Manitoba Health Appeal Board

Annual Report

April 1, 2016 - March 31, 2017

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BOARD ACTIVITIES 2016-17

Message from the Chairperson

This is the annual report of this Board for the time from April 1, 2016 to March 31, 2017. It is published as part of the statutory mandate to provide a transparent and accountable process for resolving disagreements within certain spheres of our health care system.

My appointment as Chair of the Board took effect in May of 2017, replacing the highly esteemed Allan Fineblit, who left to pursue other challenges. With that timing, I must note this report reflects a time entirely prior to my involvement with the Board.

Because of that, the observations I have to offer are more in the way of initial impressions, rather than as to the evolution of the Board over time. Much of the bulk of the report that follows contains detailed facts and numbers about the actions of the board. As preamble to that, I offer a few observations based on my early experiences, which I believe are supported by the data in the pages to follow:

- **Professional Staff** - The staff people (Bob Sample, Doreen Cote and Tracey Schaak) that administer these proceedings are exceedingly professional, pleasant and efficient. The citizens who appeal, the government bodies that respond, and the Board members who adjudicate are well served by them. They enable these proceedings to function smoothly.

- **Access to Justice** - In my view this Board serves as a positive example of access to justice needs being met. In a time when the courts, justice departments and Law Societies across this country wrestle with access to justice issues this tribunal is an example of an area where citizens of our country are able to have these matters dealt with effectively and quickly. Though lawyers appear from time to time (and those that do are professional and effective) many self-represented people attend on their own behalf, and seem able to navigate this system with relative ease. Such is not the case with many other legal issues.

- **Speedy Resolution** – These appeals are dealt with reasonably quickly. Hearings regularly and occur resolve issues within a few months after the medical procedures that gave rise to them. Most courts and administrative tribunals take years to grind through matters. Happily, this Board does not.

- **Courteous and Effective Hearings** – These hearings function well. They strike a good balance allowing parties to have their full say without getting bogged down into too much detail and process. The hearings move reasonably quickly, and everyone has a full opportunity to be heard.

Overall, this tribunal effectively adjudicates the gray areas of funding in our health care system. Public confidence in the system depends, in part, on a reliable and transparent method of resolving the areas of dispute between the public at large and the various government departments providing health care. I believe that this Board ought to be seen as a strong example of a part of the system that works well.

My hope is that the year that follows will see us build upon these strengths.

Grant Driedger
Chairperson

History, Jurisdiction and Process

History

Manitoba Health Appeal Board

- On March 31, 1993, the amalgamation and integration of the Manitoba Health Services Commission and the Department of Health was finalized with the proclamation of *The Health Services Insurance and Consequential Amendments Act.*

- On April 1, 1993, the former Manitoba Health Services Commission ceased to exist as a corporate entity and its staff and operations were amalgamated with the Manitoba Department of Health.

- At the same time, the proclamation of the *Act* established the Manitoba Health Board to hear and determine a wide range of specific appeals, including review of Authorized Charges for personal care homes, eligibility/coverage for Insured Benefits, licenses for operation of a laboratory or a personal care home and other matters prescribed by regulation.

- In June 1998, the *Act* was amended to change the name of the Board to the Manitoba Health Appeal Board.

- In 2001, the Minister of Health assigned the Manitoba Health Appeal Board as the authority to hear appeals under the new Manitoba Hepatitis C Compassionate Assistance Program.

Appeal Panel for Home Care

- On May 26, 1994, the Minister of Health announced two new committees for the Continuing Care program; one of which was the Appeal Panel for Home Care. The Panel consisted of seven members and its mandate was to hear appeals from people who disagreed with decisions regarding their eligibility for, or changes to, home care service. It reported directly to the Minister of Health and was not legislated.

Amalgamated Manitoba Health Appeal Board

- In May 2006, the Appeal Panel for Home Care and the Manitoba Health Appeal Board were amalgamated under the Manitoba Health Appeal Board, which assumed responsibility for hearing Home Care appeals.

Previous Changes to Legislation

- On November 17, 2008, the Manitoba Health Appeal Board Regulation (M.R. 175/2008) was enacted to formalize an individual's right to appeal decisions made by a regional health authority with respect to eligibility for and/or the type or level of Home Care services.

- On January 9, 2009, the Minister of Health formally assigned the Manitoba Health Appeal Board the duty to conduct appeals regarding home care services brought pursuant to Manitoba Health Appeal Board Regulation 175/2008.

Jurisdiction

The Manitoba Health Appeal Board is an independent quasi-judicial administrative tribunal established by *The Health Services Insurance Act*. Sections 2(1), 9, 10, 57(4), 57(5), 58, 61, 85.1(1) 85.1(2), 112.1, 113(1)(dd), 118.2(1), 118.2(3), 118.2(4), 118.3 and 127(1) of *The Health Services Insurance Act* specifically refer to the Board.[1]

In general, the Board is responsible for:

a) hearing and determining appeals as specified under *The Health Services Insurance Act* and its regulations*, The Emergency Medical Response and Stretcher Transportation Act* and the Charges Payable by Long Term Patients Regulation made under *The Mental Health Act*;

b) performing any other duties assigned by any act of the Legislature or any regulation;

c) performing any other duties assigned by the Minister.

Specifically, the Board hears a wide range of appeals, including decisions where a person has been:

- assessed an authorized charge (daily rate) in a personal care home, a hospital or other designated health facility and is dissatisfied with a review decision made by Manitoba Health;
- refused registration as an insured person under *The Health Services Insurance Act*;
- denied entitlement to a benefit under *The Health Services Insurance Act* (for example, out-of-province medical services, transportation subsidies, plastic surgery);
- refused an approval to operate a laboratory or a specimen collection centre, or conditions have been imposed on their approval, or their approval has been revoked;
- refused an approval to operate a personal care home, or conditions have been imposed on their approval, or their approval has been revoked;
- refused a licence to operate an emergency medical response system or a stretcher transportation service or had the licence suspended or cancelled;
- refused a licence to act as an emergency medical response technician, stretcher attendant or ambulance operator or had the licence suspended or cancelled;
- denied financial assistance under the Manitoba Hepatitis C Compassionate Assista... Program;
- issued a decision by a regional health authority regarding eligibility, type or level of service under the Manitoba Home Care Program and is dissatisfied with the decision;

[1]Sections 1, 12, 13 and 20(3) of *The Emergency Medical Response and Stretcher Transportation Act* also make reference to the Board's powers to hear appeals under this legislation. The provisions in this *Act* are closely aligned with the provisions set out in *The Health Services Insurance Act* related to the Board's authority and mandate.

- issued a decision by a regional health authority assessment panel in relation to an application for personal care in a personal care home and is dissatisfied with the decision.

Board Membership

Section 9 of *The Health Services Insurance Act* states the Board must consist of not less than five members appointed by the Lieutenant Governor in Council. Board members' terms are specified in the appointing Order-in-Council and each member continues to hold office until he/she is reappointed, a successor is appointed or the appointment is revoked.

During the fiscal year April 1, 2016 to March 31, 2017, the Board consisted of the following members:

1. Allan Fineblit, Q.C., B.A., LL.B., Chairperson[2]
2. Roger Gingerich, BSc, M.D.[3]
3. Richard Kennett, B.A., B.Ed., M.Ed., Vice-Chairperson
4. Kristine Barr, B.A., LL.B.
5. Patrick Caron
6. Bonnie Cham, M.D., FRCPC
7. Denyse T. Côté, B.A., LL.B[4].
8. Dr. Allen Kraut, M.D., FRCPC
9. Claudette Labossière, LPN[5]
10. Howard Mathieson, B.A., B.Ed.
11. Alan M. McLauchlan
12. Jagjit Polly Pachu, RCT (Advanced)
13. Priti Shah, B.A., LLB., C. Med

[2] Allan Fineblit resigned from the Board December 23, 2016

[3] Dr. Roger Gingrich was appointed to the Board November 2, 2016 (OIC 0419/216)

[4] Denyse Cote's term ended April 30, 2016 (OIC 00419/2016)

[5] Claudette Labossière's term ended November 2, 2016 after serving ten years as a Board member (OIC 00419/2016)

Board Biographies

Allan Fineblit, Q.C., Chairperson Appointed March 16, 2011

Mr. Fineblit was appointed as Chairperson of the Board effective May 1, 2012.

