Honourable Janice C. Filmon, 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 2014/2015.

Respectfully submitted,

"Original signed by"

Kerri Irvin-Ross



**Social Services
Appeal Board**

**7th Floor, 175 Hargrave Street
Winnipeg MB R3C 3R8
CANADA**

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September 2015

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

Dear Minister Irvin-Ross:

I am pleased to submit the annual report of the Social Services Appeal Board for the fiscal year ending March 31, 2015.

Section 26 of *The Social Services Appeal Board Act* states that 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 Board is proud of its continued efforts to provide a fair and impartial appeal process to Manitoba citizens as well as informing and offering recommendations to the Minister related to matters arising from appeal hearings.

Sincerely,

"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 2014/2015 fiscal year:

Chairperson:	Frank Caldwell
Vice-chair:	Eva Dupont
Members:	George Bouchard Doug Crookshanks Valerie Debooy Ron Erickson Edward Goralski Jeannette Gougeon Zanna Joyce Julie Kading Brent Kurz Derek Legge Annette Niven Ellen Peel Marie Walker

Social Services Appeal Board Staff:

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

Legal Counsel:	Vivian Rachlis
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BOARD BIOGRAPHIES – 2014/15

Frank Caldwell, Chairperson

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.

George Bouchard

Appointed February 18, 2015

George began his career as a flight attendant in 1997 in Calgary and moved back to Winnipeg with the airline in 2001. George got involved with his local union in 2006 and was subsequently elected as President in 2008. George began working as a National representative for CUPE in 2010. In the last 5 years he has represented members in all five sectors, including health care and social services.

Doug Crookshanks

Appointed November 25, 2014

Doug is retired from a career in Mental Health in Manitoba, initially employed as a clinician with the Psychology Department of Brandon Mental Health Centre, and then in administrative positions (Head of Psychology followed by Program Manager of the Child and Adolescent Treatment Centre in Brandon when Regional Health Authorities were created). During Mental Health Reform Doug was involved in the organization and administration of Mental Health programs, along with the creation of the multi-faceted Treatment Centre in Brandon that provides services to children, adolescents, and their families in Western Manitoba. Both prior to and since retirement Doug has served on a variety of boards and committees in the community, including the Board of Directors of a local credit union, various church committees, and the Board of Governors of Assiniboine Community College.

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 Lions Club and an active volunteer in the community.

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.

Brent Kurz

Appointed February 18, 2015

Brent is a lifelong Winnipeg resident with a background in human resources, education and social services. He has a Certificate in Human Resource Management and a Bachelor of Social Work from the University of Manitoba and holds the CHRP (Certified Human Resource Professional) designation. Brent has been an active member of several professional associations including the Human Resource Management Association of Manitoba, Winnipeg Organization of Recruitment Coordinators and has sat on the Boards of EDGE Inc. and Manitoba WorkInfonet. He retired in 2012 but continues to work on a contract/consulting basis.

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. Annette 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. Annette 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.

Ellen Peel**Appointed February 18, 2015**

Ellen attended the University of Manitoba (Bachelor of Arts and Master of Social Work) before embarking on a 39 year career with Child and Family Services. She retired in 2007 as the Program Manager for Resources at Winnipeg CFS. Throughout her career she advocated for strengthening services and resources for families and children. Now retired, she volunteers with a number of organizations and believes in giving back to the community.

Marie Walker**Appointed February 18, 2015**

Marie was born and raised in Selkirk, Manitoba. She was employed as a case manager for 23 years with the Employment and Income Assistance Program. She has been working with Indian residential school survivors as a Resolution Health Support Worker for the past year. She is recently retired and raising three grandchildren full-time. She is an active volunteer and past board member with the Selkirk Friendship Center.

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 AND Rent Assist

Subsection 9(3) of *The Manitoba 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 or shelter assistance
- b. his or her request for income assistance, general assistance or shelter assistance or for an increase in income assistance, general assistance or shelter assistance was not decided upon within a reasonable time
- c. his or her application for income assistance, general assistance, or shelter assistance was denied
- d. his or her income assistance, general assistance or shelter assistance was cancelled, suspended, varied or withheld
- e. the amount of income assistance, general assistance or shelter 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*.

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.

THE APPEAL AND HEARING PROCESS

Appeals are accepted by mail, fax, or in person at the counter. An appeal can be made in the form of a handwritten letter or by filling out the Notice of Appeal to the Social Services Appeal Board (SSAB). The Appeal must be in writing and submitted within 30 days from the time the Appellant receives the decision they are appealing, although the SSAB may extend this time period.

Once an appeal is received, a copy is faxed to the respondent (the person who made the decision). The respondent is required to prepare a report outlining why the decision was made, and including any documentary evidence upon which the decision was made.

A copy of the respondent's report and a Notice of Hearing will be mailed to the appellant. The SSAB is required to hold the hearing within 30 days after the appeal is received, unless the appellant requests a longer time.

The Board has the power to summons witnesses if required.

The appellant may bring a person to support them or help them present their case, but they are not required to.

At the hearing, three members of the SSAB will sit as a panel to hear the appeal. The appellant is required to attend, as is a representative for the Department. Each party will provide a short presentation, and the Board will ask any questions they need in order to make their decision. The Board's decision is made in private following the hearing, and a letter with the Board's decision and the reasons for that decision will be mailed within 15 days.

Decisions made by the SSAB are subject to reconsideration or application for leave to appeal from the Court of Appeal.

More detailed information about the SSAB's Policies and Procedures can be found at: <http://www.gov.mb.ca/fs/ssab/index.html> .

FINANCIAL INFORMATION

In 2014/15, the annual budget for the Social Services Appeal Board was \$564,000. This amount was apportioned into \$481,000 for staff and board salaries and benefits, and \$83,000 for operating costs. The actual expenditures were \$473,000.

The board members' per diem payments are paid from salary expenses. In the 2014/15 fiscal year, the amount spent on board per diems was \$70,617.

09-1C Social Services Appeal Board

Expenditures by Sub-Appropriation	Actual 2014/15 \$000	FTE*	Estimate 2014/15 \$000	Variance Over/(Under)	Expl. No.
Total Salaries and Employee Benefits	394	5.00	481	(87)	1
Total Other Expenditures	79		83	(4)	
Total Expenditures	473		564	(91)	

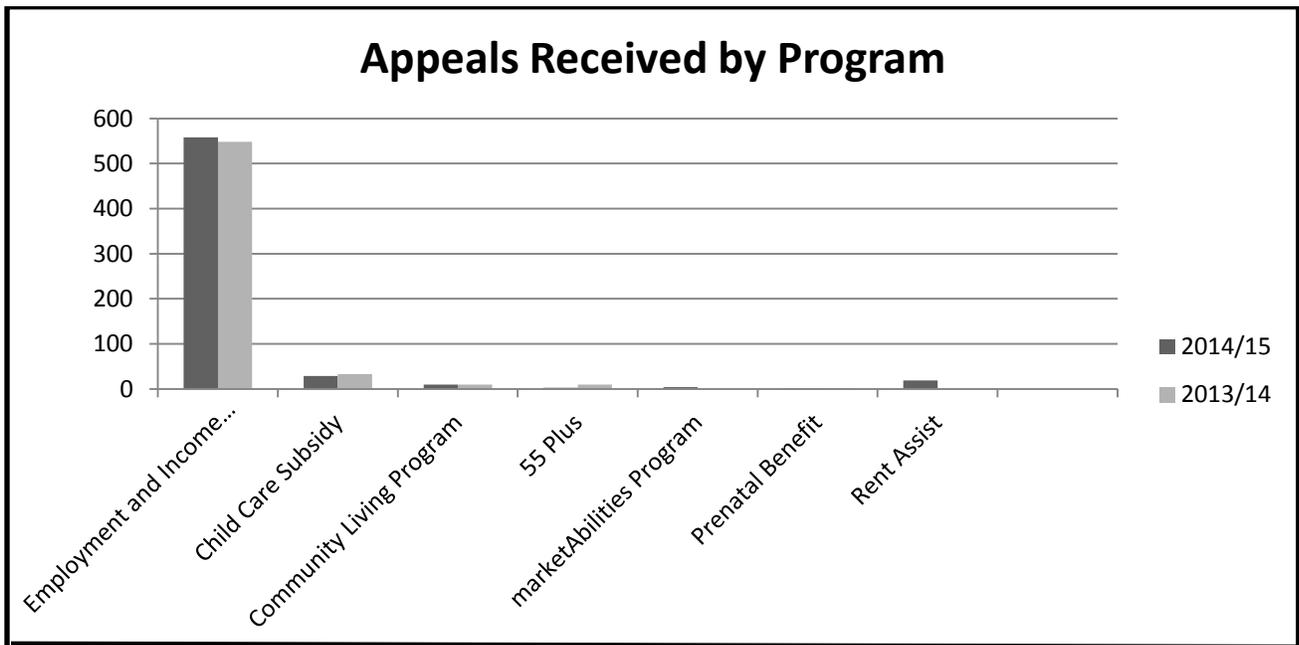
* Full time equivalents do not include board positions.

