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MANITOBA HEALTH
APPEAL BOARD

ANNUAL REPORT

APRIL 1, 2022 - MARCH 31, 2023



This communication is available in multiple formats upon request.



Manitoba Health Appeal Board Annual Report April 1, 2022 to March 31, 2023

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Message from the Chair

I am pleased to present this report for the period April 1, 2022 to March 31, 2023 for the Manitoba Health Appeal Board. 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.

During the COVID-19 pandemic and subsequent lockdowns, the Board continued holding hearings with the use of technology. Due to the provincial regulations for social/physical distancing, the format for hearings transitioned from in-person to virtual delivery. The Board also provided accommodation for parties who requested an in-person hearing format in order to reduce an identified barrier and ensure equal access to justice. This ensured that residents of Manitoba had continuous access to our independent arms-length appeal process.

A secure digital platform was adopted this year eliminating the need for paper based hearing material. This secure digital platform was introduced in an effort to increase accessibility to Board members while maintaining sustainable secure record access. This initiative provided value added savings to Manitobans through a reduction of operation costs and the Board's overall carbon footprint.

As caretakers of information, the Board understands its responsibility to keep information secure. Following a break in at our 500 Portage location, physical security and information storage upgrades were made in response to assessment recommendations following this event. The Board appreciates the efforts by staff and stakeholders in achieving timely responses to those affected by the break in and in completing upgrades for improved security going forward.

The Board looks forward to engaging in initiatives that foster and advance its priority of providing a secure and accessible adjudication platform for all Manitobans.



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 Appeal 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 (The Board) is an independent quasi-judicial administrative tribunal established pursuant to section 9 of The Health Services Insurance Act¹ whose members are appointed by Order-in-Council.

The Board is responsible for:

- hearing and determining appeals as specified under *The Health Services Insurance Act*, *The Emergency Medical Response and Stretcher Transportation Act* and *The Mental Health Act (Charges Payable by Long Term Patients Regulation 155/97)*;
- performing any other duties assigned by any Act or regulation of the Legislature; and
- performing any other duties assigned by the Minister.

In summary, the Board:

- serves as an appeal body for recipients and providers of health services and others as provided for in the legislation referred to above;
- ensures natural justice, fairness and due process for appellants and respondents;
- provides timely, fair and impartial adjudication, and independent decisions regarding appeals; and
- serves as an advisory body to the Minister on all matters referred by the Minister, and responds to requests from the Minister within a reasonable time.

¹Sections 2(1), 9, 10, 57(4), 57(5), 58, 61, 85.1(1), 85.1(2), 112.1, 113(1)(dd), 118.2(1), 118.2(3), 118.2(4) and 127(1) of the The Health Services Insurance Act specifically refer to the Board. Sections 1, 12, 13 and 20(3) of The Emergency Medical Response and Stretcher Transportation Act also make reference to the Board's powers to hear appeals under this legislation. The provisions in this Act are closely aligned with the provisions set out in The Health Services Insurance Act related to the Board's authority and mandate.

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, 2022 to March 31, 2023, the Board increased from 14 members to 16 members and consisted of the following members:

1. Joan Holmstrom, LL.B., Chairperson
2. Dr. Rajinder Bhullar, Vice-Chairperson
3. Ian Craven
4. Andrea Doyle, B.Sc., LL.B.
5. Robert Duttchen CD, PAPM
6. Dr. Roger Gingerich, B.Sc., M.D.
7. Elaine Graham
8. Lisa Fainstein, LL.B, B.A, C. Med.
9. George Kolomaya²
10. Dr. Allen Kraut, M.D., FRCPC
11. Alan M. McLauchlan³
12. Edna Nabess
13. Alana Parashin⁴
14. John Peters, B.A., M.Ed.
15. Dr. William Pope, MD, LL. B, FRCPC⁵
16. Monica Wood

² George Kolomaya was appointed as a member of the Board effective June 1, 2022 by Order in Council No. 228/2022

³ Alan McLauchlan resigned from the Board effective February 25, 2023

⁴ Alana Parashin was appointed as a member of the Board effective August 10, 2022 by Order in Council No. 336/2022

⁵ Dr. William Pope was appointed as a member of the Board effective December 7, 2022 by Order in Council No. 434/2022

Board Biographies

Joan Holmstrom, LL.B

Appointed May 1, 2017

Joan Holmstrom was appointed Chairperson of the Board effective August 7, 2019.

Joan Holmstrom is the director of competence for the Law Society of Manitoba where she also held the previous positions of claims counsel and complaints counsel. Prior to her time with Law Society of Manitoba, she was liability claims manager with Leonard French and Company as well as a litigation associate with Hill Abra Dewar. Ms. Holmstrom graduated with a Bachelor of Laws Degree from the University of Manitoba in 1989.