Allan is a lawyer with the firm of Thompson Dorfman Sweatman. He is the former CEO of the Law Society of Manitoba, the regulatory body for the practice of law in Manitoba. Allan is a member of the Board of Directors of the Canadian Lawyers Insurance Association, a Board member of End Homelessness Winnipeg and is a Past Chair of the Board of Trustees of the United Way of Winnipeg. He currently Chairs the Canadian Bar Association Entity Regulation Working Group and the Federation of Law Societies of Canada national Discipline Standards Committee. Allan is also on the selection committee for the Winnipeg Citizens Hall of Fame.

Richard Kennett Appointed October 26, 2011

Mr. Kennett was appointed Vice-Chairperson of the Board effective March 12, 2014.

Richard grew up in England. In 1970, he came to Winnipeg as a young teacher and worked for the Winnipeg School Division for 30 years. From 2000 to 2010, he created and managed a Manitoba Justice youth crime prevention program called “Lighthouses”. From 1992, Richard has been constantly active as a volunteer mediator and restorative conference facilitator through the Winnipeg community justice committee movement and through the agency called Mediation Services. He and his partner have been married 41 years and have two fine sons.

Kristine K. Barr Appointed May 1, 2012

Kristine completed her Law degree at the University of Manitoba in 2005 and received her call to the bar in 2006. Kristine currently practices labour law with the Canadian Union of Public Employees (CUPE) in the Manitoba regional office. Kristine chaired the Social Services Appeal Board from 2005-2012. In this capacity, she served as an executive member of the Manitoba Council of Administrative Tribunals and co-chaired the annual MCAT Conference. Kristine is committed to social justice, equality and human rights issues and has served as the National Chair of SOGIC, the Sexual Orientation and Gender Identity Section of the Canadian Bar Association. Kristine was a founder of the Teen Talk program at Klinic Community Health Centre where she previously worked as a Program Coordinator and co-ordinated the provincial teen pregnancy campaign “If you think it can’t happen to you, think again”. Kristine was an elected School Trustee with the Winnipeg School Division from 1998-2014.

Patrick Caron Appointed October 26, 2011

Patrick has been with the Internal Trade Secretariat since April 2008 working on Interprovincial trade issues. He is the managing director at the Secretariat and has been managing since June 2014. He has a pan-Canadian life experience, being born in Quebec and raised in Western Canada. His post-secondary background is firstly in Political Science from University of Alberta and this was followed by Journalism/Communication at Mount Royal University. He has a few

years work experience as a reporter in Rural Manitoba. Prior to working at the Secretariat he worked for 5 years at the Government of Manitoba.

Denyse T. Côté Appointed March 16, 2011

Denyse is currently a lawyer with the Tax Law Services section of the Department of Justice Canada. She has been active in the union which represents lawyers from the federal public service and has previously served as a board member on the Manitoba Public Utilities Board, Community Legal Education Association, Association des juristes d'expression française du Manitoba and Centre Culturel Franco-Manitobain.

Bonnie Cham, M.D., FRCPC Appointed March 16, 2011

Dr. Cham graduated from the Faculty of Medicine at the University of Manitoba in 1982. Following specialty training in Pediatrics, Hematology and Oncology (at U of Manitoba and UBC), she was appointed to the Faculty of Medicine, University of Manitoba and active staff at CancerCare Manitoba where she was involved in research and patient care until 2010. During that time she also worked as a consultant at Canadian Blood Services and was Director of the Manitoba Rh program. An interest in ethics led her to complete a Graduate Diploma in Bioethics from Monash University in 1999. She was a volunteer on the Manitoba Medical Association Ethics Committee, followed by a term as Chair of the Canadian Medical Association's Committee on Ethics from 2005-2009. She is currently the Medical Director of Clinical Ethics at Health Sciences Center.

Dr. Roger Gingerich, BSc, M.D. Appointed November 2, 2016

Dr. Gingerich graduated from the Faculty of Medicine at the University of Manitoba in 1985. His career as a family doctor has been to provide medical care in rural settings. He has a special interest in international medical relief and has worked with refugees during the unrest in Haiti (1995), the Kosovo Crisis (1999), the Mozambique floods (2000), and in Darfur, Sudan (2004). He has delivered medical care to disadvantaged patients in over 10 countries. From 2008-2014, he served as Chairperson of the Board at Providence University College and Seminary in Otterburne, MB, and has served in various other leadership positions including committees with Doctors Manitoba, the College of Physicians and Surgeons of Manitoba, and in his local community. He also served as Executive Director of CMDS Canada for 5 years. He currently practices medicine in Steinbach MB.

Allen Kraut, M.D., FRCPC Appointed May 1, 2015

Dr. Kraut is an Associate Professor in the Departments of Internal Medicine and Community Health Sciences at the University of Manitoba. He is a specialist in Internal Medicine and Occupational Medicine. He graduated from the University of Manitoba Medical School and completed training in Internal Medicine in Winnipeg and Occupational Medicine in New York City. Dr. Kraut is the Medical Director of the Winnipeg Regional Health Authority's Occupational Medicine program. For the past 27 years he has been an attending physician in Internal Medicine at the Health Sciences Center (HSC), and practiced clinical occupational medicine at the MFL Occupational Health Clinic and the HSC. Dr. Kraut has served as a consultant to a variety of labour, industry and government organizations in the field of occupational health.

Claudette Labossière Appointed May 1, 2006

For many years Claudette has enjoyed working in a rural personal care home. Being a front line nurse assisting clients in her community and surrounding area has given her valuable insight into the home care system. She still remains living in a small southern Manitoba town with her husband, where they raised their three children. Claudette is presently nursing in the local long-term care facility, which cares for and houses 60 residents.

Howard Mathieson Appointed June 27, 2007

Howard was employed at the University of Winnipeg from 1970 to 2000 where he was an instructor and administrator in the Collegiate Division. During his tenure he served as both an instructor and Associate Dean. He was active in University affairs and committees, notably the University Senate, its' Athletic Board and was active as a basketball coach. He also participated as a member of the Collegiate CAUT bargaining team. Following retirement he was appointed to the Public Schools Finance Board where he served prior to his appointment to the Manitoba Health Appeal Board.

Alan M. McLauchlan Appointed February 1, 2014

Alan has a background in Justice from his career with the Royal Canadian Mounted Police followed by a second career as a college instructor. His expertise includes conflict resolution and restorative justice. He presently is self employed and provides training to organizations on a variety of topics including justice issues, crime prevention and restorative justice. Alan also works on expanding on his families Non Timber Forest Product company, one of the largest in Manitoba.

Jagjit Polly Pachu Appointed October 26, 2011

For the past 27 years, Polly has worked as a Cardiology Technologist at St. Boniface General Hospital (SBGH) specializing in Exercise Tolerance Testing – Echo Dobutamine, Cardiac Imaging, Nuclear Testing and Electrocardiograms (EKG) and now works part-time at Victoria General Hospital in the same capacity. She was a Paramedical Technologist for Medox and Bodimetric Profiles where she provided paramedical services for life insurance companies. She was elected National President and Vice-President of the Canadian Society of Cardiology Technologists (CSCT) and she is presently the Director. She was also a former Vice-Chair for the Licence and Suspension Appeal Board as well as a Union Representative for the Manitoba Association of Health Care Professionals (MAHCP). Currently, she is an interpreter for the Immigrant Center, Vice President of the Immigrant Women's Association of Manitoba (IWAM), a member of the SBGH Workplace Safety and Health Committee and a member of the MFL Occupational Health Centre (OHC).

