

*Strengthening Families.
Building Communities.*



Social Services Appeal Board

Policy and Procedure Manual

December 2008

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Social Services Appeal Board
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Manitoba 

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Definitions

Appellants: people who want to appeal a decision of Manitoba Family Services and Housing (FSH)

Chair: the person who presides over the appeal hearing

Court of Appeal: refers to the Court of Appeal in Manitoba

Department: refers to Manitoba Family Services and Housing

Designated Officer: a person who has the legal responsibility for a decision under one of the acts designated in *The Social Services Appeal Board Act*. This person is usually the director of a Manitoba Family Services and Housing program.

EIA: Employment and Income Assistance

Order: refers to the written decision of the appeal board and the written reasons for that decision

Respondent: refers to the person who is representing the department at the appeal hearing. On the board's order, the **designated officer** is also referred to as the **respondent**.

SAMIN: the computer data base used by The Employment and Income Assistance Program

Deciding to Appeal

What is the Social Services Appeal Board?

The Social Services Appeal Board (SSAB) consists of a group of people who are appointed by the Lieutenant Governor to review appeals from the public about decisions made by the staff of Manitoba Family Services and Housing under some of the programs they administer. Board members must represent the social, economic, and cultural diversity of the province. They must also understand the social programs and services that can be appealed to the appeal board. Each board member is appointed for a term of two years and may be re-appointed for two additional two-year terms. The SSAB gives appellants a fair, impartial and informal appeal process for decisions made by the department's social services and programs.

The SSAB's Jurisdiction and Authority

History

In 2001, *The Social Services Appeal Board (SSAB) Act* was approved and became the new legislative authority for the appeal process. The full act can be found in Appendix 1 of this manual.

Prior to 2001, *The Social Services Administration Act* was the legislation allowing the Social Services Advisory Committee (SSAC) to hear appeals. A full copy of *The Social Services Administration Act* is available by request from the Social Services Appeal Board office. The Social Services Advisory Committee changed to the Social Services Appeal Board when the new legislation came into effect.

Programs and Services That Can Be Appealed

- Employment and Income Assistance
- Adoption Agency Licensing
- Child Care Licensing and Subsidies
- 55-Plus: A Manitoba Income Supplement, Junior Component
- Manitoba Prenatal Benefit
- Residential Care Licensing
- Vocational Rehabilitation Services Program
- Vulnerable Persons Living with a Mental Disability Program (eligibility)

Employment and Income Assistance

Individuals who feel a decision under the Employment and Income Assistance program was unfair may appeal if:

- a. the person was not allowed to apply or re-apply for income assistance
- b. a decision on the person's request for income assistance was not made in a reasonable amount of time
- c. the person was denied income assistance
- d. the amount of income assistance was cancelled, suspended, changed or withheld
- e. the amount of income assistance provided was not enough to meet the person's needs

Legislative Authority: *The Employment and Income Assistance (EIA) Act*, Section 9

Adoption Agency Licensing

An individual may file an appeal with the appeal board if the director of Adoption Agency Licensing refuses to issue a licence for an adoption agency. An individual may also file an appeal if a licence that was previously issued is suspended, cancelled or not renewed.

Legislative Authority: *The Adoption Act*, Section 9

Child Care Licensing and Subsidies

Appeals can be heard on four issues:

- a. a refusal to issue a licence to a child care facility
- b. a suspended or revoked licence of a child care facility
- c. newly imposed terms or conditions on a child care facility licence
- d. a denied or insufficient child care subsidy

Legislative Authority: *The Community Child Care Standards Act*, Section 20

55-Plus: A Manitoba Income Supplement, Junior Component

A person can appeal if they are told that they are not eligible to receive benefits under the 55-Plus Program. An appeal can also be filed if an individual disagrees with the amount of benefits that they are receiving.

Legislative Authority: *The Social Services Administration Act*, Income Supplement for Persons Not Eligible for Old Age Security Benefits, (55-PLUS) Regulation, Section 9

Manitoba Prenatal Benefit

An individual can appeal an assessment or re-assessment of their Manitoba Prenatal Benefit.

Legislative Authority: *The Social Services Administration Act*, Manitoba Prenatal Benefit Regulation, Section 12

Residential Care Licensing

An appeal can be made if the department decides to deny, suspend or cancel a provisional letter of approval or a licence for a residential care facility. Appeals can be made if a letter of approval for a residential care facility was cancelled or suspended.

Legislative Authority: *The Social Services Administration Act*, Section 13

Vocational Rehabilitation Services Program

An appeal may be filed if the director of the Vocational Rehabilitation program refuses an application because the applicant does not meet the eligibility criteria for the program.

Legislative Authority: *The Social Services Administration Act*, Vocational Rehabilitation of Disabled Persons Regulation

Vulnerable Persons Living with a Mental Disability Program (eligibility)

Appeals can be made when the eligibility of a person for entrance into the Vulnerable Persons Living with a Mental Disability Program is in question.

Legislative Authority: *The Vulnerable Persons Living with a Mental Disability Act*, Section 16

Summary of the Appeal Process

1. Filing an Appeal

To file an appeal, the appellant can fill out a Notice of Appeal form or write a letter to the appeal board. Notice of Appeal forms are available at the Social Services Appeal Board office, and other department offices where appeals are made. If an appellant wishes to appeal a decision but needs assistance to fill out the Notice of Appeal form, they can contact the appeal board office for assistance and speak with a staff member.

An appeal may be mailed, faxed, or dropped off in person to the appeal board office, at the following address:

Social Services Appeal Board
7th Floor - 175 Hargrave Street
Winnipeg, MB R3C 3R8
Phone: 204-945-3003 or 204-945-3005
TTY: 204 - 948-2037
Toll free: 1-800-282-8069
Fax: (204) 945-1736

Note: Appeals cannot be accepted by e-mail.

Appeals should contain:

- a. the appellant's name and address
- b. the appellant's phone number or a number where messages can be left
- c. the name of the program being appealed
- d. the office the appeal is being filed against
- e. the decision made by the department that is being appealed
- f. a brief description of the reason for the appeal
- g. the appellant's signature
- h. a copy of any decision letters that were sent by the department if possible
- i. if legal counsel or another person will be involved with the appeal, their name and phone number
- j. a release form when a third party will be acting on the appellant's behalf

A copy of the Notice of Appeal will be sent to the FSH office that originally made the decision.

The hearing will be scheduled as soon as possible up to a maximum of 30 days from when the appeal notice was received. In Winnipeg, the hearing will usually take place in the appeal board's office. If an appellant resides outside of Winnipeg, every effort is made to have the board come to the individual's community to hold the hearing. If this is not possible, the hearing will be conducted via teleconference or video conference.

During the hearing, the appellant and a representative from the department must be present. If they are not both present, they must be able to communicate with each other and the appeal board simultaneously – such as through video or teleconference.

Both parties will receive a Notice of Hearing letter at least six days before the hearing date. This notice states the date, time and location of the hearing.

It is very important to call the appeal board office two days prior to the hearing date to confirm attendance. The hearing will be cancelled if confirmation is not received.

2. Determining the Basis of an Appeal

An appeal may be returned to the appellant for clarification if it does not clearly identify the issues under appeal, or if pertinent information is missing.

When it is unclear as to whether an appeal is within the board's jurisdiction, it will be placed before a panel of the board for a decision as to whether or not the appeal falls within the board's jurisdiction. Appellants will be informed in writing if their appeal is outside the jurisdiction of the board and will be given an explanation as to why.

The respondent may disagree with the board's ruling on jurisdiction when the Notice of Appeal is received. If that happens, the department may submit a request in writing to have the board review their decision.

3. Extension of Time Limits for an Appeal

Anyone wanting to appeal a decision of the department must file their appeal within 30 days after the date the decision was made. However, the appeal board does have the power to extend the time limit for filing an appeal.

Procedure for granting the extension:

A request for an extension must be submitted in writing to the board and include an explanation of why the appellant could not file within the legislated time period.

If the department objects to the board granting an extension of time, they must submit this objection in writing. They should also provide evidence that they correctly advised the appellant of their decision in writing and advised them they had the right to appeal.

Both parties will be given an opportunity to review the written submission of the other party and provide a response.