1. The Fair Practices Officer position was vacant for months of April to September 2014.

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 COMPARISON BY PROGRAM

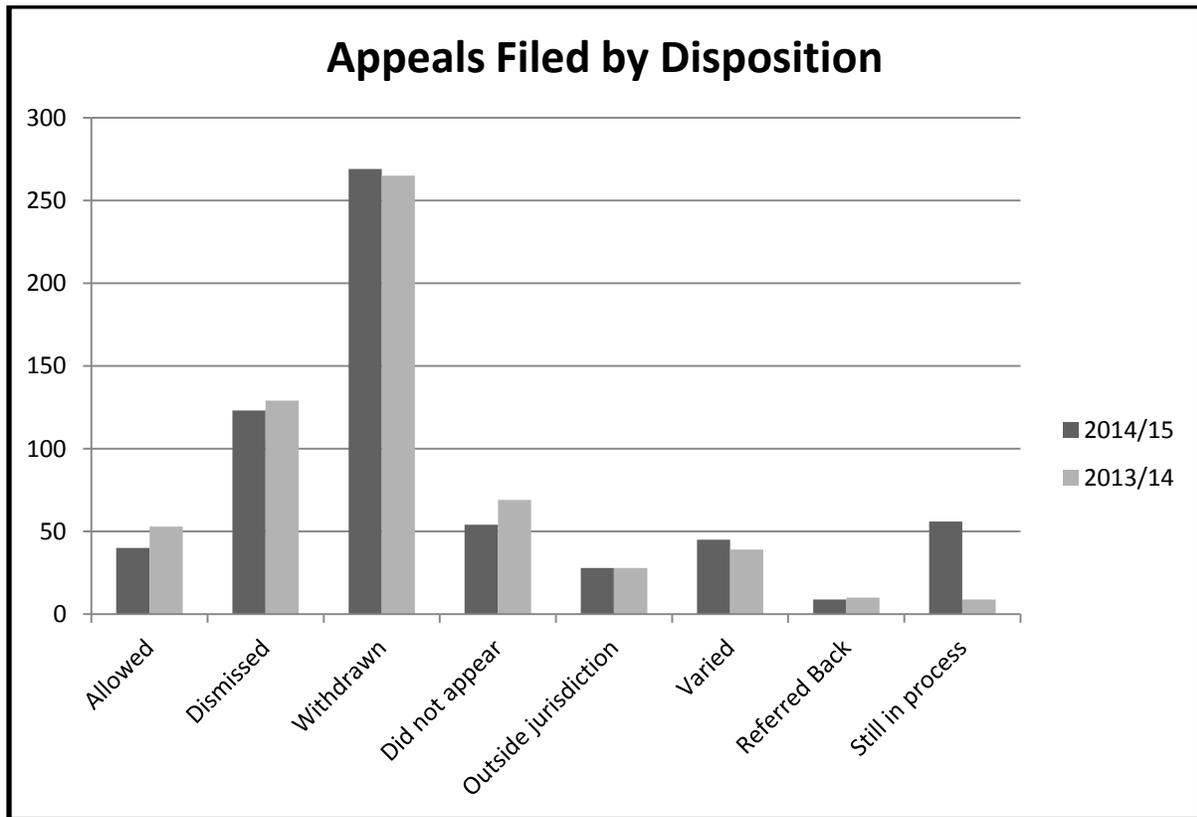
	2014/15	2013/14
TOTAL APPEALS FILED	624	602
EMPLOYMENT & INCOME ASSISTANCE	558	548
CHILD CARE SUBSIDY	29	33
COMMUNITY LIVING disABILITY PROGRAM	10	10
55 PLUS	3	10
MARKETABILITIES PROGRAM	4	0
PRENATAL BENEFIT	1	1
RENT ASSIST*	19	--



* Effective July 2014 Rent Aid was replaced by Rent Assist. Rent Assist is a new monthly shelter-related financial benefit to help low-income Manitobans who pay rent in the private market and who are required to spend a large portion of their income on rent.

APPEALS FILED BY DISPOSITION

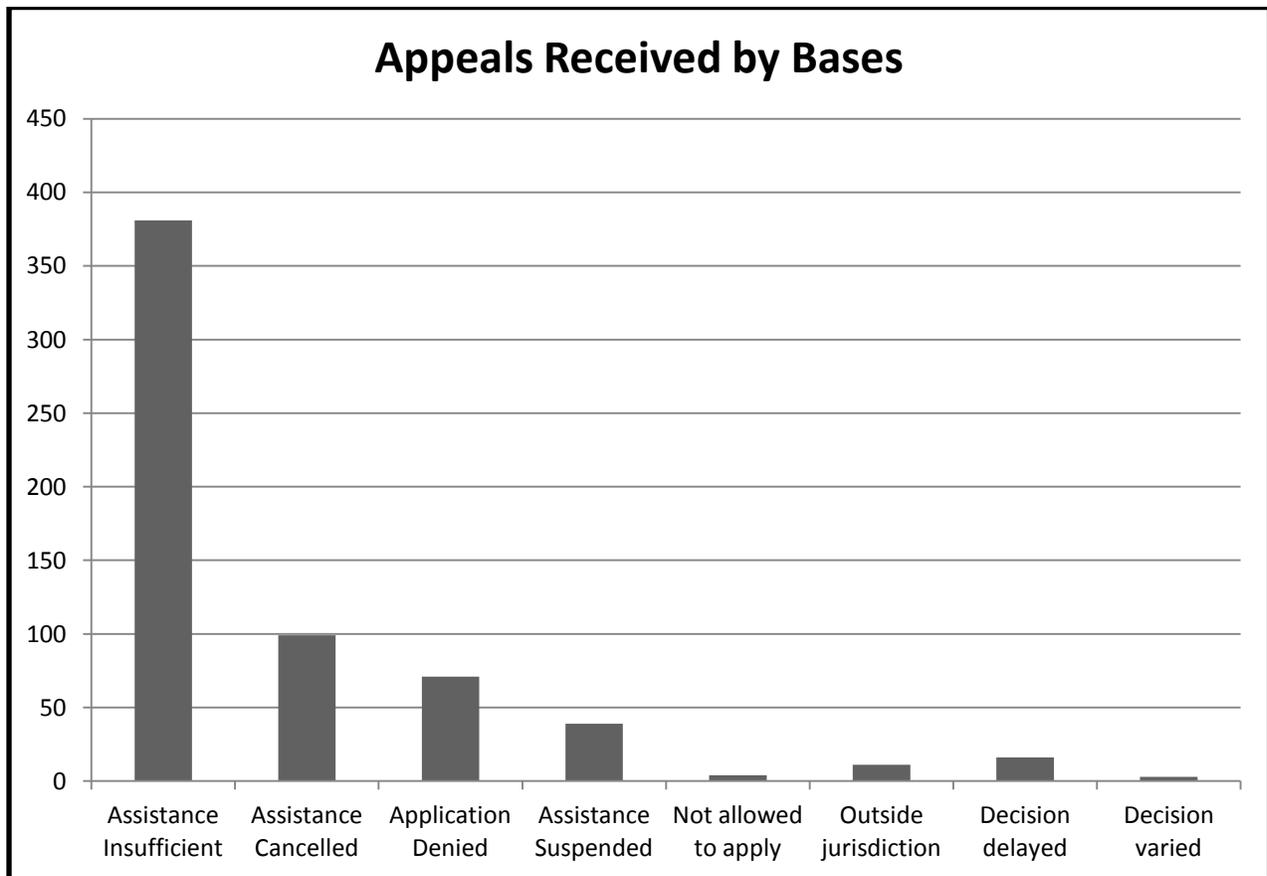
	2014/15	%	2013/14	%
Allowed	41	7	52	9
Dismissed	129	21	125	21
Withdrawn	268	44	252	41
Did not appear	53	8	69	11
Outside jurisdiction	28	4	28	5
Varied	46	7	34	6
Referred back	9	1	10	2
Still in process	50	8	32	5
TOTAL	624	100	602	100