Dr. Rajinder Bhullar, Vice-Chairperson

Appointed August 7, 2019

Dr. Rajinder Bhullar was appointed Vice-Chairperson on the Board effective December 15, 2021.

Dr. Rajinder Bhullar (Winnipeg) is a professor and associate dean of research in the College of Dentistry at the Rady Faculty of Health Sciences. As part of this position, Dr. Bhullar holds positions on numerous boards including the Research Awards Committee, Research Advisory Committee, College of Dentistry Graduate Studies and Research Committee and the Department of Oral Biology Graduate Studies and Research Committee among others.

Ian Craven, CPA, CMA, MBA

Appointed August 7, 2019

Ian Craven (La Salle) is a partner in MNP's Winnipeg office. A professional management consultant for more than 30 years, Mr. Craven provides economic and business development research and advice to private and public corporations, not-for-profit organizations, Indigenous organizations and government. Ian has a Master of Business Administration degree from the University of Manitoba and holds a Certified Management Consultant and Chartered Professional Accountant designation. He was an inaugural member of the Farm Debt Review Board of Canada for the Manitoba Region, involved with CMA Manitoba and an inaugural member of the board of the CPA Western School of Business.

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

Appointed July 11, 2017

Andrea Doyle (Winnipeg) is a lawyer with the firm Thompson Dorfman Sweatman LLP ("TDS"). She graduated from the University of Manitoba, Faculty of Law in 2009 and 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 Canadian Bar Association French Speaking Common Law Members Section Executive. She has previously been a member of the Manitoba Bar Association Council and the University of Winnipeg Alumni Association Council.

Robert (Rob) A. Duttchen, CD, PAPM

Appointed December 15, 2021

Rob Duttchen (Winnipeg) is a veteran who served thirteen years in the Royal Canadian Artillery, including overseas, as part of the United Nations Peace Keeping Force in Cyprus. In 2000, he joined the Winnipeg Police Service, where he presently serves as a Staff Sergeant in Uniformed Operations. He has served in various assignments in investigations, uniformed policing, and administration throughout his career. Rob is bilingual and fluent in English and French. Rob also holds a Post-Baccalaureate degree in Aerospace Program Management from the University of Manitoba and the Canadian Decoration.

Dr. Roger Gingerich, B.Sc., M.D.

Appointed November 2, 2016

Dr. Gingerich (Steinbach) 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 (Portage la Prairie) is a retired as manager of a printing company. 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 in preschool. 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.

Lisa Fainstein, LL.B, B.A, C. Med.

Appointed December 15, 2021

Lisa Fainstein (Winnipeg) is a lawyer and retired law professor. She is Co-counsel and Supervisor at the L. Kerry Vickar Business Law Clinic at the University of Manitoba. Lisa received her law degree from the University of Manitoba in 1979 and her call to the Bar of Manitoba in 1980. She was Associate Dean at the Faculty of Law at the University of Manitoba from 2010 to 2018. She has taught Legal Methods, Negotiation, Property law and Family law. She also presently serves as a mentor at the Legal Help Centre.

George Kolomaya

Appointed June 1, 2022

George A. Kolomaya (Winnipeg) (Ind) (bil) is the president of SamSon Journey Inc. Mr. Kolomaya is the former chief communications specialist with the Metis Child and Family Services Authority. He has many years of experience as a communications consultant which has led to public relation campaigns and events across Canada and American Midwest. Mr. Kolomaya holds a Creative Communications Diploma from Red River College Polytechnic and has completed Intermediate Level French with the Alliance Francais.

Dr. Allen Kraut, M.D., FRCPC

Appointed May 1, 2015

Dr. Kraut (Winnipeg) 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 (The Pas) 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.

Edna Nabess

Appointed December 15, 2021

Edna Nabess (Winnipeg) (ind.) is the founder and principal designer of Cree-Actions, and an artisan known for their one-of-a-kind designs. Edna has served on numerous boards including as a member on the Social Services Appeal Board, Efficiency Manitoba, and the Manitoba Public Insurance Board of Directors.

Alana Parashin LL.B

Appointed August 10, 2022

Alana Parashin (Springfield) is a lawyer in Winnipeg practicing primarily in litigation. She graduated from the University of Manitoba, Faculty of Law in 2005 and was called to the Manitoba Bar in 2006. Alana is bilingual in English and in French. She has previously served as an Executive Member on the Springfield Minor Hockey Board and Chair of the Manitoba Bar Association Young Lawyers Executive.

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

Appointed May 9, 2018

John Peters (Steinbach) 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.

Dr. William Pope

Appointed December 7, 2022

Dr. William Pope (Winnipeg) is a licensed physician anesthesiologist and administrator with degrees in medicine, law and music, and a fellowship in anesthesiology from the Royal College of Physicians & Surgeons of Canada. After his degree in law he became the Registrar /CEO of the College of Physicians & Surgeons of Manitoba. He presently sits on the Council of St John’s College, the Biomedical Ethics Research Board of the University of Manitoba, the selection committee for the Citizen’s Hall of Fame at Assiniboine Park, the King’s Counsel Selection Committee for Manitoba and is chair of the Medical Review Committee of the province of Manitoba. He has been a member of the Council of the Royal College of Physicians & Surgeons of Manitoba, the past chair of Royal College International, the President of the Academy of Anesthesiology in the USA, a member of the University of Manitoba Honorary degree recipient committee, Boards of the Royal Manitoba Theatre Centre, the Winnipeg Symphony Orchestra and Manitoba Opera, as well as the national board of PLAN Canada (formerly Foster Parents Plan Canada).

Monica Wood

Appointed August 7, 2019

Monica Wood (Winnipeg) is the director of development with Vila Rosa care home. She has a diverse work background that includes experience in business, non-profits, academia and the volunteer sector. She previously worked in a variety of roles at the University of Winnipeg including as director of Enrollment Services and director of Admissions. Ms. Wood has also developed governance experience by serving on boards including the Manitoba Council of International Education and the University of Winnipeg – Board of Regents.

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 2022-23 the Board’s staff consisted of the following individuals:

Amanda Cloutier	Administrator
Erin Wills	Administrator (Term) ⁶
Rolan Tan	A/Administrator/Office Manager ⁷
Flordeliza Leones	Administrative Assistant

⁶ Appointed as Administrator for the term of March 29, 2021 – June 3, 2022.

⁷ Appointed as Administrator for an acting status term of June 6, 2022 – September 06, 2022.

Appeals and Hearings

Appeals

Appeals coming before the Board vary in nature. Overall, the appeals heard by the Board during 2022-23 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.

For the 2022/2023 fiscal year, parties continued to attend hearings virtually utilizing Microsoft Teams platform by either teleconference (audio only) or video conference. In person hearing options continued to be available by request.

With respect to Insured Benefits appeals, the Board has developed an Information Checklist that is provided to appellants on Insured Benefits appeals in advance of the hearing and is available on the Board's website. This checklist is meant to assist appellants by ensuring they are 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 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 Benefits 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 their 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 panel 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 written reasons for decision.

Pursuant to Board policy, the recordings are maintained secure and are 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 decision⁸ on an appeal, the Board may confirm, set aside or vary the decision in accordance with the provisions of The Health Services Insurance Act and regulations or refer the matter back to the person authorized to make the decision for further consideration with the Board's instructions.⁹

The Board's decision with reasons is prepared in written format and issued to all parties. The board strives to provide a written decision within 12 weeks of 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 King'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 King's Bench by any party for the 2022-23 year.

Canadian Legal Information Institute (CanLII)

The Board started to post redacted appeal decisions on the CanLII website (<https://www.canlii.org/en/mb/mbhab/>) 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.

⁸Section 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."

⁹The powers of the Board on appeal is set out in Section 10(5) of The Health Services Insurance Act.

FINANCIAL INFORMATION 2022-23

In 2022-23, the annual operating budget for the Manitoba Health Appeal Board was \$127,000, and the annual salaries budget was \$198,000.

Operating Budget

The annual operating budget expenditures were \$87,619 for an under expenditure of \$ 39,381

Operating Budget: 2022-23 Manitoba Health Appeal Board		
Budget		\$127,000
Less Actuals		
Board Remuneration (per diems)	\$72,267	
Other Expenditures	\$15,352	
Total Actuals		<u>\$87,619</u>
Variance (under budget)		<u>(\$39,381)</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 \$188,087.12 for an under expenditure of \$9,912.88

Salaries Budget: 2022-23 Manitoba Health Appeal Board				
Description	FTE^[1]	Estimate	Actual	Variance Over (Under)
Staff Salaries	3 FTE	\$174,000	\$151,582	(\$22,418)
Employee Benefits	3 FTE	\$23,000	\$34,862	\$11,862
Other Expenditures ^[2]	3 FTE	\$1,000	\$1,643	\$643

Figure 2 – Salaries Budget

^[1] Full time equivalents

^[2] Pension Adjustment, Staff Turnover Allowance, Overtime, Vacation Pay, