

Manitoba Health Appeal Board

Annual Report
April 1, 2018 - March 31, 2019



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**Manitoba Health Appeal Board
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Message from the Chair

This report is for the period April 1, 2018 to March 31, 2019. It is published as part of this Board's role to provide a transparent and accountable process for resolving disagreements within certain parts of our province's health care system.

Since its inception in 1993, this tribunal serves as a positive example of how to meet the public's need for access to justice on a cost effective and timely basis. Most matters before this Board are resolved quickly, often within a few months of arising. These impressive results might not be possible if not for the dedicated professional staff serving this Board: Bob Sample, Doreen Cote and Tracey Schaak. It is appropriate at this time to single out Bob Sample as he retired on April 2, 2019 after serving this Board for 5 years. His dedication to his work shows through in the respect paid to him by the Board members and in the effective operation of this tribunal. While he will be missed, the public can rest easily knowing that his good work will continue on in those that follow.

I do not have the distinction of being the Chair of the Board for the period that this report covers. That honour lies with Grant Driedger who retired from the Board in August 2019. Under his direction the Board maintained its reputation for providing timely and professional service to the public. As Chair in the coming year, I will endeavour to carry on that legacy.

Joan Holmstrom
Chair

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 pursuant to section 9 of *The Health Services Insurance Act*.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 Assistance 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;
- 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.

¹Sections 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.

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, 2018 to March 31, 2019, the Board consisted of the following members:

1. Grant Driedger, LL.B., Chairperson
2. Richard Kennett, B.A., B.Ed., M.Ed., Vice-Chairperson
3. Patrick Caron
4. Andrea Doyle, B.Sc., LL.B.
5. Roger Gingerich, B.Sc., M.D.
6. Elaine Graham
7. Joan Holmstrom, LL.B.
8. Dr. Allen Kraut, M.D., FRCPC
9. Alan M. McLauchlan
10. Jagjit Polly Pachu, RCT (Advanced)
11. John Peters², B.A., M.Ed.
12. Priti Shah, B.A., LL.B., C. Med

² John Peters was appointed as a Board member effective May 9, 2018 (OIC 136/2018)

Board Biographies

Grant Driedger, LL.B.

Appointed May 1, 2017

Mr. Driedger was appointed Chairperson of the Board effective May 1, 2017.

Grant Driedger practices law as a partner at the firm of Smith Neufeld Jodoin LLP, based in Steinbach. He has served as a Bencher with the Law Society of Manitoba since May of 2014, a role which has included adjudication in hearings of the Discipline Committee and the Admissions and Education Committee. Previously he has served as an adjudicator with the Pipeline Arbitration Committee, a federal tribunal which hears cases arbitrating compensation disputes regarding pipelines, and has also chaired many hearings involving Canada Pension Plan benefits as a member of the Canada Pension Plan Review Tribunal. He resides in Grunthal with his wife and three children, where he has been actively engaged in a variety of volunteer activities, including coaching minor hockey; serving on the board of various community organizations; and engaging in church related endeavours.

Richard Kennett, B.A., B.Ed., M.Ed.

Appointed October 26, 2011

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

From 1970 to 2000, Richard Kennett was a teacher and vice principal in the Winnipeg School Division. From 2000 to 2010, he developed and managed a Manitoba Justice youth crime prevention funding program called “Lighthouses”. The program provided grants to community groups across Manitoba to engage youth outside school hours in safe and productive settings. He has served on the following governance boards – Mediation Services, The Community Unemployed Help Centre and The John Howard Society. From 1995 to 2004, he received extensive training in the facilitation of restorative justice interventions and has, until recently, been a regular mediator for Youth Justice Committees and for Mediation Services. He has facilitated victim/offender cases diverted from the courts, as well as community disputes.

Patrick Caron

Appointed October 26, 2011

Patrick Caron 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.

Andrea R. Doyle, B.Sc., LL.B.

Appointed July 11, 2017

Andrea Doyle is a lawyer with the firm Thompson Dorfman Sweatman LLP (“TDS”). After articling at TDS, she was called to the Manitoba Bar in 2010. Andrea has a broad practice that includes administrative law, bankruptcy and insolvency law, civil litigation and corporate and commercial law. She is fluently bilingual in English and in French. Andrea is a member of the Manitoba Bar Association Council and has been a member of the University of Winnipeg Alumni Association Council.