Priti Shah Appointed January 16, 2016

Priti Shah is a lawyer, mediator, arbitrator, investigator and facilitator and operates PRAXIS Conflict Consulting in Winnipeg. She received her Bachelor of Arts in 1986 and her Bachelor of Laws in 1989, both from the University of Manitoba. She was called to the Bar of the Law Society of Manitoba in 1990 and has experience in the practice of law in both the public and private sectors. Priti has travelled to 64 countries and represented the Government of Canada and the Organization for Democratic Institutions and Human Rights in September 1998 as an observer of the parliamentary elections in Bosnia & Herzegovina. She is committed to international development and in 2014 completed her seventh Habitat build.

Board Administrative Staff

The Manitoba Health Appeal Board administrative office staff manage the day-to-day business of the Board and provides administrative assistance and support to the Board in carrying out its responsibilities.

Administrative Staff

During 2016-17 the Board's staff consisted of the following individuals:

Bob Sample	Administrator
Doreen Côté	Office Manager
Tracey Schaak	Administrative Assistant

Term employees were employed periodically during the fiscal year to provide assistance during a long term absence of one of the regular staff.

Sittings and Meetings

Sittings

During 2016-17, sittings of the Board were scheduled on Thursdays with Authorized Charge appeals usually heard in the morning and Insured Benefit appeals in the afternoon. Whenever possible, hearings for Home Care and other types of appeals were also scheduled on Thursdays, with flexibility to use other week days when necessary.

Sittings of the Board are usually held at the Board's office located at 102 – 500 Portage Avenue, Winnipeg, Manitoba but on occasion, the Board will attend to other locations in Manitoba to hear appeals.

For the most part, the parties[6] attended in person for the hearing of appeals. However, the parties are also offered the option of participating by teleconference and many did so, particularly for appeals of Authorized Charges and for those parties who reside in rural communities. Participation via videoconferencing is another option that is available to the parties although access to the equipment is limited and dependent on a third party.

During 2016-17 the Board held forty-four sittings for the purpose of hearing appeals and considering complex motions:

# Sittings Held	Type of Appeal
9	Authorized Charges
22	Insured Benefit
12	Home Care
1	Late Filed Motion Hearing (Insured Benefit)

Figure 1 – Sittings Held in 2016-17

On average, the Board heard three appeals at each sitting for Authorized Charge appeals. Generally, the Board heard only one appeal at a sitting for Insured Benefit and other types of appeals.

French Language Appeal Hearings

The Manitoba Health Appeal Board is one of the quasi-judicial tribunals that hears citizens directly in the official language of their choice. During 2016-17, there were no requests made by parties to an appeal to conduct hearings in the French language.

[6]The "parties" are defined as the appellant (the person who the appeal is about) and the respondent (the authority who made the decision that is being appealed; i.e., Manitoba Health or a regional health authority and their representatives).

Composition of Board Quorums/Panels

Taking into consideration the nature of each type of appeal, the Board has agreed that it will sit in quorums/panels[7] as follows:

Authorized Charge Appeals	3 members
Home Care Program Appeals	3 members
Insured Benefits Appeals	5 members
Hepatitis C Appeals	5 members
Other Appeals	5 members

Generally, the Board sits in panels of five members whenever possible for Insured Benefits, Hepatitis C and Other appeals.

Board members are scheduled on a rotating basis, utilizing their various areas of expertise as required. Due to the medical nature of Insured Benefit appeals and the complex legal issues that can arise, it has been the practice of the Board to have at least one physician, whenever possible, and one lawyer member of the Board participate on the panel for this type of hearing.

General Business Meetings

During 2016-2017, the Manitoba Health Appeal Board met for general meetings on June 13, 2016 and November 28, 2016 to discuss and decide upon administrative and policy matters. The primary purpose of the meetings was to review and revise the Board's guidelines and policies prior to posting the documents on its webpage.

Appeals and Hearings

Appeals

Appeals coming before the Board vary in nature. Overall, the appeals heard by the Board during 2016-17 related to decisions regarding payment of benefits with respect to insured medical services and/or travel subsidies, assessed authorized charges (daily rates) for residents of personal care homes and other long-term facilities, and Home Care services.

Mediation

The Board's Administrator is authorized to offer a mediation process with the parties when contacted about Home Care matters to try and resolve issues before the need to proceed with the filing and/or hearing of an appeal.

[7]Section 9(6) of *The Health Services Insurance Act* states: "Except where provided otherwise in this or any other Act of the Legislature or any regulation respecting the board, any three members of the board constitute a quorum …" Section 9(7) of the *Act* states "The board may sit in panels of at least three members."

Hearings

Section 9(10) of *The Health Services Insurance Act* provides that the Board may establish its own rules of practice and procedure including rules respecting meetings and hearings, not inconsistent with this or any other act of the Legislature or any regulation regarding the Board. Accordingly, the Board has adopted standard Rules of Procedure for the hearing of appeals. All parties appearing before the Board are provided with a copy of the Board's Rules of Procedure at the time an appeal is filed, and a copy of the Rules is also available on the Board's website.

The *Act* also directs that appeals shall be conducted on an informal basis and the Board is not bound by the rules of law respecting evidence applicable to judicial proceedings.

With respect to Insured Benefit appeals, the Board has developed an Information Checklist that is provided to appellants on Insured Benefit appeals in advance of the hearing. This checklist is meant to assist appellants by making them aware of the type of information the Board may find pertinent to their position and the nature of evidence the Board is able to take into consideration on a case-by-case basis.

All parties have the right to attend hearings in person and/or to be represented by legal counsel or another person of their choice who they have designated in writing as their representative or who has the authority to act on their behalf. While some appellants choose not to appear at their hearing, they were usually represented by legal counsel or designated individuals such as advocates, family members or friends. As the respondent to the appeals, Manitoba Health and the regional health authorities have had representatives present at all hearings. Manitoba Health has also chosen to be represented at all Insured Benefit hearings by legal counsel and, on occasion a regional health authority has also chosen to be represented by legal counsel on Home Care and Personal Care Home Placement appeals.

Where notice of a hearing has been duly provided but an appellant and/or representative fails to attend on the hearing date, the Board may proceed with the hearing to make a determination on the appeal based on the written material filed by both parties for the hearing and the oral presentation of the respondent. Alternatively, the Board may direct that the hearing be rescheduled to a later date.

At an appeal hearing, the appellant is allowed to present his/her case and make a submission first, followed by questions by the Board and the respondent. The respondent is then provided with an opportunity to present their case and submission, followed by questions by the Board and the appellant. All questions and answers must be directed through the Chair. The appellant is then given a final opportunity to make any last comments before the hearing concludes.

Recording of Hearings

It is the practice of the Board to digitally record all hearings so that a record of proceedings can be made available if required. The recordings also assist the Board in the preparation of its reasons for decision.

Pursuant to Board policy, the recordings are maintained in CD format and are securely retained by the Administrator for a minimum period of three years. Thereafter, they are destroyed, unless there is a judicial review underway, in which case the recordings are maintained until judicial proceedings are concluded.

Parties to a hearing may request a copy of the recording. However, the Board's records are governed by the disclosure provisions set out in *The Freedom of Information and Protection of*

Privacy Act and *The Personal Health Information Act.* Therefore, depending on the nature of the request, a transcript of proceedings may be required so that the information can be reviewed and a determination made as to whether severing of the record is required in accordance with the legislation. The cost of the preparation of a transcript is borne by the requesting party.

Decisions of the Board

After the conclusion of an appeal hearing, the Board meets in-camera to discuss the evidence and submissions and to make a decision. The only non-Board member privy to these in-camera discussions is the Administrator who does not participate in the decision making, but is available to answer Board questions.

After considering the merits of the written and oral evidence and submissions by the parties, in making a decision[8] on an appeal, the Board may confirm, set aside or vary the decision in accordance with the provisions of *The Health Services Insurance Act* and regulations or refer the matter back to the person authorized to make the decision for further consideration with the Board's instructions.[9]

The Board's decision with reasons is prepared in written format and issued to all parties generally within four weeks after the hearing date.

Judicial Review

Unless otherwise provided for in any act or regulation, the decisions of the Board on appeals are final. However, like any administrative tribunal, an application for judicial review of the Board's decision may be made to a court. In Manitoba, the appropriate court would be the Manitoba Court of Queen's Bench. An application for judicial review might be made on issues such as the tribunal having made an error of law; having acted without proper jurisdiction; or having made a significant error in procedural aspects of a hearing.

There were no applications for judicial review filed in the Manitoba Court of Queen's Bench by any party for the 2016-2017 year.

Canadian Legal Information Institute (CanLII)

The Board started to post redacted appeal decisions on the CanLII website (www.canlii.org/en/mb/) in 2015. Identifying information is removed from all decisions prior to posting. The Board decided to post appeal decisions for transparency, fairness, educational and research value.

[8]Section 9(9) of *The Health Services Insurance Act* states: "A decision or action of the majority of the members of the panel or of the majority of the members of the board constituting a quorum is a decision or action of the board."
[9]The powers of the Board on appeal is set out in Section 10(5) of *The Health Services Insurance Act.*

FINANCIAL INFORMATION 2016-17

In 2016-17, the annual operating budget for the Manitoba Health Appeal Board was $139,000, and the annual salaries budget was $180,000.

Operating Budget

The annual operating budget expenditures were $126,521 for an under expenditure of $12,479.

The annual operating budget for the Manitoba Health Appeal Board was reduced in 2016-17 to $139,000. The operating budget for the 2015-2016 fiscal year was $169,000.

Operating Budget: 2016-17
Manitoba Health Appeal Board

Budget		$139,000
Less Actuals		
Board Remuneration (per diems)	$77,202	
Other Expenditures	$49,319	
Total Actuals		$126,521
Variance (under budget)		($12,479)

Figure 2 – Operating Budget

Board members are paid a per diem when they attend hearings:

Chair: $256.00 per half day and $446.00 per full day
Members: $146.00 per half day and $255.00 for a full day
Physician Members: paid based on specialty and location at the sessional rates established for medical practitioners.

Board members are also paid a per diem for pre-hearing preparation, decision writing, and duties unrelated to hearings (e.g., attendance at a meeting):

Chair: $74.33 per hour
Members: $42.50 per hour
Physician members: at the current hourly sessional rate

Members are also reimbursed for reasonable travel and out-of-pocket expenses incurred in carrying out their responsibilities in accordance with government established rates.

Salaries Budget

The actual salary expenditures were $214,047 for an over expenditure of $32,047.

Salaries Budget: 2016-17 Manitoba Health Appeal Board				
Description	**FTE[10]**	**Estimate**	**Actual**	**Variance Over (Under)**
Staff Salaries	3 FTE	$168,000	$179,289	$11,289
Employee Benefits	3 FTE	$18,000	$34,785	$16,785
Total		$182,000	$214,047	$32,047

Figure 3 – Salaries Budget

The compared estimated budget to actual expense shows MHAB salaries were $32,047 over spent due to under budgeted salary costs and employee benefits. The following provides context:

- $12,000 in staff turnover allowance – MHAB was fully staffed for the fiscal year 2016-17. Therefore, it did not meet staff turnover allowance. This is a standard accounting practice used by the department.
- The deficit in Salaries Budget was offset somewhat by being under spent $12,479 in the Operating Budget.
- Temporary staff were employed during the fiscal year to cover a long term absence with an expense of $15,022.

[10] Full time equivalents

Board Activities 2016-17

Sittings and General Meetings

A review of the appeals received, the Board's sittings and general meetings held in the current and past four fiscal years indicates the following:

Appeals Received					
Type	2016-17	2015-16	2014-15	2013-14	2012-13
Authorized Charges	44	90	86	72	68
Request for Waiver of Authorized Charge	3	5	1	0	0
Insured Benefits	45	42	24	30	28
Hepatitis C Compassionate Assistance Program	0	0	0	0	0
Home Care Program	17	10	8	5	5
Personal Care Home	8	3	4	4	3
Other Appeals	0	2	1	1	1
Total	**117**	**152**	**124**	**112**	**105**

Figure 4 – Review of Appeals Received

As can be seen by the chart in Figure 4 above, there was a decrease of thirty-five appeals received by the Board over the previous fiscal year.

The reason for the decline of appeals for 2016-17 in comparison to the 2015-16 fiscal year was, for the most part, related to a reduction in Authorized Charge appeals. The Manitoba Health, Seniors and Active Living Residential Charge Unit (RCU) relates the reduction in the number authorized charge appeals to:

- the review office approving reviews to the satisfaction of the clients, and
- the retirement of the manager of the RCU and the delayed hiring of a replacement resulted in a backlog of reviews to process.

Three Request for Waiver of Authorized Charge appeals did not proceed to appeal because the Board decided at its Annual General Meeting that it did not have the jurisdiction to hear that type of appeal. Consequently, the Board is no longer accepting Request for Waiver of Authorized Charge appeals.

Appeals Heard by Board					
Type	2016-17	2015-16	2014-15	2013-14	2012-13
Authorized Charges	22	47	27	35	46
Request for Waiver of Authorized Charges	0	5	0	0	0
Insured Benefits	28	18	11	17	23
Hepatitis C Compassionate Assistance Program	0	0	0	0	0
Home Care Program	12	5	7	2	6
Personal Care Home	0	1	2	0	1
Other Appeals	0	2	0	0	0
Total[11]	**62**	**78**	**47**	**54**	**76**

Figure 5 – Comparison of Appeals Heard

As can be seen by the chart in Figure 5, there was a decrease of sixteen appeals heard by the Board over the previous fiscal year.

The number of appeals heard in 2016-17 is less than the total number of appeals received for the following reasons:

- Some appellants withdrew their appeals because the respondent, Manitoba Health, Seniors and Active Living (MHSAL) or a regional health authority, changed its decision to the satisfaction of the appellant. The majority of decisions were changed based on additional information that was submitted by the appellant during the appeal process.

- Prior to a hearing being scheduled, some appellants withdrew their appeals because they decided not to pursue the matter any further.

- Appellants and respondents have a right to file a brief (written argument and evidence) on the appeal issues. The parties are given a specified number of weeks to submit their briefs and this process takes several weeks from the time the appeal is received. As a result, appeals received late in the fiscal year might not be heard until the following fiscal year.

- Appellants were unable to proceed for a number of reasons and the appeal was carried forward to the next fiscal year – e.g., health-related reasons, appellants are away on vacation, or they require additional time to gather their evidence.

- Appellants submitted new information to the respondent and the respondent was in the process of reviewing the new information.

[11]This total does not include the appeals that were withdrawn or struck off the Board's hearing schedule during the fiscal year. Information rationalizing appeals that were withdrawn or struck off is shown starting on page nineteen of the report.

Below is a chart comparing total sittings and meetings over the past five years.

Sittings and General Meetings			
Fiscal Year	**# of Appeal Sittings**	**# of General Meetings**	**Total Appeal Sittings/ General Meetings**
2016-17	44	2	46
2015-16	51	1	52
2014-15	26	1	27
2013-14	31	1	32
2012-13	44	1	45

Figure 6 – Comparison of Number of Sittings and General Meetings Held

APPEALS

The following is a statistical summary of appeals received and heard for 2016-17.