The board will review the written submissions from both parties and determine whether or not to grant the extension. Only in exceptional circumstances would the board ask the parties to appear before them in order to ask questions before making their ruling on whether or not to grant the extension.

Granting the extension:

If the department does not object to an appeal that is filed more than 30 days, but less than six months, after a decision, the appeal will be scheduled without review by the board.

The board will automatically review all appeals that are more than six months past the decision date, whether or not the department has objected.

Under no circumstances will the board consider hearing appeals regarding decisions which were made before February 18, 2002. This is the date when the jurisdiction to grant extension of time frame was implemented.

If the designated officer objects to the extension, the appeal board will consider the following factors in deciding whether to grant an extension:

- a. the reason(s) for the extension – for example, if the appellant:
 - i. did not know they had the right to appeal the department's decision
 - ii. did not know that there was a time limit for filing an appeal
 - iii. was unable to appeal for reasons beyond their control, such as coping with an illness or crisis
 - iv. discovered new facts about the case that didn't become available until after the time limit for filing an appeal had passed
- b. whether granting the extension would unfairly give one party an advantage over the other

Although this manual sets out general issues, every application for an extension of time will be dealt with on a case-by-case basis.

4. Requiring the Attendance of Witnesses

The department, the appellant or the board may ask witnesses to attend the hearing. Information from witnesses may be required to help the appeal board obtain all information needed to make a fair decision.

The board prefers that witnesses attend voluntarily. However, if a witness has relevant information and does not want to appear, either party can request in writing to the board, to have a summons prepared requiring attendance of the witness.

A summons is a legal document served to the witness. It contains the hearing time and location, and the information that they are to bring. The appeal board can inquire into the reason for requesting a summons. The board may refuse to issue a summons if they determine that the attendance of a witness is not relevant.

Requests for a summons must include the person's full name, address and a description of why that person's testimony is important to the appeal. If the witness is required to bring certain documents, the request must indicate to the board the type of documents that they require the witness to bring. If the board grants the request, a summons will be issued.

The person requesting the summons is responsible for serving it (making sure the summons is put in the witness's hands. The staff of the Social Services Appeal Board can assist with this if required.

5. Role of the Designated Officer

When an appeal is filed, a Notice of Appeal is sent to the FSH office that made the decision. This informs them of the appeal and allows them time to contact the appellant to resolve the issue (s). The respondent should call the appeal board with any concerns regarding the basis of appeal, time frame of the appeal, or any scheduling restrictions.

The respondent must provide an appeal report to the board within seven days after receiving the hearing notice to ensure that it can be mailed to the appellant in advance of the hearing. In exceptional circumstances the respondent may send a written request to the director of the appeal board to extend the report due date.

The report should include all documents relevant to the decision. The board has the power to exclude evidence. Documents received less than seven days before the hearing may not be allowed into evidence.

Content Guidelines for Employment and Income Assistance Reports

For a hearing to proceed efficiently and fairly, it is important that all department information is presented in advance. The following is a guideline for information required as part of the hearing process:

a. name of appellant

- b. category of assistance
- c. family composition (SAMIN printout is acceptable)
- d. date of enrollment
- e. budget breakdown (SAMIN printout is acceptable)
- f. most recent application and/or the application that is relevant to the issues of the appeal (required by legislature)
- g. objective, chronological and dated sequence of events leading up to the decision that is being appealed
- h. date of decision
- i. printed name and signatures of case coordinator and direct supervisor
- j. supporting documents that the department used to make the decision

Example:

- i. if the basis of the appeal is income assistance closed/denied due to non co-operation: attendance reports from training programs or inadequate job search forms
- ii. if the basis of the appeal is income assistance closed/denied due to financial resources: applicable documents like copies of pay stubs and/or EI benefits received
- iii. if the basis of the appeal is income assistance cancelled due to a commonlaw allegation: bank statements verifying joint bank accounts, copies of leases, signed affidavits
- iv. if the basis of the appeal is income assistance insufficient due to the assessment of an overpayment: clear calculations and dates showing how the overpayment has been assessed
- v. if the basis of the appeal is income assistance insufficient due to medical eligibility denied: current medical assessments and corresponding medical panel summaries (transcribed if illegible) and previous assessments and summaries if applicable (An explanation as to why the medical panel did not grant eligibility would be beneficial.)