Dr. Roger Gingerich, B.Sc., 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 the Christian Medical and Dental Society of Canada for 5 years. He currently practices medicine in Steinbach MB.

Elaine Graham

Appointed May 1, 2017

Elaine Graham brings a business background to the Manitoba Health Appeal Board (MHAB). She retired as manager of a printing company 5 years ago. She graduated with a Bachelor of Commerce from the University of Manitoba in 1975. She worked in the Winnipeg banking industry before getting married and moving to Portage la Prairie, where she still resides. She has worked for the federal government in HR, owned her own photo shop and worked part-time teaching for Red River College when her children were pre-school. She is very active in her home community, having served as president of the Curling Club and promotions chair for various events including; World Jr. Curling, Provincial Curling and Manitoba Games. She brought Big Sisters to Portage and more recently started a pickleball club. Elaine brings a balanced perspective to the MHAB as part-owner of a medical clinic, wife of a chiropractor, mother of a chiropractor, naturopath and massage therapist.

Joan Holmstrom, LL.B.

Appointed May 1, 2017

Joan Holmstrom is a lawyer and is the Director of Competence at the Law Society of Manitoba. Joan received her law degree from the University of Manitoba in 1989 and was called to the Bar of Manitoba in 1990. She practiced in the field of civil litigation, specializing in insurance work, until 2004 when she joined the Law Society of Manitoba. She also presently serves on the executive of the Manitoba Highland Dancers' Association and of the Association of Canadian Legal Educators.

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. He was an attending physician in Internal Medicine at the Health Sciences Center (HSC) for 30 years, and practices clinical occupational medicine at the Manitoba Federation of Labour 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.

Alan M. McLauchlan

Appointed February 1, 2014

Alan McLauchlan 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, RCT (Advanced)

Appointed October 26, 2011

For the past 27 years, Polly Pachu 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 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 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. Currently, she is an interpreter for the Immigrant Center, Vice President of the Immigrant Women’s Association of Manitoba, a member of the SBGH Workplace Safety and Health Committee and a member of the Manitoba Federation of Labour Occupational Health Centre.

John Peters, B.A., M.Ed.

Appointed May 9, 2018

John Peters served as an educator in the Hanover School Division for 35 years. He started his teaching career in 1972 and later became a Vice-principal, Principal, Assistant Superintendent and Superintendent/CEO. Following his retirement as Superintendent in 2006, he was asked to serve as the Executive Director of the Bethesda Foundation. This Foundation’s mission is to enhance health service in the region through innovation, partnership and funding. During his 10 years with the Foundation he was able to assist the Board and be part of a team instrumental in bringing several important projects to fruition, including a Crisis Stabilization Unit, a Primary Care Centre, housing for marginalized persons, and most recently, an increased number of personal care beds for the community. John and his wife Connie, a retired registered nurse, live in Steinbach, close to their two married children and three grandchildren.

Priti Shah, B.A., LL.B., C. Med

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 2018-19 the Board's staff consisted of the following individuals:

Bob Sample	Administrator
Doreen Côté	Office Manager
Tracey Schaak	Administrative Assistant

Appeals and Hearings

Appeals

Appeals coming before the Board vary in nature. Overall, the appeals heard by the Board during 2018-19 related to decisions regarding payment of benefits with respect to insured medical services and/or travel subsidies, refused registration as an insured person, assessed authorized charges (daily rates) for residents of personal care homes and other long-term facilities, and Home Care services.

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.

After considering the merits of the written and oral evidence and submissions by the parties, in making a decision³ 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.⁴

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 2018-2019 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.

³Section 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."

⁴The powers of the Board on appeal is set out in Section 10(5) of *The Health Services Insurance Act*.

FINANCIAL INFORMATION 2018-19

In 2018-19, the annual operating budget for the Manitoba Health Appeal Board was \$139,000, and the annual salaries budget was \$209,000.

Operating Budget

The annual operating budget expenditures were \$114,194.86 for an under expenditure of \$24,805.14

Operating Budget: 2018-19 Manitoba Health Appeal Board		
Budget		\$139,000
Less Actuals		
Board Remuneration (per diems)	\$67,522.35	
Other Expenditures	\$46,672.51	
Total Actuals		<u>\$114,194.86</u>
Variance (under budget)		<u>(\$24,805.14)</u>

Figure 1 – 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 \$217,862 for an over expenditure of \$8,862.

Salaries Budget: 2018-19 Manitoba Health Appeal Board				
Description	FTE⁵	Estimate	Actual	Variance Over (Under)
Staff Salaries	3 FTE	\$185,000	\$182,711	(\$2,289)
Employee Benefits	3 FTE	\$24,000	\$35,151	\$11,151

Figure 2 – Salaries Budget

⁵ Full time equivalents

Board Activities 2018-19

Appeal Sitings and Meetings

Appeal Sitings

During 2018-19, 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 parties⁶ 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 2018-19 the Board held thirty-two sittings for the purpose of hearing appeals and considering complex motions:

# Sitings Held	Type of Appeal
9	Authorized Charges
15	Insured Benefit
7	Home Care
1	Other - MAID

Figure 3 – Sitings Held in 2018-19

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.

It is also noteworthy that there were 23 hearings scheduled but subsequently cancelled, sometimes a day before, or the day of, the hearing. There were several reasons for the cancellation or adjournment of the hearings: 1) Manitoba Health provided payment for the requested medical service, 2) Manitoba Health provided health coverage, 3) a regional health authority amended its decision to the satisfaction of the appellant, 4) appellants withdrew their appeals and, 5) hearings were rescheduled at the request of the parties for various reasons.

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 2018-19, there were no requests made by parties to an appeal to conduct hearings in the French language.

⁶The “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 sits in three member quorums/panels.⁷

The Board has decided that a five member panel should be structured for complex appeals and that a physician should be scheduled on an appeal panel when there is a medical focus to the issue at appeal and that a lawyer be scheduled on an appeal panel when there is a jurisdictional issue at appeal.

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 2018-2019, the Manitoba Health Appeal Board did not meet for a general meeting.

Appeal Sitings and General Meetings Statistics

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

Appeals Received					
Type	2018-19	2017-18	2016-17	2015-16	2014-15
Authorized Charges	60	60	44	90	86
Request for Waiver of Authorized Charge	0	1	3	5	1
Insured Benefits	35	51	45	42	24
Hepatitis C Compassionate Assistance Program	0	3	0	0	0
Home Care Program	12	18	17	10	8
Personal Care Home	3	3	8	3	4
Other Appeals	3	4	0	2	1
Total	113	140	117	152	124

Figure 4 – Review of Appeals Received

As can be seen by the chart in Figure 4 above, the number of appeals received by the Board decreased from 140 in 2017-18 to 113 in 2018-19.

The reason for the decrease of appeals for 2018-19 in comparison to the 2017-18 fiscal year was, for the most part, related to a decrease in Insured Benefit appeals. The figures provided in table 4 show that appeals filed with the Board fluctuate from year to year and consequently are unpredictable.

⁷Section 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."

As of 2017-2018, the Board is no longer accepting Request for Waiver of Authorized Charge appeals.

Appeals Heard					
Type	2018-19	2017-18	2016-17	2015-16	2014-15
Authorized Charges	29	21	22	47	27
Request for Waiver of Authorized Charges	0	0	0	5	0
Insured Benefits	15	26	28	18	11
Hepatitis C Compassionate Assistance Program	0	1	0	0	0
Home Care Program	7	8	12	5	7
Personal Care Home	0	1	0	1	2
Other Appeals	1	2	0	2	0
Total⁸	52	59	62	78	47

Figure 5 – Comparison of Appeals Heard

As can be seen by the chart in Figure 5, the number of appeals heard by the Board during 2018-19 has decreased by seven from the number of appeals heard in the previous fiscal year.

The number of appeals heard in 2018-19 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.

⁸This 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
2018-19	32	0	32
2017-18	51	1	52
2016-17	44	2	46
2015-16	51	1	52
2014-15	26	1	27

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

APPEALS

The following is a statistical summary of appeals received and heard for 2018-19.

Authorized Charge Appeals

Appeals Received

The Board received sixty Authorized Charge appeals, which is the same number of appeals received in the previous fiscal year⁹.

Breakdown of Authorized Charge Appeals Received by Regional Health Authority

The following figure shows the breakdown by regional health authority (RHA) of the sixty Authorized Charge appeals received in 2018-19:

RHA	Appeals
Interlake-Eastern	10
Northern	3
Prairie Mountain	8
Southern Health-Santé Sud	10
RHA Subtotal	31
Winnipeg	29
Total	60

Figure 7 – Breakdown by RHA of Appeals Received

Appeals Heard

During 2018-19, the Board held twenty-nine hearings for Authorized Charge appeals, which is an increase from the previous year's total of twenty-one.

⁹ In addition, there were 14 appeals brought forward from the previous fiscal year.

Disposition of Authorized Charge Appeals Heard

The disposition of the twenty-nine appeals heard by the Board in 2018-19 is as follows:

Disposition	Number	%
Appeals denied	16	55.1%
Appeals allowed to minimum charge	2	7.0%
Appeals allowed to other rate	11	37.9%
Total	29	100%

Figure 8 – Disposition of Authorized Charge Appeals

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

Manitoba Health amended its review decision	18
Withdrawn by Appellant for other reasons	4
Appellant deceased prior to hearing ¹⁰	1
Appeal filed prematurely ¹¹	4
Total	<u>27</u>

The withdrawal of eighteen 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 eighteen appeals pending at the end of the fiscal year and carried forward to 2019-2020.¹²

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.

¹⁰ 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.

¹¹ 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.

¹² 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.

Appeals Received

The Board received thirty-five Insured Benefit appeals in 2018-19, which is a decrease from the previous fiscal year's total of fifty-one¹³.

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 2018-19, the Board held fifteen hearings for Insured Benefit appeals, which is a decrease from the previous year's total of twenty-six.

Insured Benefit Appeals Heard				
2018-19	2017-18	2016-17	2015-16	2014-15
15	26	28	18	11

Figure 9 – Comparison of Appeals Heard

Disposition of Insured Benefit Appeals Heard

The disposition of the fifteen Insured Benefits appeals heard by the Board is as follows:

Disposition	Number	%
Appeals approved	0	0%
Appeals denied	13	86%
Manitoba Health advised that it was approving the request for health coverage and the appeal was withdrawn ¹⁴	1	7%
Appeal hearing commenced but did not proceed ¹⁵	1	7%
Total	15	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.

¹³ In addition, there were 25 appeals brought forward from the previous fiscal year.

¹⁴ At the commencement of the hearing, Manitoba Health advised that it would provide health coverage to the appellant.

¹⁵ At the commencement of the hearing, the appellant clarified that the procedure for which benefits were denied, and which gave rise to the appeal, was no longer being contemplated. The Board determined that there was no longer a basis for the appeal hearing to take place.

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.

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

Withdrawn as Manitoba Health approved payment	8
Withdrawn as Manitoba Health approved registration /coverage	3
Withdrawn by Appellant for other reasons	14
Appeal filed prematurely	1
Issue resolved by the parties	1
Struck-off (failure to actively pursue)	<u>3</u>
Total	<u>30</u>

There were fifteen appeals pending at the end of the fiscal year and carried forward to 2019-2020. 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 2018-2019, the Board received no 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-four appeals, the outcomes of which are as follows:

Disposition	Number	%
Appeals heard & denied	11	25%
Appeals heard & allowed	3	7%
Appeals rejected	2	4%
Appeals withdrawn/abandoned	28	64%
Total Number of Appeals Received	44	100%

Figure 11 – Disposition of Hepatitis C Compassionate Assistance Appeals

Home Care Program Appeals

Appeals Received

The Board received twelve appeals from decisions related to the provision of home care services in the province in 2018-19, which is a decrease from the previous fiscal year's total of eighteen¹⁶.

Appeals Heard

During 2018-19, the Board held seven hearings for Home Care appeals, which is a decrease of one from the previous fiscal year.

