

**Social Services
Appeal Board**

**Annual Report
2017-2018**



The Social Services Appeal Board Annual Report for the year 2017/18 can be obtained at the Appeal Board's offices at 7th floor-175 Hargrave Street, Winnipeg MB R3C 3R8; telephone 204-945-3003 or online at http://www.gov.mb.ca/fs/ssab/annual_reports.html.

This publication is available in alternate formats upon request.

Please contact Accessibility Coordinator, Katherine Wong, at 204-945-6122 or by email at katherine.wong@gov.mb.ca.



MINISTER OF FAMILIES

Room 357
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

September 2018

Her Honour the Honourable Janice C. Filmon, C.M., O.M.
Lieutenant-Governor of Manitoba
Room 235, Legislative Building
Winnipeg, Manitoba
R3C 0V8

May It Please Your Honour:

I have the pleasure of presenting the annual report of the Social Services Appeal Board for the fiscal year ending March 31, 2018.

Respectfully submitted,

Original signed by

Honourable Heather Stefanson
Minister of Families



**Social Services
Appeal Board**

**7th Floor, 175 Hargrave Street
Winnipeg MB R3C 3R8
CANADA
TEL: 204-945-3003
FAX : 204-945-1736**

September 2018

Honourable Heather Stefanson
Minister of Families
Room 357 Legislative Building
Winnipeg MB R3C 0V8

Dear Minister Stefanson:

I am pleased to submit the annual report of the Social Services Appeal Board for the fiscal year ending March 31, 2018.

Section 26 of The Social Services Appeal Board Act states that within six months after the end of the government's fiscal year, the appeal board must provide the Minister with a report about the board's activities during that fiscal year. Within that report, the board has in the past provided sample decision letters in order to provide a reference to the types and range of decisions that are made by the board. We are pleased to report that a sample of our decision letters are now provided online, following strict confidentiality protocols at <http://www.gov.mb.ca/fs/ssab/decisions/index.html>.

The board is proud of its continued efforts to provide a fair and impartial appeal process to Manitoba citizens as well as informing and offering recommendations to the Minister related to matters arising from appeal hearings.

Sincerely,

Original signed by

James C. McCrae
Chairperson



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BOARD MEMBERSHIP

The Social Services Appeal Board (SSAB) consists of 15 members who are appointed by the Lieutenant Governor in Council. Members must represent the social, economic, and cultural diversity of the province. They must also exhibit knowledge of the social programs and services that have the right of appeal to the Appeal Board. Members cannot be employees of a minister responsible for an act in which the right of appeal is granted. Each member is appointed for a term of up to two years and may be reappointed for two additional two-year terms.

Staff that support the activities of the board are employed by the Department of Families.

Appeal Board Appointees during the 2017/18 fiscal year:

Chairperson: James C. McCrae

Vice-chair: Carmanne Berry

Members: Teresa Banman
Viola Davidson
Taranjit Dhaliwal
Jason Guy Glesby
Dolores Hardy
Zanna Joyce
Shirley Kalyniuk
Helene Lariviere
Garry McLean
Annette Niven
Treena Ross

We have 2 vacancies as a result of resignation

Social Services Appeal Board Staff:

Gord Greasley, Director
Kim Harrison, Hearing Officer
Linda Bothorel, Administrative Assistant
Karen McKane, Administrative Secretary

Legal Counsel: Vivian Rachlis, Thompson, Dorfman, Sweatman

BOARD BIOGRAPHIES – 2017/18

James C. McCrae, Chairperson

Appointed May 10, 2017

The career of board chair James McCrae of Brandon spans many years within all levels of government. He has served as a City Councillor for the City of Brandon and as the MLA for Brandon West from 1986 to 1999. He was appointed Attorney General, Minister of Health and Minister of Education. A former Canadian citizenship judge, James has also been involved with numerous boards, committees and charitable organizations.

Carmanne Berry

Appointed May 10, 2017

Anne worked for Child Care Subsidy in the Province for many years. Prior to that she worked in the banking community around Manitoba, including the City and the North. These skills have aided in her decision-making on both moral and financial issues on the Advisory Board.

Teresa Banman

Appointed May 10, 2017

Teresa was a career civil servant with the Province of Manitoba, recently retiring with over 33 years of service. She graduated from the University of Winnipeg with a degree in Urban Studies, and has always been an active volunteer who strongly believes in applying her experience to strengthen and grow her communities.

Teresa has been Chairperson on various associations in the provincial educational system, has participated with numerous charitable organizations throughout southeastern Manitoba, and over the years, has managed various sports teams in the Steinbach area.

Additionally, as a passionate believer in the inspirational properties of people participating in the Arts, she has volunteered for several years with the Board of Directors of the Steinbach Arts Council.

For the past 26 years, Teresa has been extremely proud of devoting herself to assisting Manitobans in receiving fair and equitable treatment while they have been dealing with mental health challenges. She fundamentally believes that each person has a life story that is worthy of being heard and respected.

Viola Davidson

Appointed May 10, 2017

Viola is a practising Registered Psychiatric Nurse, with a varied job spectrum in Mental Health spanning 37 years. She has worked in institutions, hospitals and the community, providing assessments, education, referrals, treatment and counselling for consumers and families. At various stages in her career, she specialized in acute and chronic care, learning disabilities, substance use disorders, schizophrenia, personality disorders, and crisis interventions. She is currently part of the Crisis Stabilization Unit team. As well she is a board member of Clubhouse Inc.

Taranjit Dhaliwal

Appointed May 10, 2017

Taranjit is currently a student in the Faculty of Science at the University of Manitoba. She has worked with a Manitoba hospital and its board members on a project regarding cleanliness. She volunteers her time at several social services and health agencies.

Jason Guy Glesby

Appointed May 10, 2017

Jason is the owner of Guy's Landscaping and also owned Guy's Place, a garden center in Winnipeg. Jason was also a City of Winnipeg Transit driver and became a railway conductor. Jason is an active member with the motion picture industry union. Jason also volunteers for Neighbor Clean. Jason is involved with preserving vintage Airstream travel trailers and trains, and travels and camps around Manitoba and surrounding areas. Jason also volunteers with the Christmas Cheer Board.

Dolores Hardy

Appointed May 10, 2017

Dolores is a retired teacher/guidance counselor who has supported and worked for the Brandon School Division for many years. Since her retirement Dolores has worked as a Faculty Supervisor for student teachers at Brandon University. Dolores also volunteers at her former school on a casual basis. She believes in helping educators who are striving to maintain an enriched learning environment in their school communities.

Zanna Joyce**Appointed August 15, 2012**

Zanna is an educator in the field of Financial Literacy, operating from the point of view of the coaching style she uses in her additional work as Project Development Coach in her firm Duckwranglers. This work has enabled her to gain direct experience in working with many communities, from corporate to inner-city, from the environment to the arts, which informs her decision-making with the Social Services Appeal Board.