APPEALS RECEIVED BY BASES

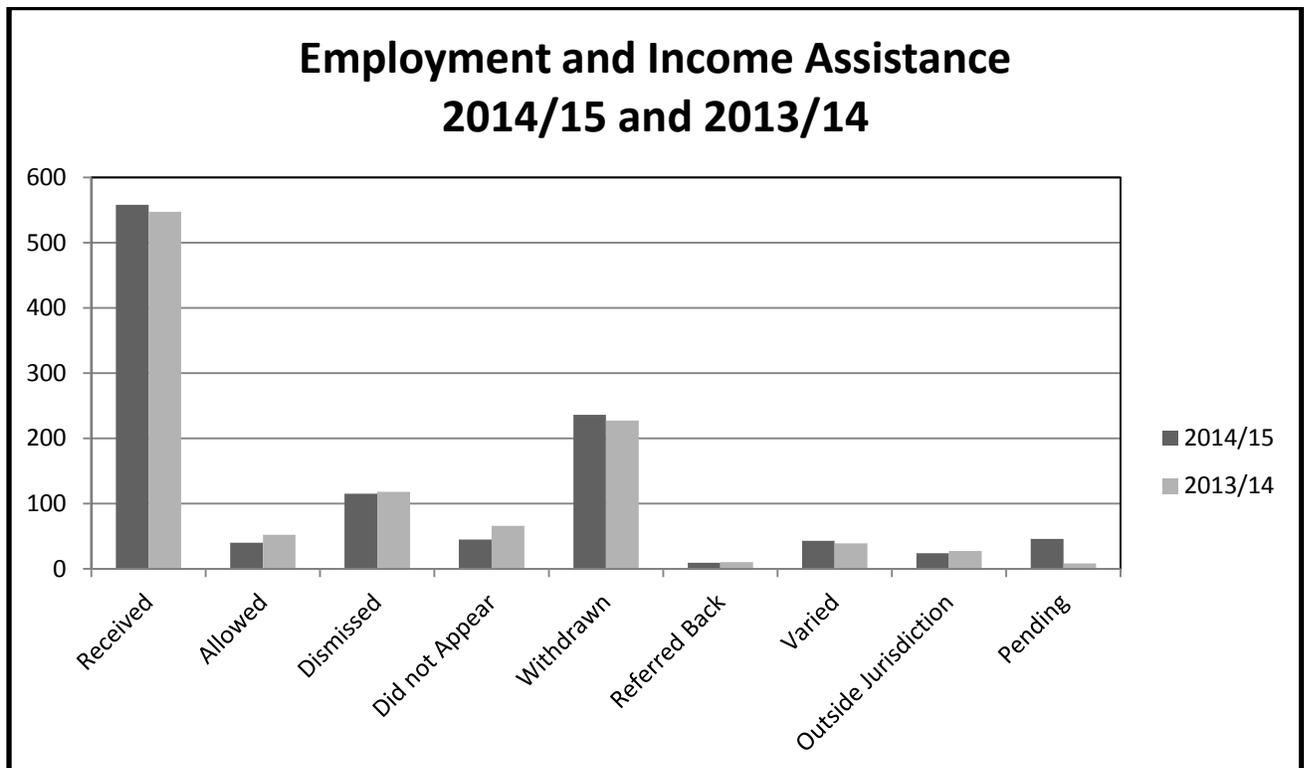
Of the 624 appeals filed during the 2014/2015 fiscal year, the bases of appeal were as follows:

Assistance insufficient	381
Assistance cancelled	99
Application denied	71
Assistance suspended	39
Not allowed to apply	4
Outside jurisdiction	11
Decision delayed	16
Decision varied	3



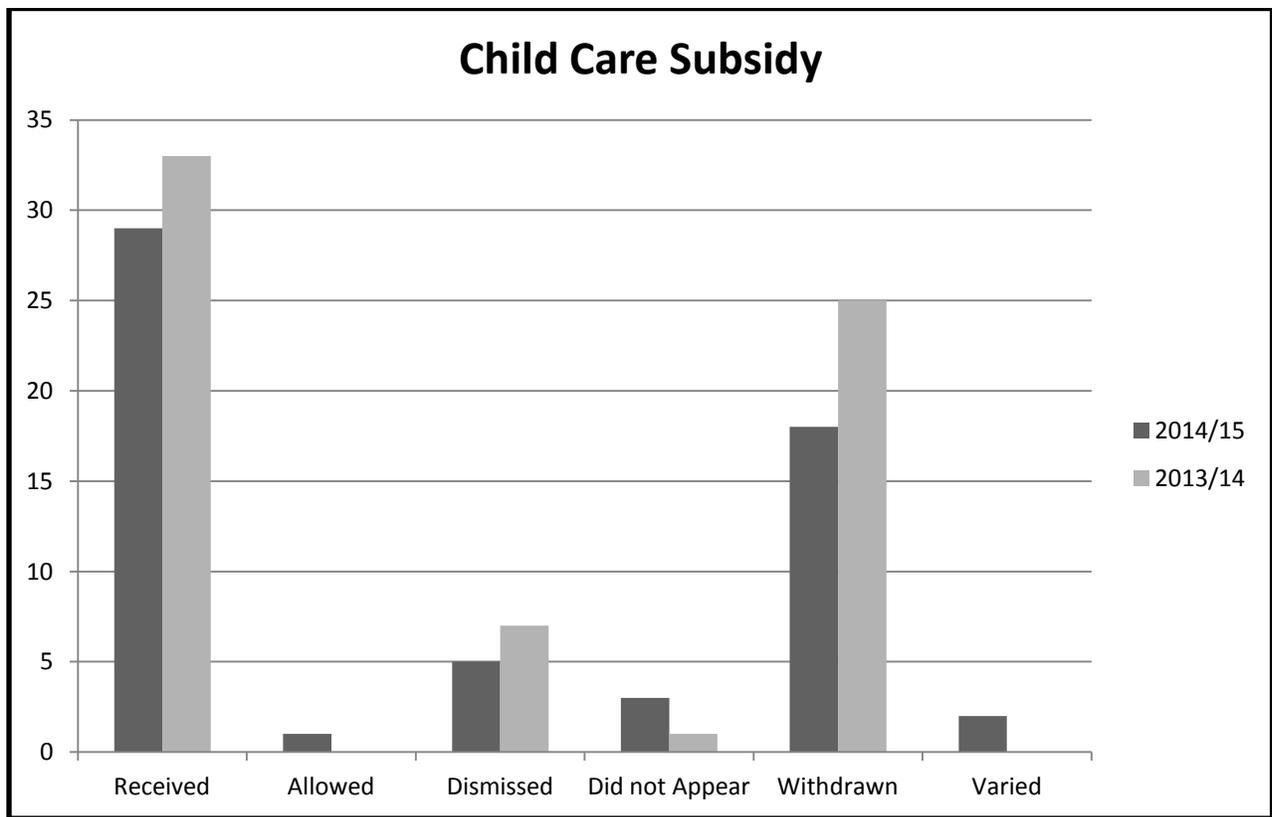
EMPLOYMENT AND INCOME ASSISTANCE

DISPOSITION	2014/15	2013/14
RECEIVED	558	548
Allowed	40	52
Dismissed	115	125
Did Not Appear	45	69
Total withdrawn (includes abandoned, clarified and resolved)	236	253
Abandoned	55	44
Clarified	14	9
Resolved	167	174
Referred Back	9	10
Varied	43	34
Outside Jurisdiction	24	28
Pending	46	8



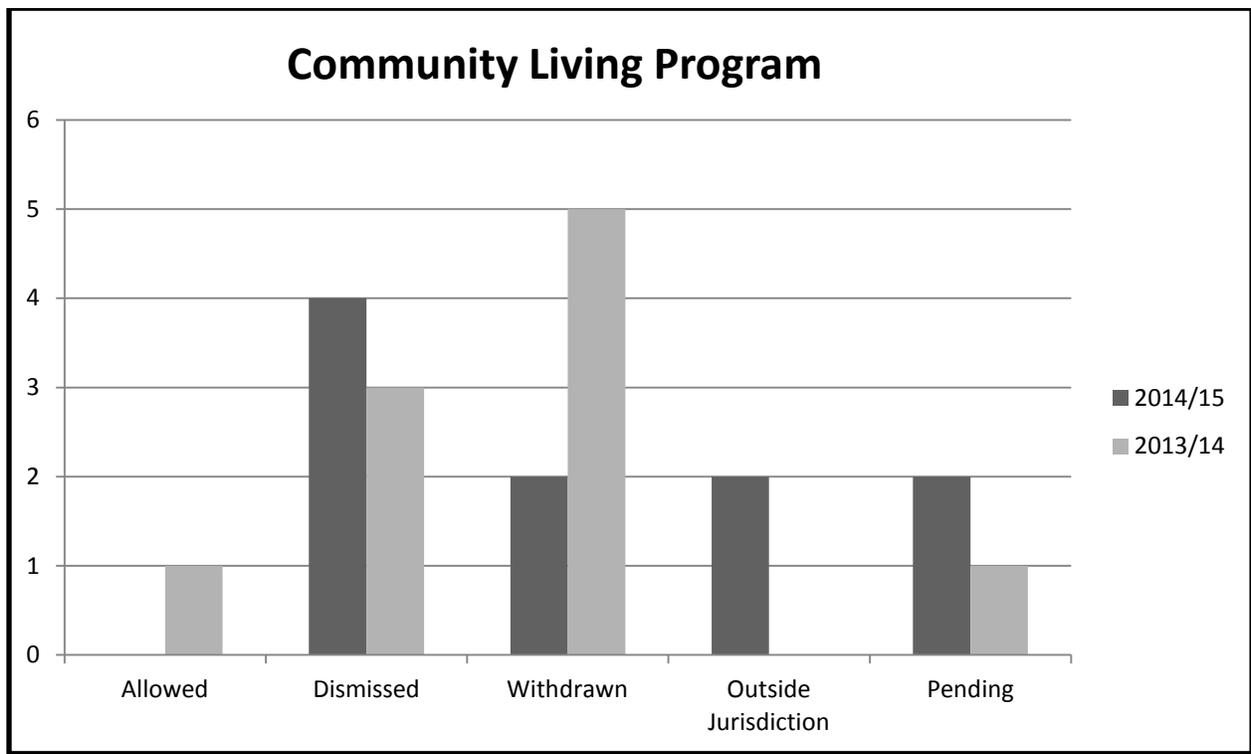
CHILD CARE SUBSIDY

DISPOSITION	2014/15	2013/14
RECEIVED	29	33
Allowed	1	0
Dismissed	5	7
Did Not Appear	3	1
Total withdrawn (includes abandoned, clarified and resolved)	18	25
<i>Abandoned</i>	1	3
<i>Clarified</i>	2	2
<i>Resolved</i>	15	20
Varied	2	0