- k. legislative basis for the department's decision including relevant regulations and policies
- l. date of last assistance and closing date, if applicable
- m. applicable decision letters sent to appellant

Note: For programs other than EIA, please contact the SSAB director for assistance with report content.

6. Admissible Evidence

Under *The Social Services Appeal Board Act*, the rules of evidence do not apply to the judicial procedures at the appeal board hearings. While the chair of each hearing has the final authority to rule on admissible evidence, the board has some guidelines to assist appellants and respondents with knowing what information will be accepted at the hearing. This list is not exhaustive, but it is meant to act as a guideline.

- Information needs to be relevant to the issue under appeal.
- Information must have been provided to, or obtained by, the department before the decision that was made, unless it is a written confirmation of verbal information.
- Verbal evidence and hearsay are admissible. Proper weight will be assigned to such evidence in decision making.
- Previous decision letters of the board, unless they apply to the same appellant, are not admissible as evidence.
- The respondent must submit all evidence a minimum of seven days before the hearing.
- The board may request additional information either before or during a hearing.
- Once the hearing is closed, no additional information can be considered by the board.

Under *The Social Services Appeal Board Act*, there is no requirement for the appellant to provide any documents to the appeal board or respondent before the hearing, but they may do so, if they choose. The respondent may request an adjournment to review any documents they have not seen before the hearing.

7. The Hearing Process

The appeal hearing is set up to be an informal proceeding that will make both the appellant and the respondent feel comfortable.

Three members of the appeal board sit as a panel to hear an appeal. One of the members will chair the hearing. A staff person of the appeal board will attend the hearing and take notes. The notes are for internal use only.

The appellant may bring a lawyer, advocate, or another person to speak on their behalf or to give evidence. The department will send a representative who can best explain the reasons for the department's decision. Normally, a hearing is open to the public, but it may be closed at the request of the appellant.

The chair begins the hearing by asking everyone in the room to introduce themselves and the chair explains what is expected of everyone present.

The appellant and the department's representative each give a brief presentation which explains their point of view. The appellant can speak first or ask the respondent to speak first. The appellant will offer information as to why they disagree with the department's decision, and the department's representative will provide reasons why the decision was made.

8. The Order and Reasons for Decision

All decisions of the Social Services Appeal Board are provided in writing within 15 days of the hearing. Every effort is made to provide written decisions as soon as possible. The staff of the appeal board cannot verbally advise either party of the board's decision.

The board's decision has two parts, the order and the written reasons for that decision.

The order lists:

- a. the name of the appellant

- b. the name of the respondent (this may not be the person who appeared at the hearing, but will be the name of the designated officer who has legal responsibility for the decision)
- c. the basis for the appeal
- d. the appeal board decision*
- e. any action the board is requiring the department to take

The reasons for decision will include:

- a. a summary of the basic facts and evidence presented at the hearing
- b. reference to the legislation that was relevant in the board's decision
- c. the boards analysis of the information and legislation and the reason for their decision

*The appeal board can confirm, rescind, or vary the department's decision, or refer the matter back to the department.

After the presentations are finished, the chairperson asks both parties if they have any questions for the other party. The board members may also ask questions at this time.

Hearings normally take one hour to complete, however, additional time may be scheduled if there is likelihood more time will be needed. The hearing will not finish until both parties have presented all of their information and have been able to ask questions.

After the hearing has ended, the panel will meet in private to decide whether to confirm, vary, or rescind the decision of the designated officer. This decision will be based on the written and verbal information presented at the hearing in accordance with the legislation and regulations.

The decision is sent in writing to both parties within 15 days after the appeal hearing has ended. Every effort is made to have decisions sent out as quickly as possible. The designated office must abide by the decision made by the appeal board. The board's decision is called an **order**.

9. Hearings Outside of Winnipeg

The Social Services Appeal Board will make an effort to hold hearings in the community where the appellant resides. The three board members and a staff person will travel to the hearing location.

When the appellant lives more than 500 kilometres from Winnipeg, the board will hold the hearing by video conference where facilities exist, or by teleconference.