Disposition of Home Care Program Appeals Heard

The seven appeal hearings held in 2018-19 were disposed of as follows:

Disposition	Number	%
Appeals approved	0	0%
Appeals allowed in part/varied	2	28%
Appeals denied	5	72%
Total	7	100%

Figure 12 – Disposition of Home Care Appeals

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

Three appeals were pending at the end of the fiscal year and carried forward to 2019-20.

¹⁶ In addition, there were 4 appeals that were brought forward from the previous fiscal year.

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

Disposition of Home Care Appeals Heard					
Disposition	2018-19	2017-18	2016-17	2015-16	2014-15
Allowed/ Allowed In Part	2	3	6	2	3
Denied	5	3	6	3	3
Withdrawn	0	0	0	6	1
Heard & Adjourned	0	1	0	0	0
Resolved during the hearing	0	1	0	0	0
Total	7	8	12	11	7

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 twelve Home Care appeals received in 2018-19 in comparison to the appeals received in the four prior fiscal years:

RHA	Appeals 2018-19	Appeals 2017-18	Appeals 2016-17	Appeals 2015-16	Appeals 2014-15
Interlake-Eastern	0	2	4	2	0
Northern	0	1	1	0	0
Southern Health	1	0	1	0	0
Prairie Mountain Health	4	2	0	0	0
RHA Subtotal	5	5	6	2	0
Winnipeg	7	13	11	8	8
Total	12	18	17	10	8

Figure 14 – Breakdown by RHA of Appeals Received

Home Care Program appeals received from regional health authorities in 2018-19 other than Winnipeg numbered five or forty-two percent of appeals, while appeals from Winnipeg numbered seven or fifty-eight 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
2018-19	42%	58%
2017-18	28%	72%
2016-17	35%	65%
2015-16	20%	80%
2014-15	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 three appeals in relation to assessment panel decisions.

Appeals Heard

The Board held no hearings for an assessment panel decision appeal.

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

- two were withdrawn because the relevant regional health authority's assessment panel reversed its initial decision and approved the individual's paneling for long-term care;
- one was withdrawn for other reasons.

Personal Care Home Placement Appeals Received				
2018-19	2017-18	2016-17	2015-16	2014-15
3	3	8	3	4

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

The Emergency Medical Response and Stretcher Transportation Act

There were no appeals received under this *Act* regarding the temporary suspension of a licence.

There was one appeal received under this *Act* regarding the Northern Patient Transportation Program. This appeal was carried forward to 2019-20.

In addition, two “Other” appeals were filed regarding decisions made by the Provincial Drug Program (Exceptional Drug Status); however, the Board does not have jurisdiction to hear these appeals.

One “Other” appeal was heard by the Board (which had been received in 2017-18) regarding a person who appealed a decision from the Medical Assistance in Dying Program with the Winnipeg Regional Health Authority. The Board denied the appeal.

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
2018 – 2019	1	<i>The Emergency Medical Response and Transportation Act</i> - Northern Patient Transportation Program
	2	Provincial Drug Program – Exceptional Drug Status ¹⁷
2017-2018	1	<i>The Emergency Medical Response and Transportation Act</i>
	1	Medical Assistance in Dying (MAiD)
	1	Provincial Drug & Ancillary Program
	1	<i>Mental Health Act</i> – issue outside the Board’s jurisdiction
2016-17	0	
2015-16	1	Laboratory Specimen Collection Centre Licence
	1	Cleft Lip and Palate Program
2014-15	1	Laboratory License

Figure 17 – “Other” Appeals Received

Board Member Training

During 2018-19, the Board and staff of the MHAB engaged in training and educational activities offered by the Manitoba Council of Administrative Tribunals.

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.

¹⁷ The Board did not have jurisdiction to hear these appeals.

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 normally posted on the Board's website. During the 2017-2018 fiscal year the brochure was removed from the website because it was being revised. The revisions were completed in the 2018-2019 fiscal year and the brochure has been reposted on the website. Brochures are distributed to appellants and, upon request, to members of the public.

Guidelines and Policies

Board guidelines and policies are posted on the MHAB website. This is 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.