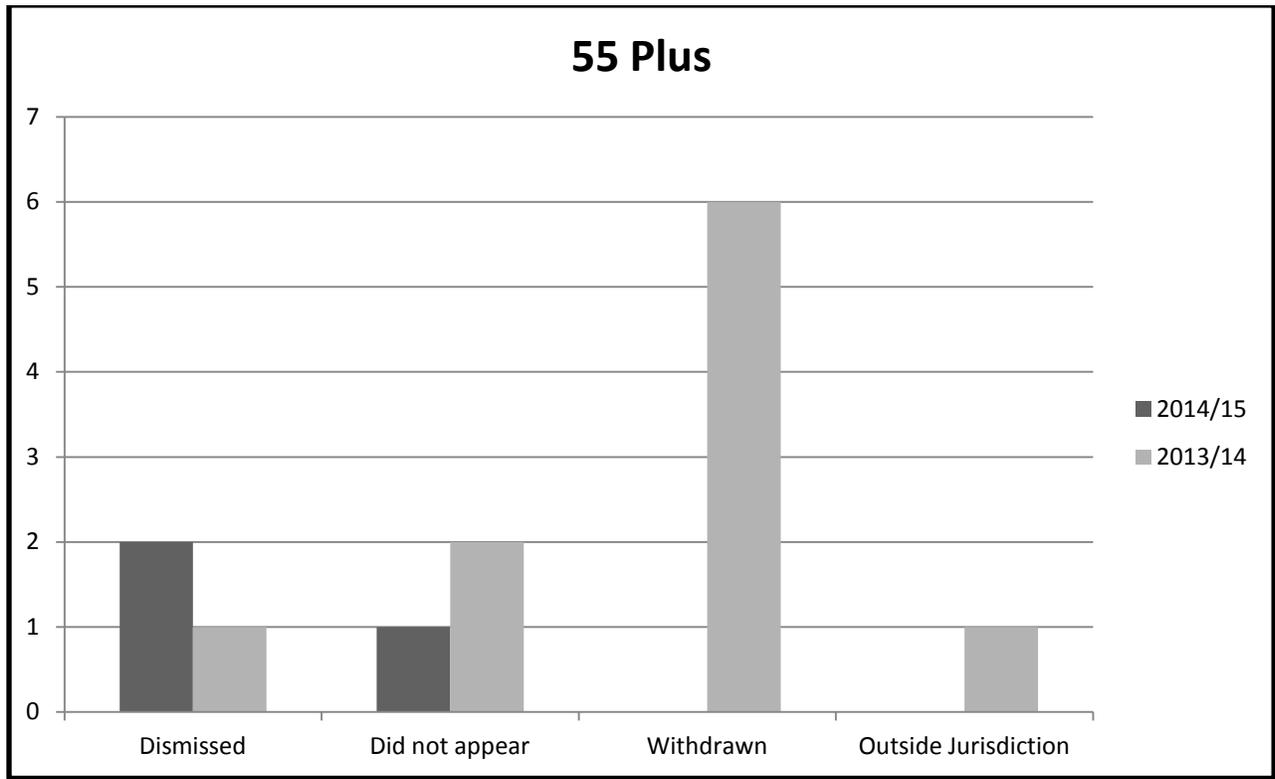
COMMUNITY LIVING PROGRAM

DISPOSITION	2014/15	2013/14
RECEIVED	10	10
Allowed	0	1
Dismissed	4	3
Withdrawn - Resolved	2	5
Outside Jurisdiction	2	0
Pending	2	1



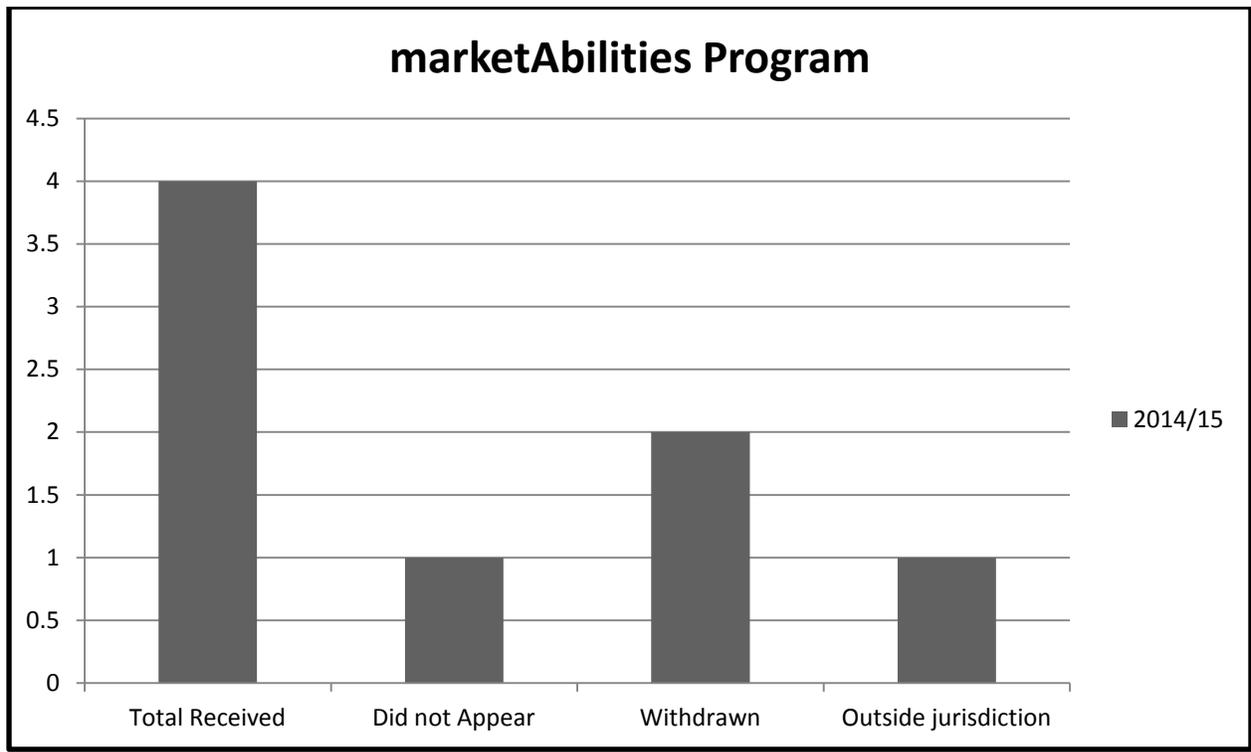
55 PLUS

DISPOSITION	2014/15	2013/14
RECEIVED	3	10
Dismissed	2	1
Did Not Appear	1	2
Total withdrawn (includes abandoned, clarified and resolved)	0	6
<i>Abandoned</i>	0	1
<i>Clarified</i>	0	3
<i>Resolved</i>	0	2
Outside Jurisdiction	0	1



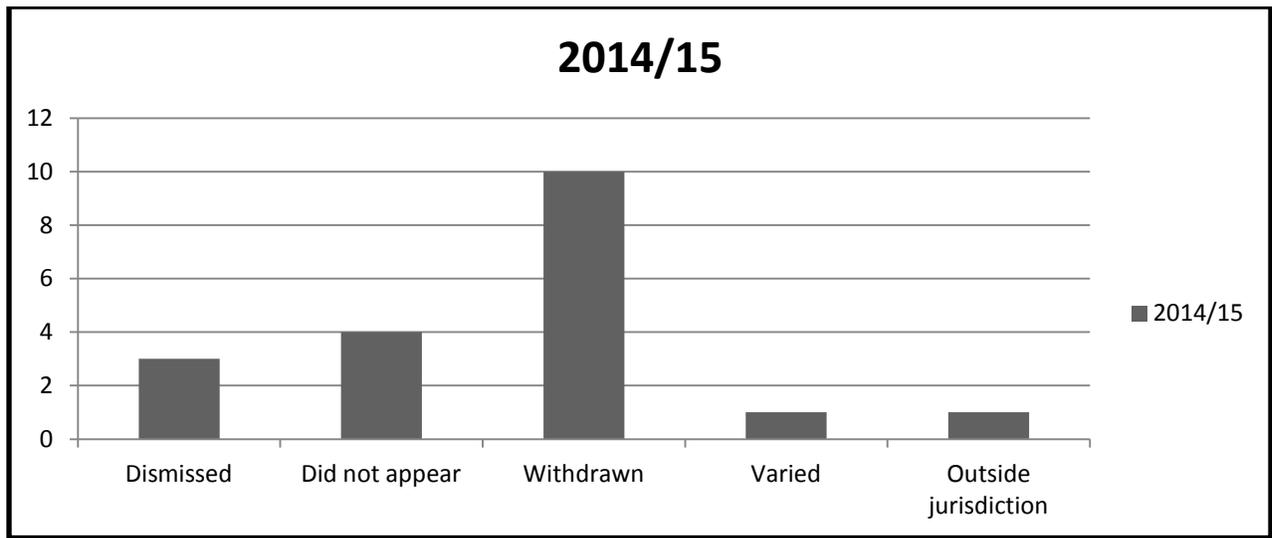
MarketABILITIES PROGRAM

DISPOSITION	2014/15	2013/14
RECEIVED	4	0
Did Not Appear	1	--
Total Withdrawn (includes abandoned and resolved)	2	--
<i>Abandoned</i>	1	--
<i>Resolved</i>	1	--
Outside Jurisdiction	1	--



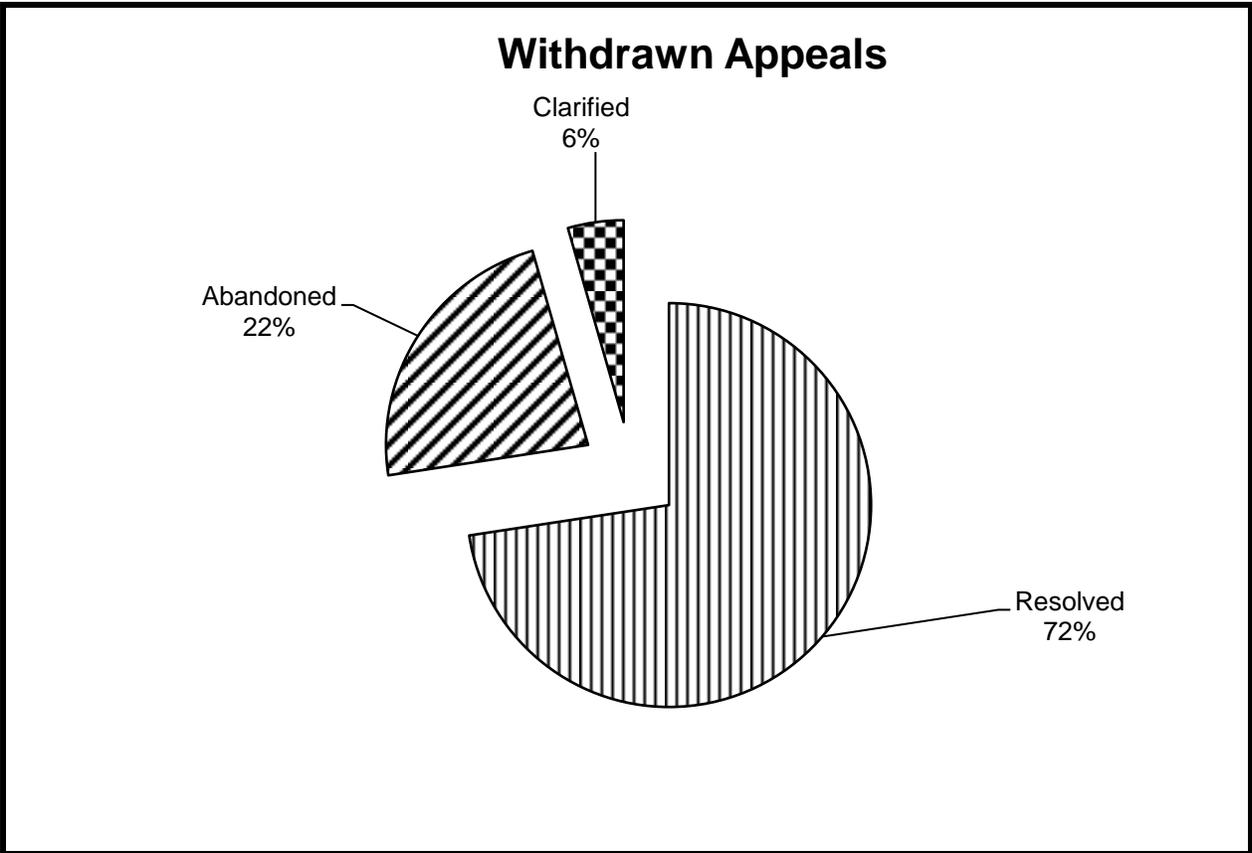
RENT ASSIST

DISPOSITION	2014/15	2013/14
RECEIVED	19	0
Dismissed	3	--
Did Not Appear	4	--
Total withdrawn (includes abandoned and resolved)	10	--
<i>Abandoned</i>	3	--
<i>Resolved</i>	7	--
Varied	1	--
Outside Jurisdiction	1	--



* Effective July 2014 Rent Aid was replaced by Rent Assist. Rent Assist is a new monthly shelter-related financial benefit to help low-income Manitobans who pay rent in the private market and who are required to spend a large portion of their income on rent.

WITHDRAWN APPEALS	
Resolved ¹	192
Abandoned ²	60
Clarified ³	16
Total Withdrawn	268



The 192 appeals that were withdrawn (resolved) combined with the 41 that were allowed and 46 that were varied result in 279 appeals or 45% 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.

HEARING ACTIVITY IN 2014/15*				
	Scheduled	Held	Winnipeg	Rural
April	41	16	14	2
May	38	17	16	1
June	38	22	15	7
July	30	19	18	1
August	44	19	16	3
September	51	29	21	8
October	48	24	21	3
November	50	30	23	7
December	47	26	20	6
January	37	17	14	3
February	33	22	20	2
March	37	25	22	3
TOTALS	494	266	220	46

Of the 624 appeals received, 262 or 42% went to the hearing phase.

*Includes appeals filed in previous fiscal years.

Appeals whose outcome was favourable to the appellants

For the 2014/15 fiscal year, there were 41 appeals allowed, 40 for the Employment and Income Assistance program and 1 for the Child Care Subsidy Program. Also, there were 192 appeals withdrawn as they were deemed to be resolved, and another 46 appeals where the Board varied the decision of the director to favour the appellant.

Reasons for Appeal*

Of the 558 appeals received for the Employment and Income Assistance Program in 2014/15, the most common reasons for filing appeals were as follows:

Medical eligibility	110
Financial resources	50
Health needs	124
Overpayments	25
Shelter costs	23
Non cooperation	37
Special needs	27
Common-law union	29
Work expectations not met	37
Basic needs	45

These reasons apply to 507 appeals, or 91% of the total appeals filed.

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

REQUESTS FOR RECONSIDERATION		
	2014/15	2013/14
Total requests received	10	13
From appellant	9	12
From respondent	1	1

PROGRAM BREAKDOWN OF RECONSIDERATION REQUESTS		
	2014/15	2013/14
Employment and Income Assistance	10	13

DISPOSITION OF RECONSIDERATION REQUESTS		
	2014/15	2013/14
Requests Granted	1	1
Requests denied	9	8
Withdrawn	0	2
Requests pending	0	2

OF THE REQUESTS GRANTED		
	2014/15	2013/14
Decision varied	1	0
Decision pending	0	1

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 2014/2015 fiscal year.

A number of changes made by the Department affected appeal activity.

A directive to Employment and Income Assistance (EIA) program staff that disposable wipes for adult diapering were not to be authorized resulted in a number of appeals against discontinuation of these supplies from persons who had been receiving them in the past. The Board monitored these appeals to determine if any feedback should be provided to the Minister in this area. Because this was not an ongoing or widespread issue, the Board determined that the issue could be handled on a case-by-case basis, and advice regarding a change in policy was not considered necessary.

The EIA program implemented strict guidelines regarding the provision of a bus pass for health reasons. In the past, many income assistance recipients would receive a monthly bus pass based on a note from their doctor indicating a medical need for the transportation. The Board heard a number of appeals from persons who had been receiving a monthly bus for years and were then denied under the revised guidelines. The need for health transportation has been limited to attendance at medical appointments and a requirement that income assistance recipients provide documentation of their actual medical appointments. The Board had concerns regarding the rigidity of some of these decisions, however, did not feel that a recommendation for a change in policy was warranted and continues to deal with these appeals on a case-by-case basis.

Another issue which the Board continues to keep an eye on is with respect to requests for Transcutaneous Electrical Nerve Stimulation (TENS) machines. A TENS machine provides an electric current which stimulates nerves for therapeutic purposes. The Board occasionally has appeals regarding the denial of funding for these machines and has overturned the Department's decision in many of these appeals. As there is no policy regarding the funding of these devices, the Board continues to review them on a case-by-case basis. In the 2014/2015 fiscal year, a total of three appeals were heard on this matter, in all three cases the Board overturned the Department's decision.