Determining the site and means for the hearing is at the discretion of the director of the Social Services Appeal Board.

10. Adjournments

The Social Services Appeal Board has the power to adjourn a hearing when necessary.

The appellant, the respondent, or the board itself may request an adjournment. Most often, adjournments occur because of lack of time to complete a hearing, one of the parties needs to seek additional documentation, or there is a request from one of the parties or the board for a witness to appear.

If the department requests that a hearing be adjourned until a later date, the board may grant the adjournment with conditions. If adjourning the hearing would cause financial hardship for the appellant, the board may grant the adjournment but request the department to provide financial assistance until the hearing resumes. If the department does not agree to provide the assistance, then the board may refuse the adjournment.

When a hearing is adjourned, the same panel would preside over the hearing when it is reconvened. If this is not possible, then the hearing would be re-started with a new panel.

11. Filing More than One Appeal

When an appellant files more than one appeal the board may decide to combine the appeals into one hearing. It is at the discretion of the appeal board whether multiple appeals will be scheduled together or on separate dates. The preferences of the appellant and the respondent, the legislated time frames, and panel availability will all be considered when deciding whether or not to combine multiple appeals

12. Rescheduling and Postponements

Hearings must be scheduled within 30 days of receiving an appeal unless the appellant requests a postponement. There is no time limit on how long an appeal can be postponed, however the staff of the appeal board will contact the appellant about once a month about the status of the appeal.

When a file has been pending for more than a year, the appellant must provide a written reason for the delay. If the board is not satisfied with the validity of the request, a hearing may be scheduled or may be considered withdrawn.

Appellants are asked to contact the office as soon as possible if they are unable to make the hearing date. Appellants must confirm two days before to their hearing date or their hearing will be cancelled. If the appellant does not confirm but shows up for the hearing, the hearing will be rescheduled.

The Notice of Hearing advises applicants that requests for postponement will not be granted the same day as the hearing. In exceptional circumstances such as medical conditions or a family emergency, the SSAB director may authorize a postponement on the same day.

The respondent is expected to have a designate at the hearing on the scheduled date. The appeal board staff does not normally contact the department before scheduling a hearing. Once the hearing date is scheduled, the respondent cannot request a postponement. Therefore, whenever the respondent receives a Notice

of Appeal, they should advise the appeal board office if there are any days in the next 30 days that they are unable to attend.

When the Notice of Hearing is faxed to the department and there are exceptional circumstances, the respondent may call the director of the Social Services Appeal Board and request a new date. When the request is made the same day as the Notice of Hearing was faxed, the director may grant the request.

Both parties are expected to arrive at the hearing on time. Appellants are advised to come a little early to receive the department report, if they have not received it in advance.

The board will wait up to 15 minutes after the scheduled hearing start time. If one of the parties has not arrived by that time, the hearing will be cancelled. If the late party contacts the appeal board office the same day or the next day with a legitimate rationale for missing the hearing, the director has the discretion to reschedule the hearing.

When an appellant does not show for a hearing and does not contact the office by the end of the day, they are sent a letter advising them that their appeal is considered withdrawn.

13. Review and Reconsideration

After an appeal hearing has ended and the appeal board has considered the evidence, each party is given a written copy of the decision within 15 days. This decision is final unless the appellant, the respondent or the board requests a reconsideration of the decision.

A reconsideration request must be filed in writing within 30 days of the decision, and must include the reasons for the request. The board will send a copy of the reconsideration request from the appellant or respondent to the other party.

When a request for reconsideration is filed, reasons must be given explaining why the reconsideration is necessary.

The other party is then allowed to respond to the request. Both parties should be as clear and detailed as possible when writing their responses. Unlike the Notice of Appeal form, there is no specific form for requesting reconsideration. The request can be written as a letter and sent to the appeal board office.

The board makes a decision on a reconsideration request, based on the parties' written submissions and any other documentation submitted with it, rather than in a separate hearing. The board will decide within 15 days whether or not it will grant a reconsideration request.