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

Shirley Kalyniuk**Appointed May 10, 2017**

Shirley has set an example by encouraging women to break barriers and become involved in the democratic process. She was the first woman municipal politician in the Town of Rosscburn, elected in 1983. She was later elected the first woman mayor, a position she held until 2014. Shirley is the recipient of many honours such as the Rural Economic Leadership Award, the Queen Elizabeth Golden Jubilee medal and the Queen Elizabeth Diamond Jubilee medal. In 2014 she retired from municipal politics after 31 years. One of Shirley's lasting legacies is her work to promote women's involvement in municipal government. In 2015, she was the recipient of the Federation of Canadian Municipalities' prestigious Ann MacLean Award for Outstanding Service by a Woman in Municipal Politics. She continues to be very engaged in her community. Shirley Kalyniuk did what she set out to do in 1983 – make a difference.

Helene Lariviere**Appointed May 10, 2017**

As the Executive Director of EPIC/SMILE St. Malo Inc., Helene brings many years of experience in working with individuals with intellectual disabilities to the Social Services Appeal Board. Helene has also completed relevant certificate courses including Mental Health First Aid and Foundations and Supervision in Disability Services.

Garry McLean**Appointed January 13, 2016**

Garry McLean worked in the field of social services in Manitoba and Ontario for 40 years with First Nations and the federal government. In recent years, he has worked in sales of vehicles and mobile homes. He volunteers at the Friendship Centre and has worked with Elders in the Ojibwa way of teaching for the last 35 years.

Annette Niven**Appointed March 25, 2013**

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

Treena Ross**Appointed May 10, 2017**

Treena has worked in the computer technology, accounting and business sectors. She brings entrepreneurial experience with her online marketing and promotional company. More recently she has worked and coordinated volunteers in a variety of areas such as non profit and fundraising. She is an active advocate for the disabled and disadvantaged by providing information about provincial and national programs while attending appointments and meetings to help support clients so that they can remain in their communities with appropriate supports. By supporting community members she is able to make a difference and propose changes to different levels of government to help support better policies and programs.

JURISDICTION OF THE SOCIAL SERVICES APPEAL BOARD

The Social Services Appeal Board is the independent appeal body for the majority of programs and services provided by the Department of Families. The board reports directly to the Minister of Families.

The board was first established in 1959 by The Department of Welfare Act. In 1974, that Act was repealed and the board continued under the provisions within The Social Services Administration Act. On February 18, 2002, The Social Services Appeal Board (SSAB) Act was proclaimed.

Under The Social Services Appeal Board Act, the board has the ability to determine its own administrative policies and procedures. A series of information bulletins has been developed and made available in order to provide this information to the public.

The board's decisions cannot be overturned by the minister's office. Only the board, through a reconsideration of its decision, or the Court of Appeal, may overturn a decision.

There are several different issues that can be appealed. These are summarized below:

Adoption Agency Licensing

Under Section 9 of The Adoption Act, an individual may file an appeal with the Appeal Board if the director refuses to issue a licence for an adoption agency. An individual may also file an appeal if a licence that was previously issued has been suspended, cancelled or not renewed.

Child Care Facility Licensing

A person who is refused a licence for the operation of a child care facility other than a foster home or whose licence is suspended, cancelled or refused renewal may appeal this decision to the Appeal Board under Section 8(5) of The Child and Family Services Act.

Child Care Licensing and Subsidies

Section 20 of The Community Child Care Standards Act allows the Appeal Board to hear appeals on the following four issues:

- the refusal to issue a licence to a child care facility
- the suspension or revocation of a child care facility licence
- the imposition of terms or conditions on a child care facility licence
- the denial or amount of a child care subsidy

Child Care Qualifications Certification

Section 30 of the Community Care Standards Act allows a person to appeal when they do not agree with the Director's decision regarding their application for a child care certificate.

Financial Assistance Programs

Employment and Income Assistance Program AND Rent Assist

Subsection 9(3) of The Manitoba Assistance Act gives an individual the right to appeal to the Appeal Board for the following reasons:

- a. he or she was not allowed to apply or re-apply for income assistance or general assistance or shelter assistance
- b. his or her request for income assistance, general assistance or shelter assistance or for an increase in income assistance, general assistance or shelter assistance was not decided upon within a reasonable time
- c. his or her application for income assistance, general assistance, or shelter assistance was denied
- d. his or her income assistance, general assistance or shelter assistance was cancelled, suspended, varied or withheld
- e. the amount of income assistance, general assistance or shelter assistance granted is insufficient to meet his or her needs

55 PLUS Junior Component

The Junior Component of the 55 PLUS Program provides applicants with the right to appeal to the Appeal Board if an applicant is told that he or she is not eligible to receive benefits under the 55 PLUS Program. An appeal may also be filed if an individual disagrees with the level of benefits that he or she is receiving under the program. The right to appeal for these reasons is granted under Section 9 of the Income Supplement for Persons Not Eligible for Old Age Security Benefits (55 PLUS) regulation of The Social Services Administration Act.

Manitoba Prenatal Benefit

If an individual disagrees with the assessment or re-assessment of his or her Manitoba Prenatal Benefit, the individual can appeal the decision under Section 12 of the Manitoba Prenatal Benefit regulation under The Social Services Administration Act.

Residential Care Facility Licensing

A person may appeal to the Appeal Board, the Department's decision to deny, suspend or cancel a licence for a residential care facility. An individual may also file an appeal with the Appeal Board if a letter of approval relating to a residential care facility is cancelled or suspended. The right to appeal these decisions for adult facilities is granted under Section 13 of The Social Services Administration Act.

marketAbilities Program (Eligibility)

The Appeal Board hears appeals regarding the marketAbilities Program. An appeal may be filed if the director refuses an application on the grounds that the applicant does not meet the eligibility criteria for enrolment. The right to appeal this decision is granted under Section 6 of the Vocational Rehabilitation of Disabled Persons regulation under The Social Services Administration Act.

Community Living disABILITY Services (Eligibility and Individual Care Plan)

The Appeal Board is also responsible for hearing appeals regarding The Vulnerable Persons Living with a Mental Disability Act. Section 16 of the act allows individuals to appeal when a person's eligibility for entrance into the program is denied, or there is a dispute concerning an individual's support services plan.

THE APPEAL AND HEARING PROCESS

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

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

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

The Appeal Board has the power to summon witnesses if required.

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

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

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

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

FINANCIAL INFORMATION

In 2017/18, the annual budget for the Social Services Appeal Board was \$433,000. This amount was apportioned into \$391,000 for staff and board salaries and benefits, and \$42,000 for operating costs. The actual expenditures were \$539,000.

The board members' per diem payments are paid as salary expenses. In the 2017/18 fiscal year, the amount spent on board per diems was \$79,300.

09-3F Social Services Appeal Board

Expenditures by Sub-Appropriation	Actual 2017/18 \$000	FTE*	Estimate 2017/18 \$000	Variance Over/(Under)	Expl. No.
Total Salaries and Employee Benefits	449	4.00	391	58	
Total Other Expenditures	90		42	48	1
Total Expenditures	539		433	106	

* Full time equivalents do not include board positions.