The Department created a Disability Health Support Unit which centralized decision making for all therapeutic diet requests and medical equipment supplies for a number of programs effective July 1, 2014. The Board saw an immediate increase in the number of appeals related to therapeutic diet requests, and in particular, the denial of high protein diet allowances. The Board advised the Minister that persons who have received a high protein diet allowance for multiple years were being denied a renewal of their diet because they have a “normal” body weight, using their Body Mass Index (BMI) as the measurement of “normal”. The Board had a concern with situations in which a therapeutic diet had been effective for years in helping a person with a serious health issue maintain a healthy body weight, and was subsequently being denied the diet they required to maintain their weight. Shortly after sharing this concern and recommendation to the Minister, the program established a new therapeutic diet category for “chronic conditions” which satisfies concerns for persons with certain health diagnoses in their need to maintain a healthy body weight.

The Board previously expressed concerns to the Minister regarding a directive to EIA staff with respect to certain decisions made by the Minister’s designate which were identified as not appealable. The Board subsequently met with senior staff of the EIA program about changes to the directive to ensure that a person’s right to appeal decisions is not being unfairly removed. Dialogue in this regard is continuing.

The Social Services Appeal Board also provided input and feedback to an EIA program committee charged with reviewing and revising the processes and forms used in determining income assistance recipients’ entitlement to disability benefits.

The Board has also been monitoring the very low levels of appeals received from the Northern region of the province. In response, the Board has planned staff trips to The Pas and Thompson in summer 2015 to ensure that persons know of their right to appeal, and to try to minimize any accessibility barriers to the appeal process that may exist for persons residing in areas remote from Winnipeg.

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: Medical Eligibility Denied
Decision: Allowed

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

The Department reported at the hearing that the appellant had applied for disability benefits on February 6, 2014. The medical eligibility was denied on March 11, 2014. A letter was sent to the appellant on March 12, 2014, indicating disability benefits were denied based on the fact that the medical information provided was insufficient to support his request. The Department requested that the appellant submit objective data/specialists' reports from his doctor for reconsideration.

The requested information was submitted to the Department and the appellant was again denied on April 17, 2014, indicating that the new information did not substantiate a change in decision. The Department sent a letter to the appellant indicating the medical information provided was insufficient. An appointment was being scheduled for May 13, 2014, to develop a further plan.

The appellant reported at the hearing that he has a cervical fracture dislocation from a fall down some stairs and that he had surgery in November 2013. The appellant stated that he was sent home three days after the surgery in tremendous pain. He did follow-up with the surgeon who put him back in an Aspen collar. The appellant's family doctor completed the Department's disability assessment report on February 11, 2014, indicating that the appellant was not able to work for a period of 19 to 24 months. The appellant also completed the self-assessment form on February 7, 2014, indicating that he had a lot of difficulty with sitting, standing, lifting, carrying and bending. He stated that his conditions had been getting worse. He advised that when he was completely healed he would not have more than 40 to 45 per cent usage of his neck. The appellant stated he currently takes Tylenol 3 for his pain, but that they are not very effective, and he also takes Xanax to help him sleep. The appellant reported that he cannot understand why he was denied disability benefits as the Department didn't provide any reasons and there is no explanation in the letter he received.

At the hearing, the Department was not able to explain their rationale for denying disability benefits. The worker did state, that "Typically there is an explanation like he may be able

to do sedentary work. The statement of why he is not eligible is not in the decision; medical panel didn't say what is expected of the appellant."

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

After carefully considering all the written and verbal information, the Board determined that the medical information and self-report provided sufficient information to determine eligibility under Section 5(1)(a) of *The Employment and Income Assistance Act*. The appellant experiences pain on a daily basis and wears an Aspen collar, which makes daily activities difficult without assistance.

The appellant submitted to the Department the report from the surgeon, an MRI report from Dr. M., along with a report from his family doctor. The family doctor's report advised that the appellant was unable to work for 19 to 24 months due to the pain and he does wear the Aspen collar. The Board was convinced by the appellant's presentation at the hearing that he has extreme functional limitations in his day-to-day living that rendered him incapable of being in the workplace.

The Board also took into consideration that the Department could not provide any rationale for why it concluded that the appellant is not eligible for disability benefits. This left the appellant uncertain as to what more could be done in acquiring more medical information than had not already been submitted. Therefore, the Board ordered the Department to enroll the appellant under Section 5(1)(a) effective March 12, 2014, for a period of 19 months.

Sample #2

Program:	Employment and Income Assistance
Basis of Appeal:	Income Assistance Insufficient
Appeal Detail:	Special Diet Allowance Denied
Decision:	Allowed

The appellant appealed that her high protein diet allowance was denied.

The appellant had funds for a high protein diet allowance in her budget since April 2003. This diet was reviewed and renewed on an annual basis. The appellant's doctor completed a new Therapeutic Diet & Nutritional supplement form. On this form the doctor

indicated that the appellant required a high protein diet allowance due to a diagnosis of Hepatitis C. The form reported the appellant's weight as 112 pounds and her height as 5' 2".

This form was reviewed by the Departmental Disability and Health Support Unit (DHSU). It denied the high protein diet because although the appellant had one of the specified eligible diagnoses, there was no evidence of body wasting or unintentional weight loss. The Department stated that the appellant's body mass index was 20.5 which is considered in the normal range, and in order to be considered underweight, there must be a body mass of 18.5 or lower.

At the hearing the appellant stated that she has a very difficult time maintaining her weight. She can gain 2 or 3 pounds and then suddenly lose those same pounds. She indicated that when she went to her doctor to get the diet form completed, her doctor did not weigh her at that time to see what her current weight was; she used the last recorded weight on file, which was taken when she was wearing winter clothing. The appellant believes her actual weight would be a few pounds lighter than what the doctor recorded. The appellant stated that without the extra funds for her diet allowance she is unable to purchase the healthy foods she needs for her Hepatitis C. The appellant indicated when she tried to go through treatment for her Hepatitis C it resulted in such bad mouth ulcers that her doctor said the only other treatment for her condition is eating healthy.

The Employment and Income Assistance regulation states:

6(2) 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 EIA Administrative Manual outlines the amounts that have been approved by the Minister.

After carefully considering the written and verbal information the Board has determined that the appellant meets the eligibility criteria for a high protein diet allowance. They determined this as the appellant has been receiving the high protein diet allowance for the past 11 years and with this allowance can barely maintain a healthy body weight at the low end of the normal range. The Board would assume that the criteria that a person must show evidence of body wasting or unintentional weight loss applies to their state when they are not on the therapeutic diet. Once a person is being treated with the diet over a number of years, the intention of the diet would be to achieve and maintain a healthy weight. In the appellant's circumstances, with the information provided on the therapeutic diet form, it appears the special diet is achieving exactly what it is set out to do. It is not reasonable to the Board that the Department would take away the special diet that is treating the appellant's condition and maintaining her at the low end of the normal body weight range. Removing the special diet allowance from the appellant's diet would cause her to start losing weight, and thus become eligible for the diet again. The Board does not believe the intention of this section of the regulation is meant to put a person in a situation

where they must be actively losing weight while receiving the allowance in order to continue eligibility for the allowance. In addition, the appellant indicated that in fact she has been losing weight, and a new updated current weight from her doctor would demonstrate this.

The Board would also recommend to the appellant that she ask her doctor for a referral to a dietician so she can receive diet counseling on how to best meet her nutritional needs.

Sample #3

Program: Employment and Income Assistance
Basis of Appeal: Income Assistance Insufficient
Appeal Detail: Medical Eligibility Denied
Decision: Dismissed

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

The appellant had been in receipt of disability benefits for the last several years.

Her most recent medical assessment was provided to the Department and sent to medical panel on February 3, 2014. The doctor lists the appellant's primary diagnosis as fibromyalgia, which was diagnosed in 2006 and is expected to remain the same for the next several years. The doctor states that the objective findings were that the appellant was tender at 14 of the 18 trigger points, pain in shoulder, trapezoid with moving neck and shoulders. The doctor lists secondary diagnoses as lumbar disc disease. The objective findings for this are lack of sensation, tender in spine, decreased range of motion, neuro in lower extremities. The doctor indicates there is Hemoptysis (blood in sputum) that has not yet been diagnosed, but there is history of Bronchiectasis and COPD. The doctor comments that she will be seeing the specialist in two days. The doctor also lists a diagnosis of pernicious anemia with no objective findings listed. The doctor also comments that she has GERD which is controlled with medication and hypertension. In the section regarding work activity, the doctor has checked off "not able to work" and listed the duration as 19-24 months. The doctor does not explain what is functionally stopping the patient from working, but lists three of her diagnoses, fibromyalgia, back pain, and hemoptysis.

The medical panel reviewed this information and determined that the condition of fibromyalgia, lumbar disc disease, and pernicious anemia should not preclude all employment. The medical panel indicated they needed objective data regarding the hemoptysis, bronchiectasis, and COPD before they could make a determination if these conditions precluded all work.

On April 22, 2014 the appellant provided some additional information to the Department which included a letter from the specialist regarding the investigation of her possible hemoptysis and her laboratory results. The specialist indicates they are investigating that the appellant reports slight blood streaking in the morning three to four times per week. He

reports her chest x-ray was clear and her physical examination is within the normal range. A bronchoscopy was performed and no abnormalities could be found in the pharynx or laryngeal area. A careful inspection of the bronchial tubes showed no abnormality and no blood was visualized in the throat or tracheobronchial tree. All lobes were washed and specimens sent for cytological examination were negative. The doctor comments that the bleeding may be from the oral pharynx and that there is no significant organic disease present, no further tests are scheduled.

The medical panel reviewed the new information and determined that it did not substantiate a change in decision as conditions should not preclude all work.

At the hearing the appellant indicated she believed she should be on disability because of her fibromyalgia and her back pain, she indicated she has been told by her doctor that she has arthritis and will eventually be in a wheelchair. She stated she can't sit very long, and has to be very careful how she gets up. She indicates she goes for needles to reduce her joint pain once a month but they do not last the whole time. After about three weeks she has problems with her legs, and her hands swell up. She states she usually does her own housework but she has to be very careful and take her time. She stated she is currently living on the second floor, but needs to find a new place to live, as it is very hard for her to climb stairs. She stated she can't do any lifting due to the hysterectomy she had in 2001. Her son helps her with the grocery shopping. The appellant also indicated that in 2010 she completed the first year of information and business technology course through Red River College. She stated if she could secure the funding, she would like to complete the second year of the course. She stated she knew it would be hard, but she would be able to work through it.

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

After carefully reviewing the written and verbal information the Board has determined that the Department was correct in determining that the appellant did not meet the eligibility requirements of a person with a disability. Although the Board acknowledges that the appellant has limitations on the type of work that she could do, her conditions should not preclude her from doing sedentary employment which did not involve a great deal of lifting, bending, or physical exertion. Therefore the Board has confirmed the decision of the Director and the appeal has been dismissed.

Sample #4

Program: Employment and Income Assistance
Basis of Appeal: Income Assistance Cancelled
Appeal Detail: Irresponsible Job Termination
Decision: Dismissed

The appellant appealed that his income assistance file was closed.

The appellant applied for income assistance in September 2010. Since that time, he has had work expectations and been referred to a variety of programs. Most recently he was referred to the Opportunities for Employment (OFE) Mentoring Program, which found a job placement for him as a car jockey. He began this job on April 28, 2014. It was expected that the appellant would be able to support himself and that his income assistance file would close to employment. However his income assistance worker received an e-mail from the counselor at OFE indicating that the appellant had quit his job on May 12, 2014. The OFE counselor also forwarded an e-mail from the employer stating that on May 12, 2014, "He finally came in today to inform us he wasn't working with us anymore, but the feeling was mutual as we have not seen him at work since May 7, 2014. He worked April 28, 29, May 1, and May 7, 2014."

The worker did not hear from the appellant until May 23, 2014 who advised that things did not work out at his job. He stated it was a mutual decision as he had done damage to vehicles. He further advised that it was too far and he didn't have a life as he did not get home from work until 8:00 pm. After speaking to the counselor at OFE, the worker determined that the appellant had quit his job without just cause and his income assistance file was closed.

In the appellant's Notice of Appeal he indicated that he did not quit his job, he was let go because he had done damage to vehicles. He stated that he had to walk down the highway for a mile and a half and that his tremors also factored in. He stated he missed some days of work because he was sick, and that he called his employer each and every morning when he could not go into work. The appellant stated he went in to see the General Manager on May 12, 2014 and they had a discussion and together they decided it was best if the appellant did not continue with his employment. He stated it was a mutual decision. The appellant stated that the job was not what he was interested in doing, but if it had been within city limits he would have stuck it out. However, the walk required to get to work made him nervous and he did not feel safe.

After carefully reviewing the written and verbal information the Board determined that the Department had sufficient reasons for terminating the appellant's income assistance benefits. Whether the appellant quit, or the employer let him go, or a combination of both, there was not a justifiable reason for the appellant to leave his employment.

Under the Employment and Income Assistance regulation Section 10(1) every income assistance recipient has an obligation to satisfy the director that:

- (e) he or she has not terminated employment or engaged in a course of conduct that caused or provoked the termination of employment that he or she might reasonably have held.

The appellant was aware of this policy at the time he began his employment as he had signed numerous action plans indicating that he understood this policy. The Board has determined that the appellant could have reasonably continued his employment at the car dealership, and the distance needed to walk to work was not a valid reason to terminate employment. The appellant did not provide any medical documentation to support that he was unable to walk this distance. Therefore the decision of the Director has been confirmed.

The Board would also like to note that under the Employment and Income Assistance Administrative Manual, 6.5.4; if an applicant or participant who leaves or refuses a job without just cause can demonstrate to EIA staff that they have looked for employment and/or been working to improve their job skills, they will be considered eligible for EIA benefits provided they meet all other criteria. If benefits have been denied, the applicant or participant, can work together to prepare a short-term action plan that can reasonably be completed in 3 or 4 days. Once the short-term action plan has been fulfilled the applicant or participant may receive benefits. Therefore, the Board would encourage the appellant to reapply for income assistance once he can demonstrate that he has been taking steps towards securing employment.

Sample #5

Program:	Employment and Income Assistance
Basis of Appeal:	Income Assistance Insufficient
Appeal Detail:	Excess Shelter Costs
Decision:	Dismissed

The appellant appealed the amount of her shelter benefit. Her appeal had contained additional items, but these were withdrawn at the hearing.

The appellant applied for income assistance on March 25, 2014. She advised at that time that her rent was \$1,100 per month. The intake worker advised her that the Department's guideline amount for shelter benefits was \$285 per month. Due to the appellant's extreme emotional distress at that time, the Department agreed to pay the actual amount of her rent for a three-month period.

The appellant was advised that the amount for rent would revert to the guideline amount of \$285 a month after the three-month period had ended. The agreement to pay the appellant's excess rent for a three-month period was made with the understanding that she would use that time to find more affordable housing. The Department stated in their report that the appellant was clearly advised that she should focus her time into securing

affordable housing, and not on employment seeking activities. The appellant also applied for disability benefits which were approved by medical panel on May 5, 2014. On May 26, 2014 the Department sent a reminder letter to the appellant that the amount she would be eligible for rent would be reduced effective July 1, 2014, to the guideline amount of \$285.

At the time of the hearing, July 4, 2014, the appellant had not found alternate accommodations. The appellant received \$285 towards her rent, plus an additional \$150 Rent Assist supplement which became payable to all income assistance recipients in private rental situations on July 1, 2014.

The appellant sought the assistance of a housing mentor through the West Central Women's Resource Centre. The appellant indicated in a letter to her caseworker on May 26, 2014 that her housing mentor was having a difficult time finding any suitable housing for her due to her requirements to find a place with no stairs, laundry facilities on same floor as suite, and air conditioning which are all required to accommodate her disability.

At the hearing the appellant also added that one of her requirements is that the building she lives in must allow pets. The appellant also provided a letter from her psychiatrist stating that he does not advise that she move. He stated that she is under a lot of stress and her current building provides her with access to a pool, an elevator and laundry facilities on the same floor as her residence. The psychiatrist stated that moving at that time would be physically demanding and likely more disabling, would add to her stress, and make her vulnerable to psychological symptoms and diminished functionality. He added that her current residence was safe and secure and thus provided an environment that did not add to her stress.

At the hearing the appellant and her advocate stated that applications for Manitoba Housing, Sam Management and Murdoch Management had been submitted. The advocate indicated that these applications were somewhat delayed as they were waiting for a budget letter from EIA which they did not receive until May 30, 2014. The appellant stated that she was actively looking for apartments in her price range but they simply did not exist. The advocate confirmed that there were no units available for \$435 per month; she had been forwarding the appellant information for apartments in the \$600 to \$700 range. This would require the appellant to use a portion of her basic needs and disability funds to cover her rent. The appellant stated that the only way she could see to resolve her current situation was to find employment and be able to remain where she is. The appellant stated that she was highly educated and employable and she had gotten a few interviews. She indicated she was looking for executive assistant type jobs which were well paying.

After carefully considering the written and verbal information the Board determined that the Department had fairly provided the appellant with a reasonable amount of time to secure alternate accommodations in line with the EIA guideline rent amounts. The purpose of the EIA Program was to provide those needs and services that are essential to health and well-being including a basic living allowance, shelter allowance, and essential

health needs. The regulation sets out the rates payable to persons enrolled in the program based on their case category. Rental guidelines are established by the program, and can be exceeded for short periods of time to the actual cost of rent in exceptional circumstances. The director exercised this discretion in the appellant's circumstances for a period of three months.

It was the Board's position that the appellant could live where she wanted to live, and that the program could not force her to live elsewhere. However, the program does have set guidelines on how much a person on their program is entitled to receive as "basic necessities". It is the Board's opinion that the appellant's actual cost of rent far exceeded a reasonable definition of basic and essential. The rental guidelines established by the Department are set with the knowledge that many persons on assistance have severe and limiting physical and mental disabilities, and therefore an exception cannot be made for the appellant's individual disability needs. The Board did weigh whether or not she should be granted additional time in lieu of her efforts in securing employment. However as she was in receipt of a disability benefit, which by definition meant that she was unable to earn a living sufficient to meet her basic needs, the Board did not feel that this solution would be realistic in the near future. Therefore the Board determined that the appellant was receiving the maximum amount of benefits available to her under *The Employment and Income Assistance Act*.

Sample #6

Program: 55 Plus
Basis of Appeal: 55 Plus Denied
Decision: Dismissed

Mr. and Mrs. Z appealed that their application for 55 Plus was denied.

The program received a reapplication for benefits on April 24, 2014. Their 2013 income tax return was used as the basis to assess their eligibility for the period of April 1, 2014 to March 31, 2015. Mrs. Z's gross employment income was \$27,513 and after allowable deductions were deducted the new income that was used to calculate their eligibility was \$26,358.63. The Department determined that this amount was over the maximum allowable income level of \$16,207.20 for a two-person family. The program stated at the hearing that the regulation states that current eligibility is based on the previous year's income, and no adjustment can be made for changes in circumstances until the following fiscal year.

Mr. and Mrs. Z and their son appeared at the hearing and indicated that they understand that the decision was made in accordance with the technicalities of the program, but they were appearing to see if any allowances could be made based on compassionate grounds. They stated that Mrs. Z's income had dropped drastically since last year as she was working three jobs and now she is working one part-time job at 25 hours per week. They also stated that Mr. Z has recently been diagnosed as being legally blind, and Mrs. Z is now his caregiver. As they are not capable of earning enough funds to support

themselves they are asking that the 55 Plus program provide them with a financial supplement.

The Income Supplement for Persons Not Eligible for Old Age Security Benefits, (55 Plus) regulation states:

2(1)(d) if married or cohabitating in a common-law relationship, has a net family income of \$16,207.20 or less.

3 Net family income for the tax year immediately preceding the benefit year for which application is being made, shall be family income

After carefully considering all the written and verbal information the Board has determined that the Department has correctly calculated Mr. and Mrs. Z's eligibility for the 55 Plus program in accordance with the legislation and policies. There is no provision in the regulation to provide benefits based on their current income rather than their previous year's income. Therefore the decision of the Director is confirmed and the appeal has been dismissed.

Sample #7

Program: Community Living disABILITY Services (CLDS)

Basis of Appeal: Eligibility for CLDS Denied

Decision: Dismissed

The appellant filed an appeal that his application for Community Living disABILITY Services (CLDS) was denied. In order to be eligible for services under the CLDS Program, an individual must be deemed to be a Vulnerable Person under *The Vulnerable Persons Living with a Mental Disability Act* (further referred to as "the Act").

Under the Act, a vulnerable person is defined as:

an adult living with a mental disability who is in need of assistance to meet his other basic needs with regard to personal care or management of his or her property.

The Act then defines "mental disability" as:

Significantly impaired intellectual functioning existing concurrently with impaired adaptive behavior and manifested prior to the age of 18 years, but excludes a mental disability due exclusively to a mental disorder as defined in Section 1 of *The Mental Health Act*.

The appellant submitted an application for CLDS in early October 2014. The application included a psychological assessment which had been completed in June 2009 when the appellant was 17 years old.

Eligibility for CLDs relies on a clinical conclusion that a person has a significant intellectual deficit. This conclusion is based on specific psychological testing. The appellant's test results showed scores in the low average range for verbal comprehension, superior range for perceptual reasoning, extremely low in the working memory, and borderline for processing speed. The appellant's overall Full Scale IQ was calculated to be in the low average range. The psychologist did have reservations about the test score results.

The appellant has been diagnosed with Pervasive Development Disorder. The Department psychologist stated at the hearing that this diagnosis is part of the Autism spectrum. As there was not a clinical conclusion that the appellant had significantly impaired intellectual functioning, the Department found that the appellant did not meet the eligibility criteria for the program. In addition the program also commented that they do not have a clinical opinion regarding the appellant's adaptive behaviour.

At the hearing the appellant's father stated that since the appellant left high school, he had been sitting at home not doing anything. They had tried to connect the appellant with some meaningful resources, but he does not qualify for any of the programs for which he had applied.

The MarketAbilities program did some testing with the appellant. They determined that his capacity for getting a job is very low, and therefore he was not eligible for that program. The family had not applied for Employment and Income Assistance, as they were not aware of that program.

The appellant stated that he did work experience while in high school. He was placed at Blockbuster and he really enjoyed putting the movies back on the shelves.

After carefully considering the written and verbal information the Board determined that the CLDS program has correctly determined that the appellant did not meet all the eligibility criteria required to receive services as a vulnerable person under the CLDS Program. The Board made this determination, as there was no clinical conclusion that the appellant has significantly impaired intellectual functioning. Therefore, the decision of the Director was confirmed.

The Social Services Appeal Board Act

(Assented to July 6, 2001)

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

DEFINITIONS AND PURPOSE

Definitions

1 In this Act,

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

"designated Act" means

(a) *The Adoption Act*,

(b) *The Community Child Care Standards Act*,

(c) *The Employment and Income Assistance Act*,

(d) *The Social Services Administration Act* or a regulation under that Act,

(e) *The Vulnerable Persons Living with a Mental Disability Act*,

(f) any other Act or regulation designated as a designated Act in the regulations; (« loi désignée »)

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

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

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

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

Purpose

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

APPEAL BOARD

Social Services Appeal Board

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

Members

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

Who can be a member

4(2) The members of the appeal board must, in the opinion of the Lieutenant Governor in Council,

(a) be representative of the regional, economic and cultural diversity of Manitoba;

(b) be knowledgeable about social services and programs under designated Acts; and

(c) not be employees under the control of a minister responsible for a designated Act.

Two-year terms

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

Reappointing a member

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

Member continues to hold office

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

Remuneration and expenses

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

Chair and vice-chair

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

Duties of vice-chair

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

Staff

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

Responsibilities of the appeal board

8 The appeal board has these responsibilities:

(a) to hear and decide appeals under designated Acts;

(b) at the minister's request, to advise and make recommendations about matters that relate to social services and programs in Manitoba;

(c) on its own initiative, to advise and make recommendations to the minister about social services provided under the designated Acts;

(d) to perform any other duties assigned to it by an Act or regulation or by the minister.

Procedural rules

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

Posting information about appeals

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

PANELS OF THE APPEAL BOARD

Board to sit in panels

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

Assigning members to panels

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

Chair of panel

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

Who is not eligible to be a member of a panel

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

(a) is a relative of a party; or

(b) is not able to be impartial and independent about the outcome of the appeal.

Quorum

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

Jurisdiction of panel

11(6) In considering and deciding an appeal,

(a) a panel has all the jurisdiction of the appeal board and may exercise the board's powers and perform its duties; and

(b) a decision of a majority of the members of a panel is the decision of the appeal board.

APPEAL TO THE APPEAL BOARD

Filing an appeal

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

Time limit for filing

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

Extending the time limit

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

Reasons

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

Parties

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

Parties to be present

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

Advocates

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

Notice to the designated officer

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

Designated office must forward documents

15(2) On receiving the notice of appeal, the designated officer must promptly give the appeal board

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

Hearing date

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

Notice

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

Parties may examine evidence

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

Powers and duties of the board

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

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

Hearing process: rules of evidence do not apply

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

Hearing by teleconference

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

Closed hearing if appellant requests

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

Adjournment

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

ORDER OF THE APPEAL BOARD

Order of the board

20(1) Unless the designated Act states otherwise, after a hearing the appeal board may, by written order,

(a) confirm, vary or rescind the order or decision of the designated officer;

(b) make any order or decision that the designated officer could have made; or

(c) refer the matter back to the designated officer for further consideration by the designated officer in accordance with any direction of the appeal board.

Reasons

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

Time limit for making order

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

Order given to the parties

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

Method of giving the order

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

Order must be given effect

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

Reconsideration of the order

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

Time limit for making request

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

Time limit for deciding request

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

Reasons

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

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

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

Time limit

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

Parties

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

Order of Court of Appeal

24 The Court of Appeal may

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

REGULATIONS

Regulations

25 The Lieutenant Governor in Council may make regulations

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

ANNUAL REPORT

Annual report

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

PROTECTION FROM LEGAL ACTION

Protection from legal action

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

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

TRANSITIONAL

Transitional: definitions

28(1) *In this section,*

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

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

Appeals already commenced

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

CONSEQUENTIAL AMENDMENTS

29 to 32

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

33

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

34

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

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

C.C.S.M. reference

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

Coming into force

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

Coming into force: section 33

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

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