To determine whether there is reason to reconsider, the board takes into consideration the following issues:

- a. if the original, three-person process or decision was, or was perceived to be biased
- b. if the panel process inhibited the presentation or consideration of relevant evidence
- c. if the decision was inconsistent with the relevant legislation
- d. if an obvious administrative error in calculation or relevant dates has occurred in the board's order

Reconsideration requests will be reviewed by the next available panel of the board, which may include one or more of the panel members who made the original decision. If the party requesting reconsideration would prefer not to have any original panel members they must state this in the letter of request and give the reasons.

If the reconsideration request is granted, the panel may make a change to the original order of the board or order a new hearing.

If the department has applied for reconsideration, and the appellant does not make a submission or attend a hearing, the board will base their decision on the department's submission alone. If the department does not attend a hearing that was requested by the appellant, the board will make its decision based on the appellant's submission alone.

Only one request for reconsideration from each party to the appeal will be considered by the board.

If a reconsideration produces a new decision, it replaces the board's previous decision and must be honoured by both parties. If the other party disagrees with this decision, they can apply for a reconsideration within 30 days, or they can go to the Court of Appeal. Each time the board issues a decision, there is a new 30-day time frame.

14. Court of Appeal

If the appellant or the department disagrees with the decision of the appeal board, they may apply to the Court of Appeal.

The board is required to inform both parties of their right to appeal a question of law or jurisdiction to the Court of Appeal. After receiving the appeal board's decision, either party has 30 days to file for leave to appeal at the Court of Appeal. Leave to appeal means that a judge of the Court of Appeal has determined that there is a valid reason for wanting to appeal a decision to the Court of Appeal. If the appellant wishes to file an appeal with the Court of Appeal, they may contact a lawyer or Legal Aid Manitoba for advice.

An appellant may apply for a reconsideration and be heard at the Court of Appeal simultaneously. Usually in these situations, the Court of Appeal will wait to decide whether to hear an appeal until all other options have been tried. If the appeal board hears the reconsideration and the appellant still disagrees with the board's decision, the Court of Appeal will decide whether to hear the appeal. Permission to present a case to the court may be granted only when the jurisdiction of the appeal board or a point of law is in question.



Advisory Capacity

Along with its roles as an appeal board, the SSAB has a mandate to advise and make recommendations to the minister about social services in the programs specifically designated in *The Social Services Appeal Board Act*.

The board meets on a quarterly basis to discuss issues which arise out of the hearings and to make recommendations to the minister where particular patterns or issues of concern have arisen out of the hearings.

The board also produces an annual report which contains the statistical information on appeal activity, a summary of the board's recommendations in the advisory capacity, and selected sample appeal summaries.

Appendix 1

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 »)

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.

Appendix 2

THE SOCIAL SERVICES APPEAL BOARD ACT
(C.C.S.M. c. S167)

Social Services Appeal Board Regulation

Regulation 26/2002
Registered February 11, 2002

Definition

1 In this regulation, "**Act**" means *The Social Services Appeal Board Act*.

Order

2 In making an order under section 20 or 22 of the Act, the appeal board must make its decision in accordance with

- (a) the designated Act and the regulations under the designated Act; and
- (b) any guidelines or policies established for the purposes of the designated Act;

in the same manner as the designated officer must.

Coming into force

3 This regulation comes into force on February 18, 2002.

LOI SUR LA COMMISSION D'APPEL DES
SERVICES SOCIAUX
(c. S167 de la C.P.L.M.)

Règlement sur la Commission d'appel des services sociaux

Règlement 26/2002
Date d'enregistrement : le 11 février 2002

Définition

1 Dans le présent règlement, « **Loi** » s'entend de la *Loi sur la Commission d'appel des services sociaux*.

Ordonnance

2 Lorsqu'elle rend une ordonnance en vertu de l'article 20 ou 22 de la *Loi*, la Commission d'appel est tenue, au même titre que le fonctionnaire désigné, de rendre sa décision en conformité avec :

- a) la loi désignée et ses règlements d'application;
- b) les lignes directrices ou les directives établies pour l'application de la loi désignée.

Entrée en vigueur

3 Le présent règlement entre en vigueur le 18 février 2002.

The Queen's Printer
for the Province of Manitoba

L'Imprimeur de la Reine
du Manitoba

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