Authorized Charge Appeals

Appeals Received

The Board received forty-four Authorized Charge appeals, which is a decrease from the previous fiscal year's total of ninety.

Breakdown of Authorized Charge Appeals Received by Regional Health Authority

The following figure shows the breakdown by regional health authority (RHA) of the forty-four Authorized Charge appeals received in 2016-17:

RHA	Appeals
Interlake-Eastern	6
Northern	0
Prairie Mountain	5
Southern Health-Santé Sud	5
RHA Subtotal	16
Winnipeg	28
Total	44

Figure 7 – Breakdown by RHA of Appeals Received

Appeals Heard

During 2016-17, the Board held twenty-two hearings for Authorized Charge appeals, which is a decrease from the previous year's total of forty-seven.

Disposition of Authorized Charge Appeals Heard

The disposition of the twenty-two appeals heard by the Board in 2016-17 is as follows:

Disposition	Number	%
Appeals denied	7	32%
Appeals allowed to minimum charge	7	32%
Appeals allowed to other rate	8	36%
Total	**22**	100%

Figure 8 – Disposition of Authorized Charge Appeals

In addition to the above-noted appeals that were heard, thirty-three Authorized Charge appeals were closed prior to a hearing being held for the following reasons:

Manitoba Health amended its review decision	26
Withdrawn by Appellant for other reasons	3
Appellant deceased prior to hearing[12]	3
Appeal filed prematurely[13]	1
Total	**33**

The withdrawal of twenty-six authorized charge appeals occurred because MHSAL amended review decisions based on additional financial information that was provided during the appeal process. Much of the financial information clarified income, thereby allowing Manitoba Health to reconsider the daily rate charge.

There were ten appeals pending at the end of the fiscal year and carried forward to 2017-2018.[14]

[12] Pursuant to Manitoba Health's policy, if it is informed that an appellant dies while an appeal is in process and has not yet been heard, the authorized charge (daily rate) will be adjusted to the previous year's assessed rate, or the current minimum rate if assessed the minimum rate in the previous rate year, or if the appellant is a new resident in personal care. If the estate of the appellant is not satisfied with Manitoba Health's adjusted rate, it may continue on with the appeal before the Board.

[13] Appeals filed prior to Manitoba Health making a decision on a Request for Review; as a result, there was no decision from which to appeal.

[14] Appeals were carried forward for the following reasons: appellants had not yet obtained and/or submitted financial documents or other relevant evidence for their appeal hearing, the appellants or their representative were not available to attend a hearing prior to the end of the fiscal year; the respondent was in the process of reviewing new documents that were submitted by the appellant.

Insured Benefit Appeals

The vast majority of Insured Benefit appeals relate to Manitoba Health's denial of requests for funding benefits for medical services received outside Manitoba and Canada. Individuals denied registration as an insured person may also appeal.

Appeals Received

The Board received forty-five Insured Benefit appeals in 2016-17, which is an increase from the previous fiscal year's total of forty-two.

Multiple Issues with Insured Benefit Appeals Received

It is to be noted that there can be more than one issue involved with an Insured Benefit appeal. For example, an appellant may appeal Manitoba Health's denial to pay benefits as well as a travel subsidy related to a medical service that was provided out of the province.

Appeals Heard

During 2016-17, the Board held twenty-eight hearings for Insured Benefit appeals, which is an increase from the previous year's total of eighteen.

Insured Benefit Appeals Heard				
2016-17	2015-16	2014-15	2013-14	2012-13
28	18	11	17	23

Figure 9 – Comparison of Appeals Heard

Disposition of Insured Benefit Appeals Heard

The disposition of the twenty-eight Insured Benefits appeals heard by the Board is as follows:

Disposition	Number	%
Appeals approved	0	0
Appeals denied	24	86%
Appeals heard & adjourned	4	14%
Total	**28**	**100%**

Figure 10 – Disposition of Insured Benefit Appeals

The report shows that eighty-six percent of Insured Benefits appeals were unsuccessful. There are several possible explanations for why this occurred.

Ultimately however, each case must be decided on its own merits. In that regard it is worth keeping in mind that many of the Insured Benefits appellants presented very sympathetic facts and circumstances.

Courts describe boards like this one as "creatures of statute" with no "inherent jurisdiction". That means that this Board is bound to follow the laws as they have been put in place by the Legislature. It does not have the power to change the rules, even in cases where its members may feel a great deal of sympathy for an appellant. The role of the Board is limited to applying those rules to the facts of the cases that come before it.

Examples of some of the legislative requirements with insured benefit appeals that are commonly not met by appellants are:

- MHSAL did not receive a referral from an appropriate Manitoba specialist for insured care and treatment that cannot be rendered in Manitoba or elsewhere in Canada prior to the treatment occurring.

- Evidence from a Manitoba specialist is required to demonstrate what services or investigations are medically necessary and why they or a service of equal nature are not readily available in Manitoba or elsewhere in Canada.

- Prior approval was not granted for the requested service.

The Board has expressed its concern in many of the denied decisions such as decision 2016-006-IB and 2016-007-IB. These decisions are available in redacted form for review on the CanLII website (https://www.canlii.org/en/mb/).

In addition to the above-noted appeals that were heard, thirteen Insured Benefit appeals were closed prior to a hearing being held for the following reasons:

Withdrawn as Manitoba Health approved payment	2
Withdrawn by Appellant for other reasons	11
Total	13

There were twenty three appeals pending at the end of the fiscal year and carried forward to 2017-2018. Appeals were carried over to the next fiscal year because:

- they were opened at the MHAB toward the end of the fiscal year which results in the appeal processing period running into the next fiscal year, and

- Appellants have requested extension of time for various reasons which has delayed scheduling a hearing date and carried the appeal file over into the next fiscal year.

Manitoba Hepatitis C Compassionate Assistance Program Appeals

Manitobans who became infected with Hepatitis C (HCV) after receiving a transfusion of blood or blood products before January 1, 1986 or between July 1, 1990 and September 28, 1998 in Manitoba may be eligible for a one-time payment of $10,000 through the Manitoba Government's Hepatitis C Compassionate Assistance Program.

Persons who apply for and are denied financial compensation through this program have the right to appeal the decision to the Board.

Appeals Received

In 2016-2017, the Board did not receive any appeals regarding a decision of the Manitoba Hepatitis C Compassionate Assistance Program to deny financial assistance.

Since the inception of the Manitoba Hepatitis C Compassionate Assistance Program in 2001, the Board has received forty-one appeals, the outcomes of which are as follows:

Disposition	Number	%
Appeals heard & denied	10	24.4
Appeals heard & allowed	3	7.3
Appeals rejected	1	2.4
Appeals withdrawn/abandoned	27	65.9
Total Number of Appeals Received	**41**	**100%**

Figure 11 – Disposition of Hepatitis C Compassionate Assistance Appeals

Home Care Program Appeals

Appeals Received

The Board received seventeen appeals from decisions related to the provision of home care services in the province in 2016-17, which is an increase from the previous fiscal year's total of ten. One additional appeal was brought forward from the previous fiscal year.

Appeals Heard

During 2016-17, the Board held twelve hearings for Home Care appeals, which is an increase of seven from the previous fiscal year.

Disposition of Home Care Program Appeals Heard

The twelve appeal hearings held in 2016-17 were disposed of as follows:

Disposition	Number	%
Appeals approved	4	33.3
Appeals allowed in part/varied	2	16.7
Appeals denied	6	50%
Total	**12**	**100%**

Figure 12 – Disposition of Home Care Appeals

In addition to the appeals that were heard, five appeals were withdrawn by the appellant. Three of the five appeals were withdrawn as the regional health authority amended its decision and the issue under appeal was resolved.

One appeal was pending at the end of the fiscal year and carried forward to 2017-18.

The Home Care appeals heard over the past five years were disposed of as follows:

Disposition of Home Care Appeals Heard					
Disposition	2016-17	2015-16	2014-15	2013-14	2012-13
Allowed/ Allowed In Part	6	2	3	0	2
Denied	6	3	3	0	3
Withdrawn	0	6	1	1	0
Heard & Adjourned	0	0	0	0	0
Referred Back	0	0	0	1	0
Motion Heard - Appeal Dismissed	0	0	0	0	1
Total	**12**	**11**	**7**	**2**	**6**

Figure 13 – Disposition of Home Care Appeals Heard by Year

Breakdown by Regional Health Authority of Home Care Appeals

The following is the breakdown by regional health authority of the seventeen Home Care appeals received in 2016-17 in comparison to the appeals received in the four prior fiscal years:

RHA	Appeals 2016-17	Appeals 2015-16	Appeals 2014-15	Appeals 2013-14	Appeals 2012-13
Interlake-Eastern	4	2	0	0	0
Northern	1	0	0	0	0
Southern Health	1	0	0	2	0
Prairie Mountain Health	0	0	0	0	0
RHA Subtotal	6	2	0	2	0
Winnipeg	11	8	8	3	5
Total	**17**	**10**	**8**	**5**	**5**

Figure 14 – Breakdown by RHA of Appeals Received

Home Care Program appeals received from regional health authorities in 2016-17 other than Winnipeg numbered six or thirty-five percent of appeals, while appeals from Winnipeg numbered eleven or sixty-five percent.

A summary of the Winnipeg/Other RHA proportions for the past five years is shown below. It indicates that percentages vary, as is to be expected with small data sets, but suggests that significantly more appeals, on a proportional basis, are generated from within Winnipeg each year.

Home Care Program Appeals		
Fiscal Year	**% RHAs other than Winnipeg**	**% Winnipeg**
2016-17	35%	65%
2015-16	20%	80%
2014-15	0	100%
2013-14	40%	60%
2012-13	0	100%

Figure 15 – Winnipeg/Other RHAs Breakdown of Home Care Appeals

Personal Care Home Placement Decisions by an Assessment Panel

Appeals Received

The Board received eight appeals in relation to assessment panel decisions.

Appeals Heard

There were no hearings held during the 2016-17 fiscal year for assessment panel decision appeals.

The eight appeals received were closed prior to a hearing being held for the following reasons:

- three withdrawn because the relevant regional health authorities' assessment panels reversed their initial decision and approved the individuals' paneling for personal care;
- five were withdrawn for other reasons.

Personal Care Home Placement Appeals Received				
2016-17	2015-16	2014-15	2013-14	2012-13
8	3	4	4	3

Figure 16 – Comparison of Appeals Received

Other Appeals

There are "Other" types of appeals that the Manitoba Health Appeal Board has been mandated to hear by other legislative acts and regulations and as assigned by the Minister of Health.

In the past, these "Other" appeals have included the following:

- emergency health transportation
- conditions and terms of licensing of laboratories and facilities and diagnostic services

There were no "Other" appeals received in 2016-17.

The following figure details the number and type of "Other" appeals received over the past five fiscal years:

Fiscal Year	Number of Appeals	"Other" Appeals
2016-17	0	
2015-16	1	Laboratory Specimen Collection Centre Licence
	1	Cleft Lip and Palate Program
2014-15	1	Laboratory License
2013-14	1	*The Emergency Medical Response and Transportation Act*
2012-13	1	Laboratory License

Figure 17 – "Other" Appeals Received

Board Member Training

During 2016-17, the Board, Administrator and administrative staff engaged in training and educational activities offered by the Manitoba Council of Administrative Tribunal, Q-Net, The Crown Corporations Council Canada and various offerings from Manitoba Health Seniors and Active Living.

Public Communication

Communication Activities

Strategies have been developed by the Board to communicate information to the public and appropriate service providers and agencies about the Board and its appeal process. These activities keep individuals and appropriate service providers and social agencies advised of the right to appeal certain decisions to the Board, and are a key component of an effective appeal process.

Hearing Guide

The Board developed a Hearing Guide to assist parties to an appeal understand the appeal and hearing process. The Hearing Guide is posted on the Board's website and is available in print form at the Board office.

Brochures

The Manitoba Health Appeal Board brochure is posted on the Board's website and is distributed to appellants and, upon request, to members of the public.

Guidelines and Policies

During the 2016-2017 fiscal-year the Board posted its guidelines and policies on the MHAB website. This was done for transparency and for public access to information that may be relevant to the preparation of an appeal.

Website

The Manitoba Health Appeal Board website contains detailed information about the Board, the types of appeals heard, the appeal process and provides access to forms required to initiate an appeal. The website is located at:

http://www.manitoba.ca/health/appealboard

Canadian Legal Information Institute (CanLII)

The Board started to post redacted appeal decisions on the CanLII website (www.canlii.org/en/mb/) in 2015. Identifying information is removed from all decisions prior to posting. The Board has decided to post appeal decisions for the following purposes: transparency, fairness, educational and research value.

Appeal Decision Summaries

NOTE: You are encouraged to read the full redacted text of each appeal decision which can be found on the CanLII website https://www.canlii.org/en/mb// What follows are summaries of appeal decisions.

Insured Benefit Appeals – Excluded Services Regulation – (2016-005-IB)

ISSUE: The appellant is appealing the denial of benefits for a facial hair transplant.

The appellant was born with cleft palate and bilateral cleft lip. Multiple surgical procedures left him with scarring. His doctor suggested growing a moustache to cover scars and a referral was made to a specialist in hair transplantation. A request for prior approval was sent to Manitoba Health. It was denied on the basis that hair transplantation is a cosmetic procedure and it was not demonstrated to be medically necessary.

At appeal the appellant said that he would like to cover the scar area up and that having a moustache would improve his prospects of employment in an area involving working with the public. He also said that a moustache would be a continuation of what the medical teams set out to do, to make his mouth and appearance look normal.

Manitoba Health argued that benefits are only provided for procedures that are medically required and that *The Health Services Insurance Act* does not cover procedures which are cosmetic in nature. The *Excluded Services Regulation (46/93)* section 2 (15) excludes elective plastic surgery unless such surgery is medically required. The request from the physician did not provide any medical reason for the procedure.

Although sympathetic to the procedures the appellant had undergone and his desire for facial hair transplantation, Board decisions must be made in accordance with the Act. The Act is clear on considering elective plastic surgery procedures as being excluded services. A patient undergoing an elective plastic surgery procedure is not entitled to benefits unless medical necessity can be demonstrated. The appeal was dismissed because there was no evidence to show that the proposed transplant was medically necessary.

The appeal panel referenced the appellant's concerns about the possibility of future employment difficulties on the basis of the appearance of the scar, and indicated that should psychological distress occur on this basis, the appellant could have a physician evaluate whether the psychological distress reached the level of demonstrating medical necessity. The physician could then apply again for prior approval for facial hair transplantation with explicit evidence of medical necessity.

Insured Benefit Appeals – Emergency Medical Treatment Received Outside of Canada – (2016-007-IB)

ISSUE: Is the appellant eligible for full coverage for the emergency medical treatment he received outside of Canada?

The appellant resides in a community close to the United States border. Manitoba Health has an Agreement with a US Clinic to provide services to residents of the community where the appellant resides. The Agreement covers all services provided at two of the Clinic locations but requires that where referrals elsewhere are required, patients be referred to Winnipeg.

The appellant attended the Clinic because he was not feeling well. It was determined that he was suffering from kidney failure and needed immediate treatment, including dialysis on an emergency basis. The Clinic was not able to provide the treatment and contacted two hospitals in Winnipeg that provide the treatment, however there was no availability of dialysis at either hospital. He was sent by ambulance to a US hospital in another community, was stabilized and received dialysis.

Manitoba Health paid the cost of the US Hospital treatment on the basis of the "sudden attack of illness" Regulations 48/93, section 16(3) which covered only a small portion of the actual cost. The US hospital then sought payment of an additional $29,939 in US funds from the appellant.

At appeal the appellant said that he did all he could to comply with the Agreement. When he attended at the Clinic he anticipated being treated there. He did not seek treatment in the US and did not wish to go to the US Hospital. He was in a bad state, strapped to a gurney, and told he could not go home and required urgent treatment. He was sent by ambulance to the US Hospital by the emergency physician. The decision to go to the US Hospital was not his and was only required because the Winnipeg hospitals were unable to provide service. He was told by the emergency physician at the Clinic that he would not be required to pay for the US Hospital service because there was no room in Winnipeg.

Manitoba Health recognized that the amounts set out in the Regulation would not cover a significant portion of the cost and that it created a very significant hardship for the appellant. Manitoba Health acknowledged that the appellant did the right thing and in the circumstances had no other reasonable option, and that this can legitimately be seen as an unfairness.

The appeal panel found that the appellant acted entirely reasonably in everything he did. The application of the Regulation in this instance was unfair and unreasonable and the result was detrimental financially and emotionally for the appellant.

The appeal panel dismissed the appeal because it is required to follow the Regulations and in this case the Regulation provided a set amount that is to be paid for treatment outside of Canada.

Insured Benefit Appeals – Transportation Subsidies - Excluded Services Regulation – (2016-014-IB)

ISSUE: Reimbursement for the cost of transportation to and from a residential treatment center.

The appellant, a minor living with her parents, had been struggling with a severe mental health/mood disorder. The disorder resulted in escalating self-harm and suicidality. She was hospitalized and referred to the Child and Adolescent Acute Assessment Service for Dialectical Behavioral Therapy (DBT) and placed on a waiting list at that time.

Her parents feared for her life given her behaviors. Having been told there was still up to a two months wait time for DBT they sought other alternatives. They travelled to a residential treatment center out of the country where the appellant was admitted. They applied for funding from Manitoba Health to receive the treatment. The request was approved and the year of residential treatment was paid for along with transportation costs for the appellant and her family to get to the center and the appellant's travel home upon completion of the treatment.

The parents signed an agreement with the center committing to participate in mandatory on site family therapy. The appellant also returned home on 3 occasions as part of the therapy plan.

At appeal the appellant's representative submitted that during the family therapy weekends, the family was expected to participate in scheduled interactions and workshops, to gain the skills that would be needed to support the appellant upon her return home.

Manitoba Health submitted that transportation costs are excluded services unless they meet the criteria set out in the *Out of Province Transportation Subsidies Regulation 51/93*. The appellant's initial trip to the facility fell under these guidelines as well as the costs of an accompanying escort. The scope of the regulation applies to insured persons who require therapy, along with an escort when necessary, and does not contemplate subsidy of travel costs for family members of the insured person to participate in therapy.

Manitoba Health added that transportation subsidies are available to persons qualifying for the trip to the facility and the subsequent return home following completion of therapy, and the issue of interim trips home, even when the activity at home is part of the therapy, are not contemplated by the regulations.

Manitoba Health's final point was that the regulation requires a referral for services outside Manitoba by a specialist for each trip that is to be reimbursed. There were no such referrals.

The appeal panel expressed its sympathy to the long struggles the appellant and her family have undergone in seeking treatment for the worsening mental health issues. The appeal panel accepted that the trips for which transportation subsidies were being requested were for travel that was mandated by the residential treatment center.

The Manitoba Health Appeal Board is bound by the Legislation and Regulations when deciding matters at appeal. The appeal panel accepted Manitoba Health's position that the trips for which transportation subsidies have been requested do not fall within the regulations and therefore the appeal was dismissed.

Insured Benefit Appeals – Residency Requirements for Eligibility to Health Services – (2016-019-IB)

ISSUE: Is the appellant a resident of Manitoba for the purpose of receiving Manitoba health benefits?

The appellant grew up in Manitoba where he played high school hockey. After that he played for teams in Ontario and the USA and he would return to Manitoba and stay with his parents at the end of the hockey season. Manitoba Health cancelled his registration for health benefits on the basis that he was not a Manitoba resident. Since then the appellant has obtained health coverage from the province of Ontario where monthly health premiums are required.

In June of 2016 the appellant completed a registration form applying for registration in Manitoba and the Manitoba Health denied the application.

At appeal the appellant argued that he is and has always been a resident in Manitoba. While he is out of the province for extended periods to play hockey, his home is Manitoba and he always returns to Manitoba for the holiday break in December and after the hockey season ends. While he is away, he resides in billeted accommodation which is temporary accommodation.

The appellant submitted that there were date errors on the registration form and, because he is generally in Manitoba from February until August or September and over the holiday break for a few weeks, he is in fact actually a resident in Manitoba for over six months of the year.

At appeal Manitoba Health relied on the registration form which showed that the appellant arrived back in Manitoba in May of 2016 and intended to leave again on August 31, 2016. This was less than six months of actual residency as required by the legislation. Manitoba Health also argued

that the fact that the appellant had been approved for health coverage in Ontario is evidence that he is not a Manitoba resident as one cannot be a resident of two provinces at the same time.

The relevant section [2(1)] of *The Health Services Insurance Act* reads:

> **"resident"** means a person who is legally entitled to be in Canada, makes his or her home in Manitoba, and is physically present in Manitoba for at least six months in a calendar year, and includes any other person classified as a resident in the regulations

The appeal panel dismissed the appeal and stated that in order to qualify for coverage the appellant must actually be present in Manitoba for six months of the year. The registration form clearly states that the appellant did not reside in Manitoba for six months of the year.

The appeal panel rejected the Manitoba Health argument that one cannot be a resident of two provinces at the same time. Residency for the purpose of health registration is determined by legislation and the Panel had no evidence of the residency requirements in Ontario. It was theoretically possible that for registration purposes, one might meet the residency requirements of two provinces with different residency requirements.

The appellant could re-apply to the Manitoba Health for coverage for 2016 if he has information about the correct dates of his actual residency in Manitoba in 2016.

Insured Benefit Appeals – Demonstrating that a Surgical Procedure is Medically Necessary – (2017-004-IB)

ISSUE: Should Manitoba Health pay for the appellant's abdominoplasty or is the surgery not medically necessary and not eligible for coverage?

The appellant underwent incisional hernia repair and panniculectomy. The surgery successfully repaired two hernias however it left the appellant with significant distortion of her abdomen. In addition to scarring, the umbilicus was quite abnormal in terms of appearance and location and there was a left side skin flap and a right side skin flap with knotted skin underneath. The appellant also experienced pain and discomfort with physical movement, sleeping difficulty, depression and embarrassment about her physical appearance.

The appellant was referred to a surgeon who advised that he could help with further surgery and submitted a Request for Prior Approval Form to Manitoba Health. Manitoba Health decided that the procedure was not medically necessary and therefore was excluded from coverage and denied the request for approval.

At appeal the appellant argued that the surgery is medically necessary to centre the umbilicus and to remove the skin flaps and knots which will then alleviate her pain and improve her ability to sleep. She would be less depressed if her body looked like it looked prior to the original surgery. The ongoing pain upon movement made it difficult for her to exercise, to partake in daily activities of life and to sit while working with children as an educational aide.

Manitoba Health said that the surgeon did not provide sufficient evidence that the abdominoplasty surgery is medically necessary. The surgeon did not provide any written documentation linking the proposed surgery with relief of the symptoms. Manitoba Health argued that coverage is available for medically necessary procedures, but without any evidence that the proposed procedure would address the problems, it cannot be determined if it is medically necessary.

The appeal panel accepted the appellant's position that she is not pursuing the abdominoplasty for pure cosmetic purposes and that she has significant medical issues that need to be treated. The appeal panel was sympathetic to her experience of undergoing a surgery that has injured her body and her emotions. However, the appeal panel agreed that there is no medical evidence that the procedure requested will alleviate the appellant's symptoms.

In dismissing the appeal, the appeal panel recognized the frustration of the appellant and reiterated the advice given by Manitoba Health at the hearing. The appellant could ask her surgeon to provide Manitoba Health with written documentation linking the abdominoplasty procedure directly with alleviating the symptoms that the she is experiencing. Manitoba Health would consider the new medical information and may approve the request.

Home Care Appeals – Eligibility to Receive Home Care Services – (2016-003-HC)

ISSUE: The appellant's home care services had been discontinued and she sought reinstatement of two hours of homecare services per month.

The appellant was a 78 year old woman who had homecare services in place for several years, since a bad fall. The most recent home care plan included bi-weekly cleaning with laundry assist. A January 2016 Home Care "care plan note" indicated that cleaning assistance was required.

In June 2016 the appellant moved to a new apartment block with accessible laundry facilities, and advised Home Care that she now only required bi-weekly cleaning support. She was assigned a new Home Care Case Coordinator and was advised that she has not been eligible for bi-weekly cleaning services since the January home care assessment. Her Home Care services were terminated. At the home visit, the appellant felt that the Case Coordinator asked very invasive, inappropriate questions regarding her financial situation.

At appeal the appellant submitted that she still required home care services, and that there had been no change in her medical condition. She argued that even one hour per month from home care would be of great assistance, particularly in regards to the pick up of garbage and recycling once per week.

At appeal, the Case Coordinator with the Home Care Program said that the appellant was advised in March 2016 that she does not meet the criteria regarding level of risk and safety. Home Care believes that the appellant can pace herself, complete a few tasks at a time, or hire privately if family is unable to assist her.

In allowing the appeal, the appeal panel found that there has not been any change in the appellant's medical condition. She could not walk even short distances. She was getting older and at greater risk of falling. Evidence was presented which supported a need for vacuuming assistance, housecleaning, garbage and recycling disposal, and tub cleaning.

The Board noted that it is inappropriate to question a client about their financial ability to pay for outside services since Home Care is a needs based, not an income based, program.

Home Care Appeals – Supplemental Self-Managed Care Support – (2016-004-HC)

ISSUE: Should the appellant be entitled to retain some of the self-managed home care support he had while employed, for other non-employment purposes?

The appellant received home care support in his rural home. In order to facilitate his employment, additional care (approximately 2.5 hours each work day) was offered in his workplace and other locations he had to be at for work purposes and delivered through a self-managed care agreement which he managed.

Upon retirement the self-managed care agreement was terminated. The appellant requested continuation of reduced self-managed care to allow him to attend medical appointments, shop and attend other activities. The request was declined by the Home Care Program.

At appeal the appellant said that he required support to remain in his home, as he needed assistance with transportation, getting his coat on and off, as well as with eating and toileting. He lived alone in a rural setting and could not rely regularly on others. The appellant said it was unfair and discriminatory to limit services based on employment status, and that Home Care should not be able to decide which activities he can and cannot participate in. The appellant relied on the Manitoba Health policy (HCS 207-12 – Off-Site Services) which allows off-site service for workplace, educational and "other community activities", and on other policies that suggest the purpose of home care is to prevent long term care and hospitalization and policies that list services available including feeding, transferring and mobilization.

At appeal Home Care noted that the arrangements with the appellant, which had allowed both self-managed care for his employment needs and regular Home Care service at home, were exceptional. They were done to facilitate a successful career in circumstances that required both the flexibility of support in the workplace and reliability of care in the home.

The appeal panel noted that Home Care is generally intended for services in the home. However, Manitoba Health policies recognize that in order to achieve its objectives some additional supports may be needed, which led to the development of the Off-Site Services policy. The background section of that policy states: *"Manitoba Health recognizes the need of increasingly large numbers of adults living in the community who were participating in settings outside of their homes and need service options available to promote independence and well being. Limited supports exist in work, educational and other settings which adequately address essential personal needs of adults".*

The policy allows for homecare services for clients "who participate in workplace, educational and other community activities". The appeal panel determined that those words applied to the appellant in these circumstances, as did the words in the background to the policy that recognize that limited supports will be provided in "work, educational and other settings which adequately address essential personal needs of adults".

The appeal panel allowed the appeal and ordered that the appellant be provided with supplemental self-managed care support for five hours weekly. He could decide as to the highest priority for the use of those resources.

Authorized Charge Appeals
Residential Daily Rate Charges for stays in Personal Care Home (PCH)

2016-011-AC – Prenuptial Agreement

The appellant's daily rate was reduced by $16.50 a day based on the existence of a prenuptial agreement which has been in place prior to the appellant being panelled and entering the PCH. The appellant's daily rate charge was calculated on her income alone based on the existence of the prenuptial agreement.

2016-014-AC – Expenses submitted for relief consideration

The appellant requested relief for expenses related to maintenance costs for the appellant's home, medical costs, trust fund fees, companion care person fees, and a family member's gasoline costs to travel to visit the appellant.

The appeal was allowed in part reducing the daily rate by $7.60 a day. Relief was provided for five months of expenses maintaining the appellant's home in the community based on the Boards Guideline "Maintaining a Home or Other Property/Assets in the Community". No relief was provided for companion care fees, trust fund fees and travel expenses incurred by family members to visit the appellant. Relief for an extraordinary medical expense had been provided by Manitoba Health with the review decision.

2016-015-AC – Inability to Obtain Spousal Tax Information

The appellant's daughter and Power of Attorney (POA) had been unable to obtain any income information regarding the appellant's husband. On the basis of financial hardship Manitoba Health was asked to determine the daily rate charge on the appellant's income alone.

The POA stated that the appellant had been estranged from her husband for many years, even though no formal separation paper work had been filed. A complete breakdown of their marriage occurred. Even though they continued living in the same residence for over thirty-five years, they led totally separate lives. Manitoba Health's position was based on its Policy that requires married individuals to provide copies of their current Notices of Assessment from Canada Revenue Agency for rate determination.

In allowing the appeal the appeal panel relied on a Board Guideline that states "an appellant who has a spouse shall be assessed as single for rate-setting purposes where . . . evidence of intent to end the relationship exists and where documents showing no jointly-held assets exist". The daily rate was reduced to the minimum rate of $34.50 a day which was a reduction in the rate of $46.10 daily.

2016-016-AC – Excessive Withdrawal from Registered Retirement Income Fund (RRIF)

The basis of the appeal is financial hardship. An excess lump sum withdrawal of over $12,000 inflated the appellant's income and consequently raised the assessed residential charge. The one-time withdrawal of excess RRIF funds was done 18 days after the appellant's date of placement and paneling. The withdrawal was part of a long-term financial plan that had been set into motion prior to the appellant's placement into the personal care home. Manitoba Health did not provide any adjustment for the excess RRIF income as the funds were withdrawn after date of panel which is in keeping with its policy regarding "Income from Registered Retirement Income Funds" (RRIF) and "Registered Retirement Savings Plans" (RRSP).

In allowing the appeal, the appeal panel reduced the rate by $32.30 daily to the minimum rate of $34.50 daily. The appeal panel acknowledged that the full financial plan that led to a third and final excess RRIF withdrawal had been set into motion before the appellant had been paneled. Therefore, the Board decided not to consider the sum as income when assessing the residential charge, even though this occurred after the paneling date.