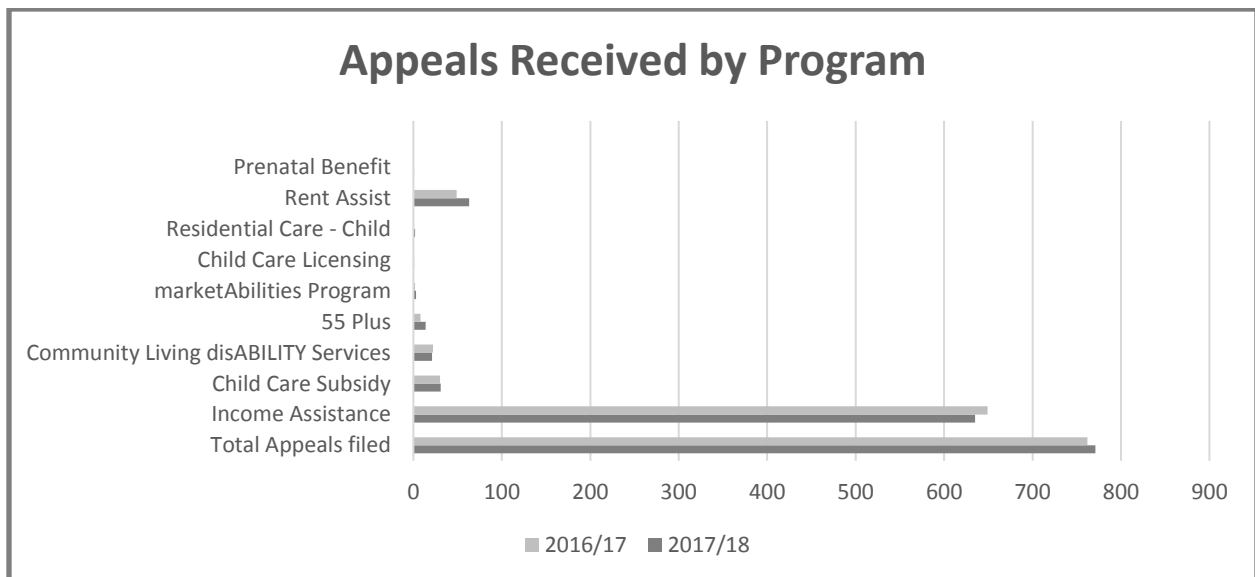
1. The variance is primarily due to new board members appointed in 2017/18, many of whom live in rural areas, resulting in increases in travel costs (hotel, mileage, meal allowances)

Board members are paid a per diem when they attend hearings, meetings, and training sessions. For a full day, the Chairperson receives \$243.00 and board members receive \$139.00. For a half day, the Chairperson receives \$138.00 and board members receive \$79.00.

APPEAL ACTIVITY

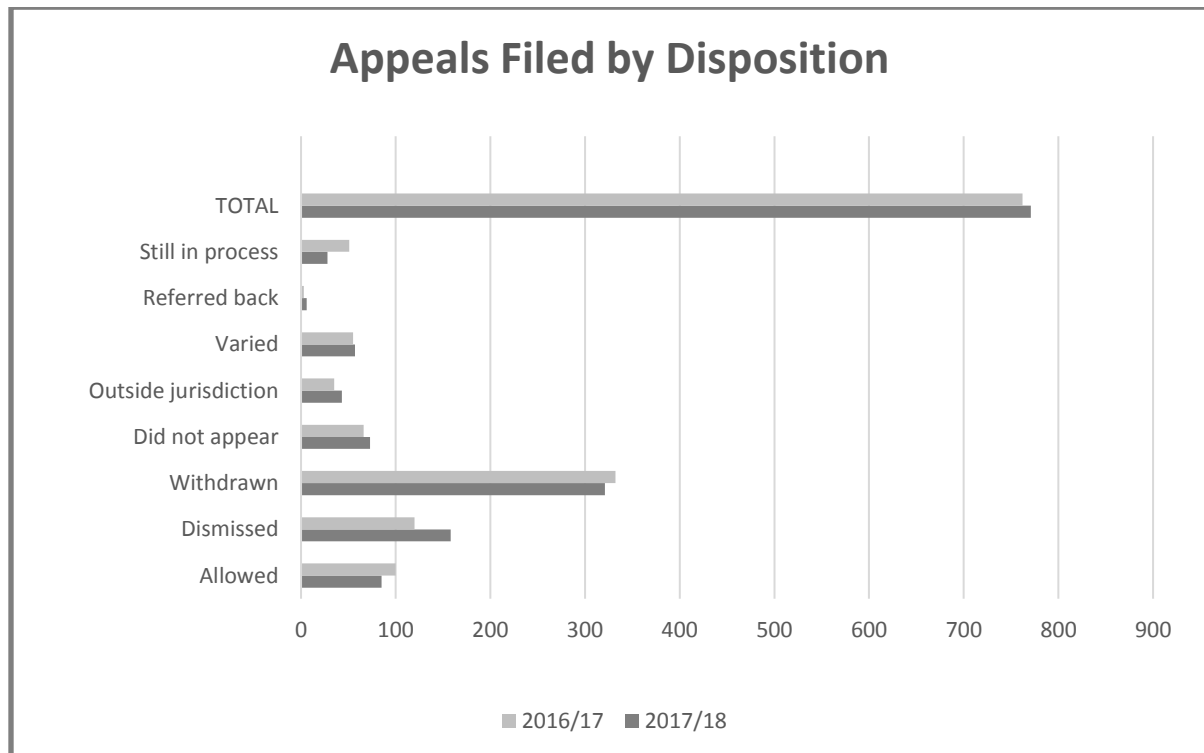
Appeals Received by Program

	2017/18	2016/17
TOTAL APPEALS FILED	771	762
Employment and Income Assistance	635	649
Child Care Subsidy	31	30
Community Living disABILITY Services	21	22
55 Plus	14	8
marketAbilities Program	3	2
Child Care Licensing	1	1
Residential Care - Child	2	1
Rent Assist	63	49
Prenatal Benefit	1	0



Appeals Filed by Disposition

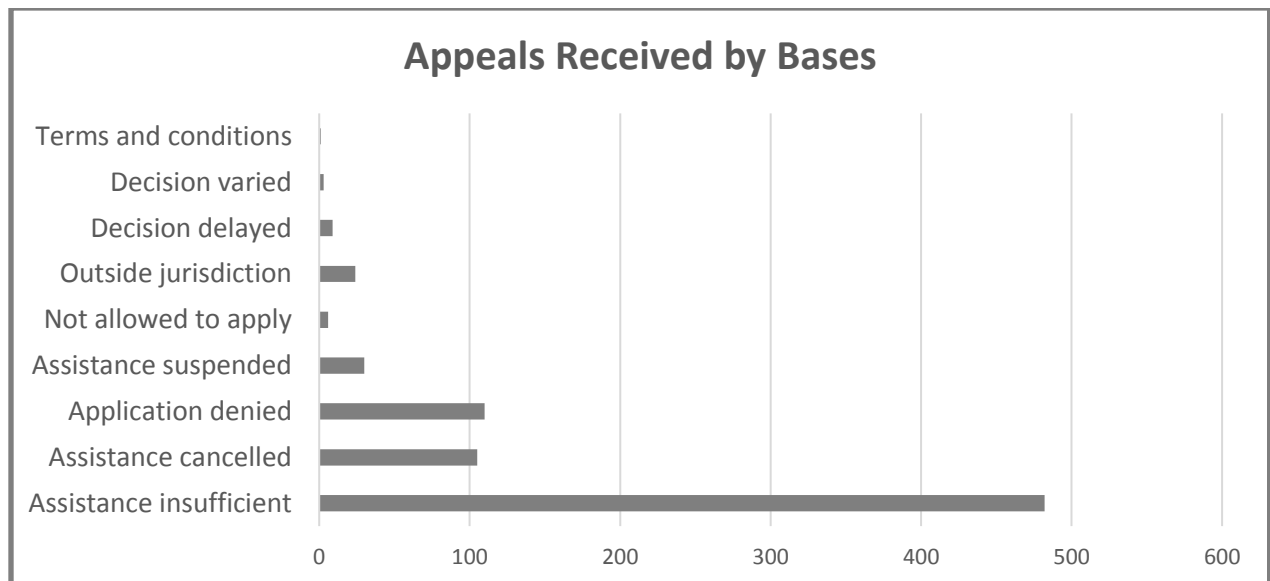
	2017/18	%	2016/17	%
Allowed	85	11	100	13
Dismissed	158	20	120	16
Withdrawn	321	42	332	43
Did not appear	73	9	66	9
Outside jurisdiction	43	6	35	5
Varied	57	7	55	7
Referred back	6	1	3	0
Still in process	28	4	51	7
TOTAL	771	100	762	100



Appeals Received by Bases

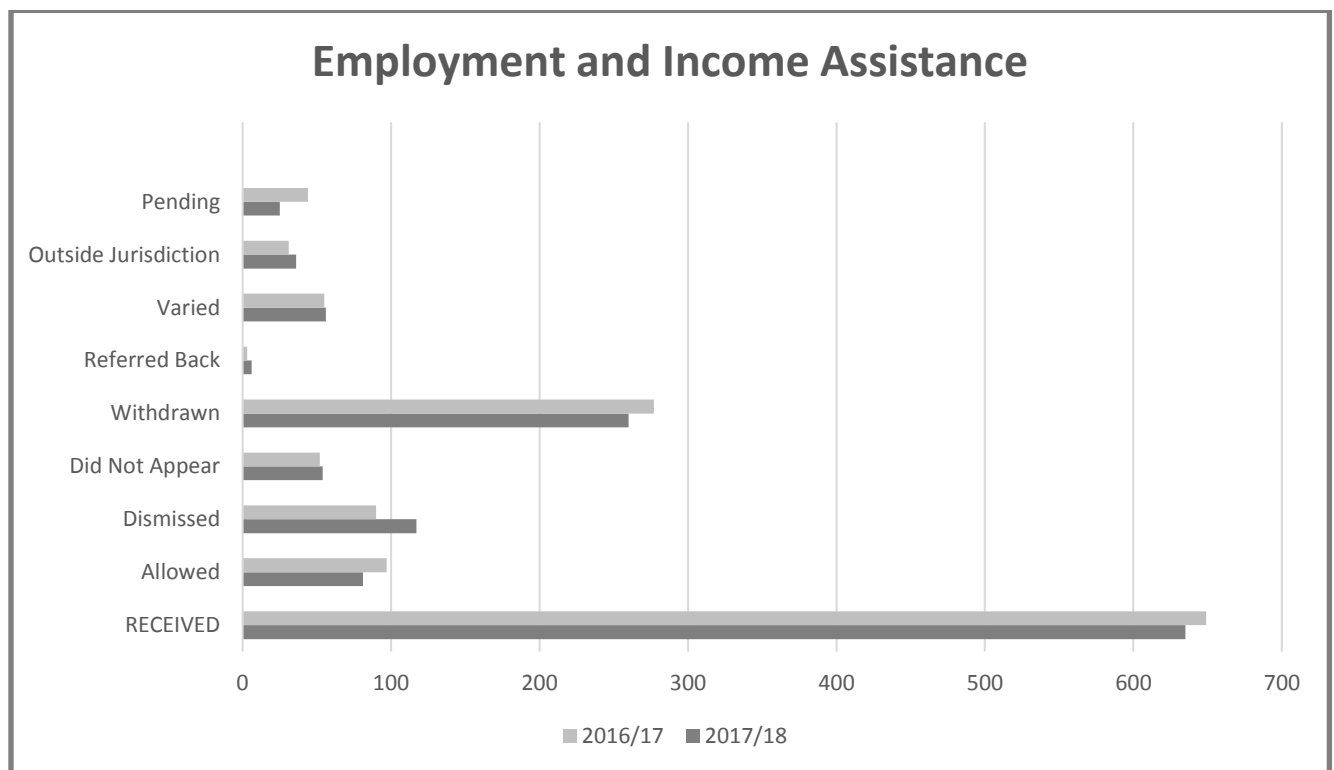
Of the 771 appeals filed during the 2017/18 fiscal year, the bases of appeal were as follows:

Assistance insufficient	482
Assistance cancelled	105
Application denied	110
Assistance suspended	30
Not allowed to apply	6
Outside jurisdiction	25
Decision delayed	9
Decision varied	3
Terms and conditions	1



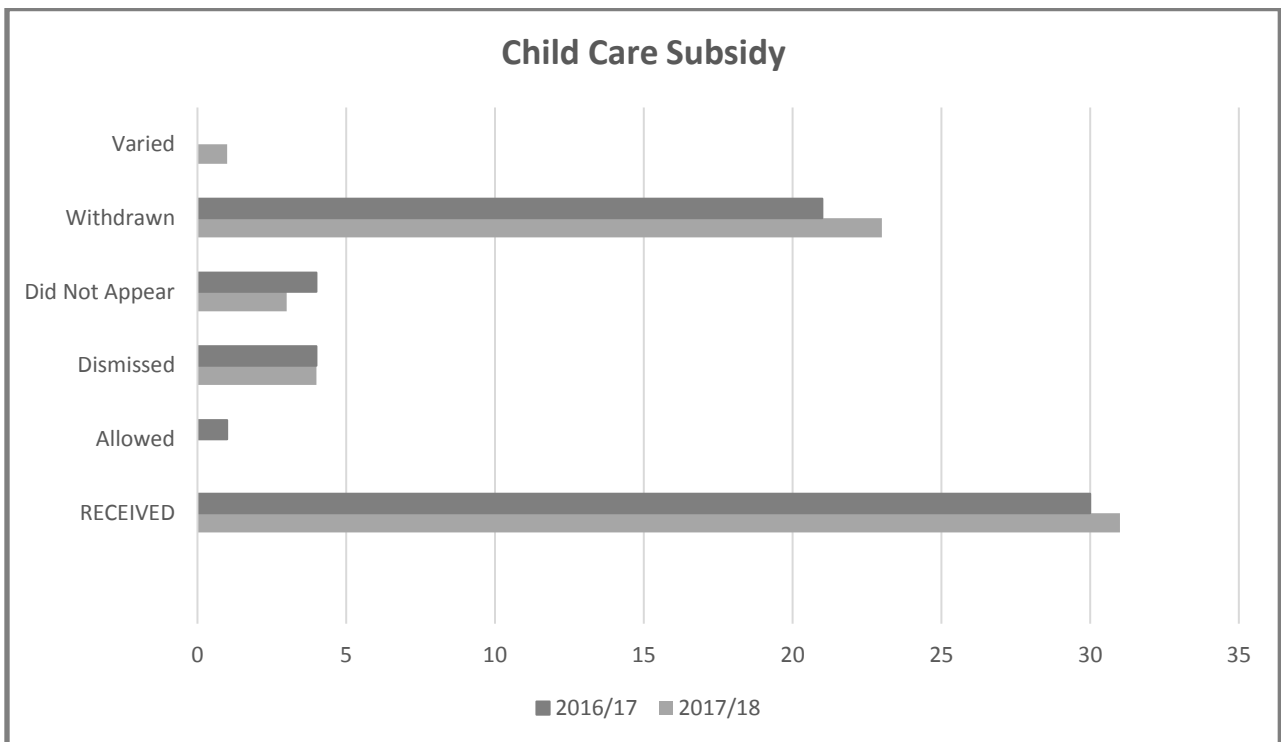
Employment and Income Assistance:

DISPOSITION	2017/18	2016/17
Received	635	649
Allowed	81	97
Dismissed	117	90
Did Not Appear	54	52
Total withdrawn (includes abandoned, clarified and resolved)	260	277
Referred Back	6	3
Varied	56	55
Outside Jurisdiction	36	31
Pending	25	44



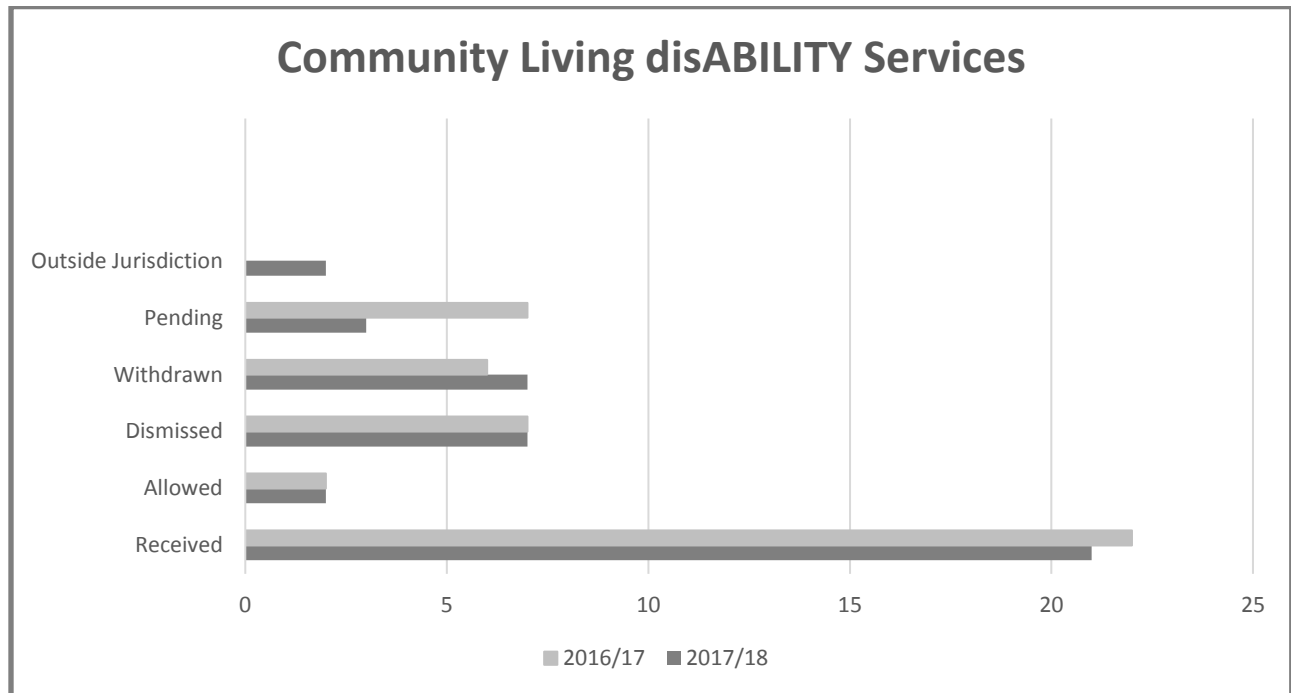
Child Care Subsidy:

DISPOSITION	2017/18	2016/17
Received	31	30
Allowed	0	1
Dismissed	4	4
Did Not Appear	3	4
Total withdrawn (includes abandoned, clarified and resolved)	23	21
Varied	1	0



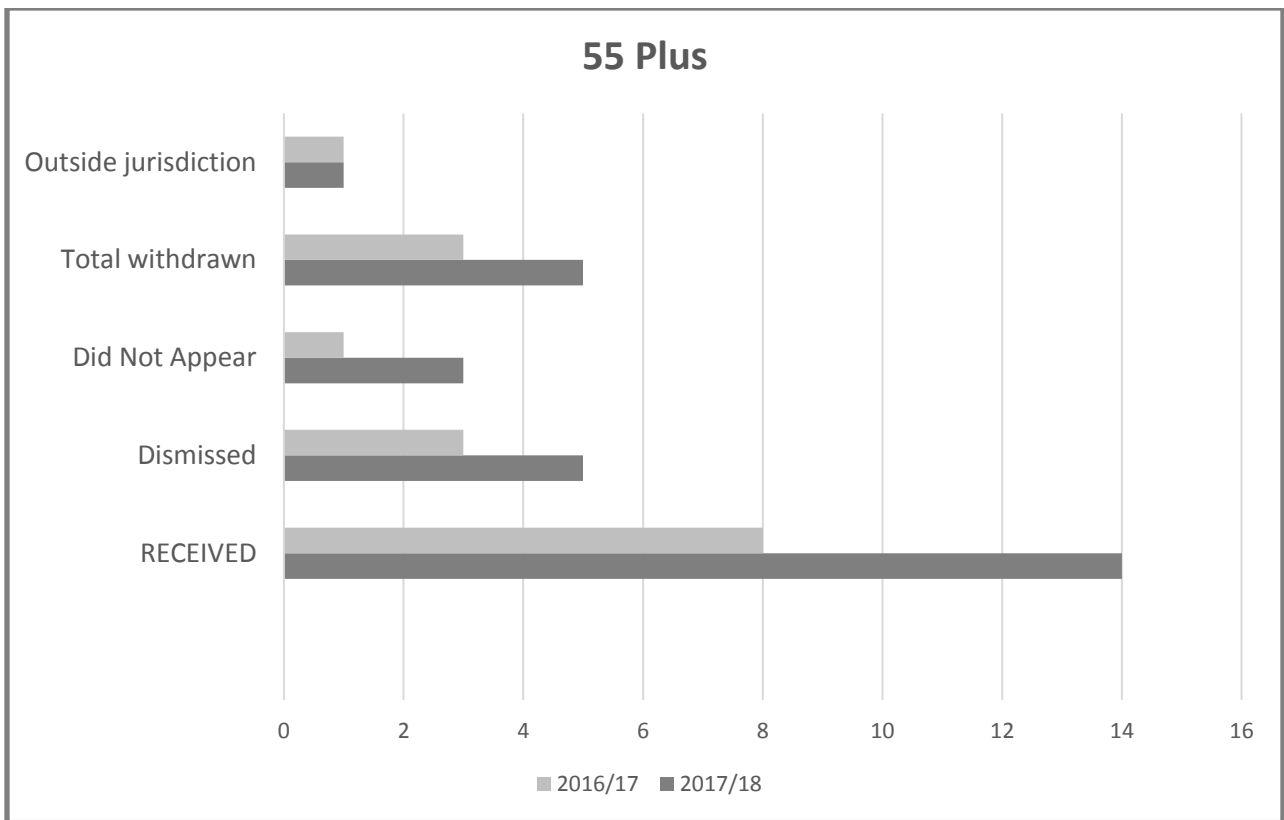
Community Living disABILITY Services:

DISPOSITION	2017/18	2016/17
Received	21	22
Allowed	2	2
Dismissed	7	7
Withdrawn	7	6
Pending	3	7
Outside Jurisdiction	2	0



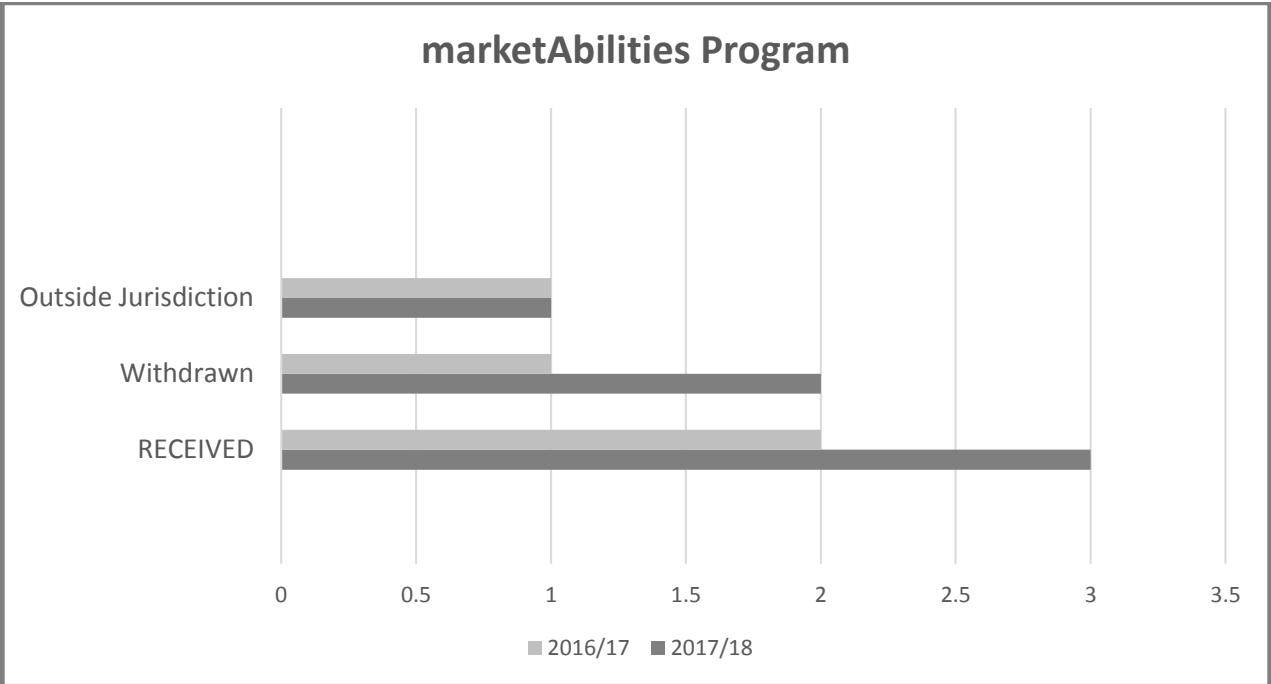
55 Plus:

	DISPOSITION	2017/18	2016/17
	Received	14	8
	Dismissed	5	3
	Did Not Appear	3	1
	Total withdrawn (includes abandoned, clarified and resolved)	5	3
	Outside Jurisdiction	1	1



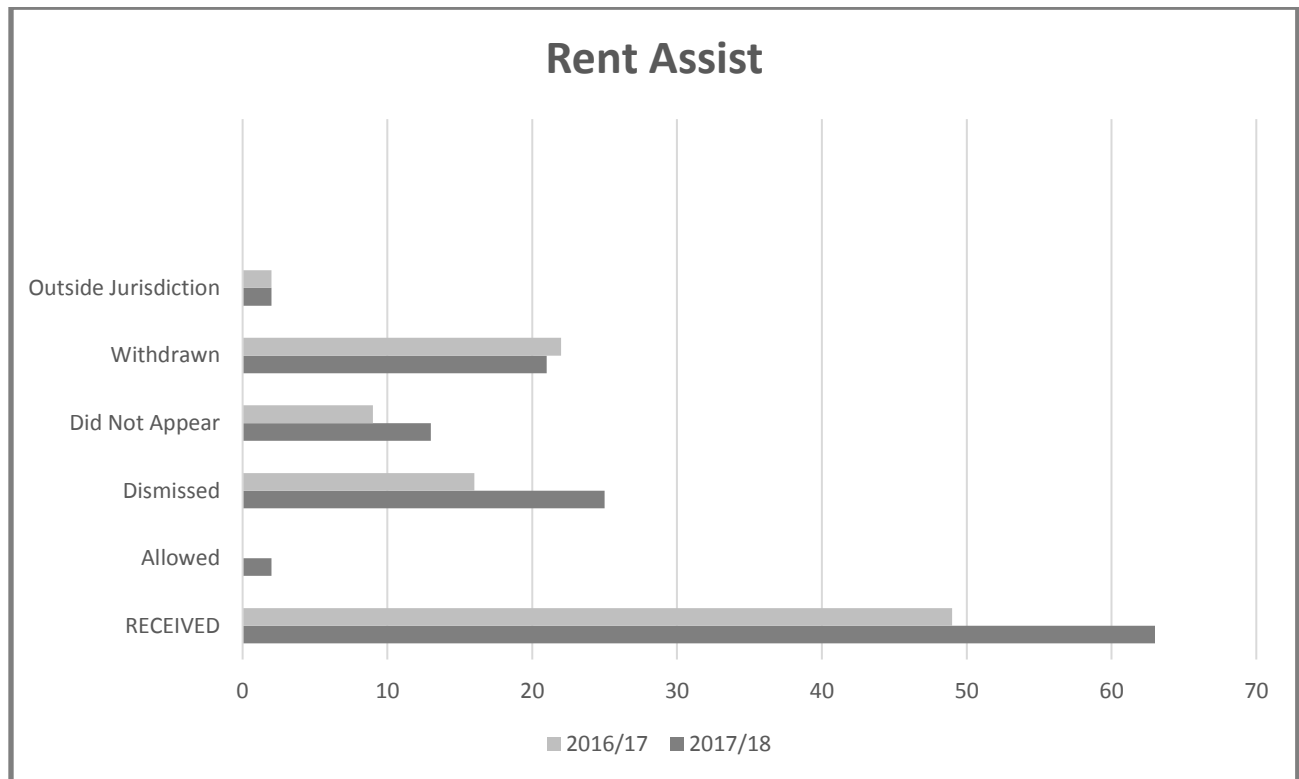
marketAbilities Program:

DISPOSITION	2017/18	2016/17
Received	3	2
Withdrawn	2	1
Outside Jurisdiction	1	1



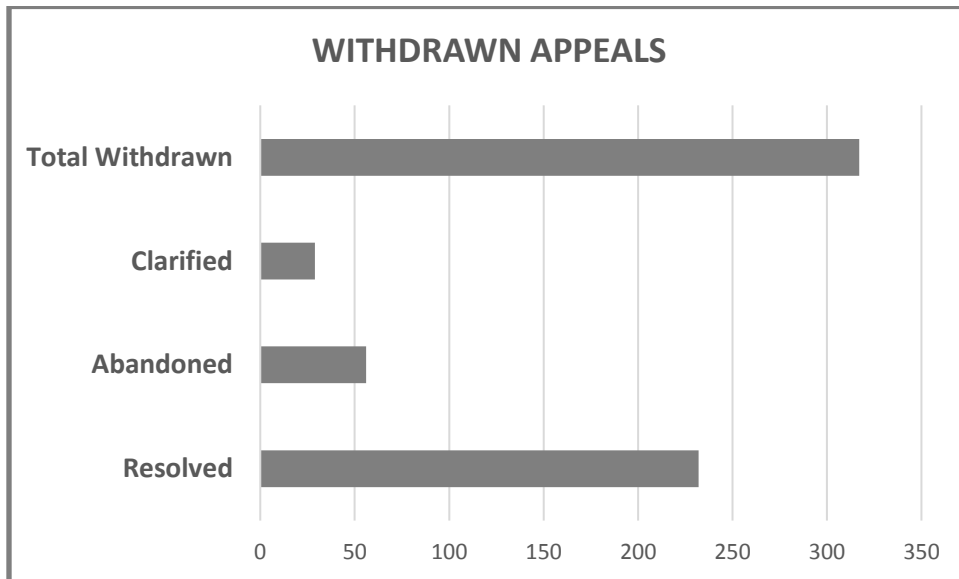
Rent Assist:

DISPOSITION	2017/18	2016/17
Received	63	49
Allowed	2	0
Dismissed	25	16
Did Not Appear	13	9
Withdrawn	21	22
Outside Jurisdiction	2	2



WITHDRAWN APPEALS

Resolved ¹	236
Abandoned ²	56
Clarified ³	29
Total Withdrawn	321

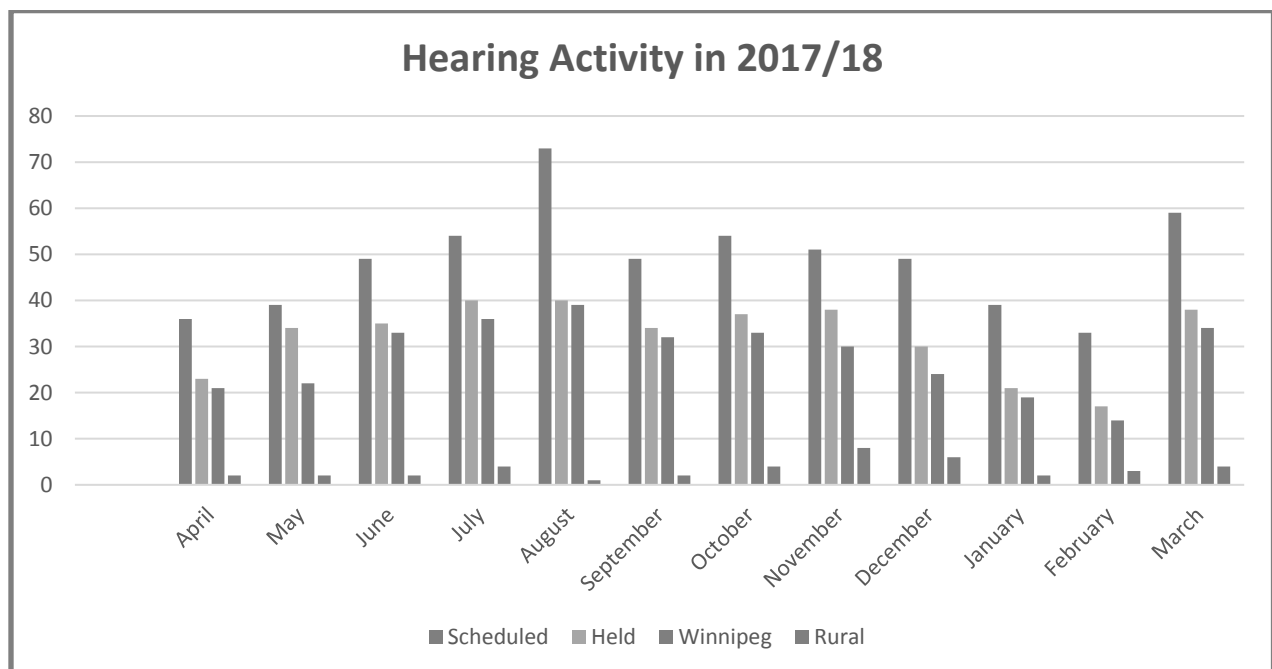


Notes:

- ¹ A **resolved** appeal means that some action was taken by the Department to address the concerns raised in the appeal.
- ² An **abandoned** appeal means that the Appeal Board has been unable to contact the appellant for a significant period of time and their appeal has been closed.
- ³ A **clarified** appeal means that an explanation by the Department caused the appeal to be withdrawn.

Hearing Activity in 2017/18

	Scheduled	Held	Winnipeg	Rural
April	36	23	21	2
May	39	24	22	2
June	49	35	33	2
July	54	40	36	4
August	73	40	39	1
September	54	34	32	2
October	54	37	33	4
November	51	38	30	8
December	49	30	24	6
January	39	21	19	2
February	33	17	14	3
March	59	38	34	4
Totals*	590	377	337	40



Of the 771 appeals received in 2017/18, 377 or 49% went to a hearing phase.

*Includes some appeals filed in previous fiscal years.

APPEALS WITH OUTCOMES FAVOURABLE TO THE APPELLANTS

For the 2017/18 fiscal year, there were 85 appeals allowed. They included 81 for the Employment and Income Assistance program, 2 for the Rent Assist Program, and 2 for Community Living disABILITY Services. There were also 236 appeals withdrawn as they were deemed to be resolved and another 57 appeals where the board varied the decision of the director to favour the appellant.

As a result, in 2017/18 a total of 378 of the appeals processed, or 49% of the appeals were resolved in favour of the appellants.

Employment and Income Assistance - Reasons for Appeal

Of the 635 appeals received for the Employment and Income Assistance Program in 2017/18, the most common reasons for filing appeals were as follows:

Medical eligibility	211
Financial resources	40
Health needs	79
Overpayments	50
Shelter costs	30
Special needs	17
Common-law union	17
Basic needs	45
Non-cooperation	37

These reasons total 523 appeals, which is 68% of the appeals filed.

These reasons for appeal apply only to the Employment and Income Assistance program.

REQUESTS FOR RECONSIDERATION

According to The Social Services Appeal Board Act, either party to the appeal may request a Reconsideration of the Appeal Board's decision.

A Reconsideration Request must be filed in writing within 30 days of the decision of the Appeal Board and asks the board to take a second look and to consider the following issues:

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

REQUESTS RECEIVED

	2017/18	2016/17
Total	21	13
From appellant	19	10
From respondent	2	3

PROGRAM BREAKDOWN

	2017/18	2016/17
Employment and Income Assistance	18	10
Community Living Program	1	1
marketAbilities Program	1	0
Residential Care – Child	0	1
Rent Assist	1	1

DISPOSITION

	2017/18	2016/17
Requests granted	1	4
Requests denied	16	9
Withdrawn	4	0

OF THE REQUESTS GRANTED

	2017/18	2016/17
Decision varied	0	3
Decision overturned	0	1
Decision upheld	1	0

SUMMARY OF ADVISORY ACTIVITIES

Under The Social Services Appeal Board Act, the board has the responsibility to advise and make recommendations about matters that relate to the social services provided under the designated act. The Appeal Board met twice during the 2017/18 fiscal year and made the following recommendations to the Minister.

In 2016/17, the board raised the issue of eligibility for the Community Living disABILITIES Program. Eligibility for the program is determined through The Vulnerable Persons Living with a Mental Disability Act. The board's opinion was that the Department relied on the outdated diagnostic criteria found in the fourth edition of the Diagnostic and Statistical Manual (DSM-IV), rather than the more recent diagnostic criteria set out in the fifth edition (DSM-V). The board was concerned that the Department's reliance on DSM-IV did not fully consider the effect impaired adaptive functioning had on an individual's overall level of functioning.

In 2017/18, the board conducted a number of hearings regarding the eligibility criteria for the Community Living disABILITIES Program. The board has begun using the DSM-V criteria when considering appeals related to eligibility. The board recommends that the Department develop a standard approach to incorporating the DSM-V criteria in all its offices, to ensure that it is available to all program applicants, not just those who appeal.

Even with the use of the DSM-V criteria, service gaps exist for those adults who have extremely low adaptive behaviours, but do not meet the clinical definition of a significant intellectual impairment. Often, disorders such as autism or fetal alcohol syndrome leave the adult with the inability to live and function independently and without services to support them. The board has raised this issue in the past; it remains our opinion that comprehensive programs of adult services are needed for these vulnerable persons.

The board heard a number of appeals regarding the level of funding for transportation for medical appointments, in particular the rate for meals purchased while travelling. These rates have not been changed since at least 1994, and no longer reflect the actual costs of purchasing meals while travelling. The board notes the rates are considerably lower than the rates paid to Department employees while travelling on government business. The board recommended that the Minister review the rates with the objective of meeting the basic needs of Employment and Income Assistance recipients when they must travel to medical appointments.

The Social Services Appeal Board Act

(Assented to July 6, 2001)

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

DEFINITIONS AND PURPOSE

Definitions

1 In this Act,

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

"designated Act" means

- (a) *The Adoption Act*,
- (b) *The Community Child Care Standards Act*,
- (c) *The Employment and Income Assistance Act*,
- (d) *The Social Services Administration Act* or a regulation under that Act,
- (e) *The Vulnerable Persons Living with a Mental Disability Act*,
- (f) any other Act or regulation designated as a designated Act in the regulations; (« loi désignée »)

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

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

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

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

Purpose

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

APPEAL BOARD

Social Services Appeal Board

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

Members

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

Who can be a member

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

- (a) be representative of the regional, economic and cultural diversity of Manitoba;
- (b) be knowledgeable about social services and programs under designated Acts; and
- (c) not be employees under the control of a minister responsible for a designated Act.

Two-year terms

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

Reappointing a member

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

Member continues to hold office

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

Remuneration and expenses

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

Chair and vice-chair

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

Duties of vice-chair

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

Staff

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

Responsibilities of the appeal board

8 The appeal board has these responsibilities:

- (a) to hear and decide appeals under designated Acts;
- (b) at the minister's request, to advise and make recommendations about matters that relate to social services and programs in Manitoba;
- (c) on its own initiative, to advise and make recommendations to the minister about social services provided under the designated Acts;
- (d) to perform any other duties assigned to it by an Act or regulation or by the minister.

Procedural rules

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

Posting information about appeals

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

PANELS OF THE APPEAL BOARD

Board to sit in panels

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

Assigning members to panels

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

Chair of panel

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

Who is not eligible to be a member of a panel

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

(a) is a relative of a party; or

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

Quorum

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

Jurisdiction of panel

11(6) In considering and deciding an appeal,

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

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

APPEAL TO THE APPEAL BOARD

Filing an appeal

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

Time limit for filing

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

Extending the time limit

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

Reasons

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

Parties

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

Parties to be present

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

Advocates

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

Notice to the designated officer

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

Designated office must forward documents

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

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

Hearing date

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

Notice

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

Parties may examine evidence

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

Powers and duties of the board

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

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

Hearing process: rules of evidence do not apply

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

Hearing by teleconference

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

Closed hearing if appellant requests

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

Adjournment

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

ORDER OF THE APPEAL BOARD

Order of the board

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

- (a) confirm, vary or rescind the order or decision of the designated officer;
- (b) make any order or decision that the designated officer could have made; or
- (c) refer the matter back to the designated officer for further consideration by the designated officer in accordance with any direction of the appeal board.

Reasons

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

Time limit for making order

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

Order given to the parties

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

Method of giving the order

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

Order must be given effect

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

Reconsideration of the order

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

Time limit for making request

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

Time limit for deciding request

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

Reasons

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

APPEAL TO COURT OF APPEAL

Appeal to Court of Appeal

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

Time limit

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

Parties

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

Order of Court of Appeal

24 The Court of Appeal may

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

REGULATIONS

Regulations

25 The Lieutenant Governor in Council may make regulations

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

ANNUAL REPORT

Annual report

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

PROTECTION FROM LEGAL ACTION

Protection from legal action

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

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

TRANSITIONAL

Transitional: definitions

28(1) *In this section,*

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

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

Appeals already commenced

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

CONSEQUENTIAL AMENDMENTS

29 to 32

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

33

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

34

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

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

C.C.S.M. reference

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

Coming into force

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

Coming into force: section 33

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

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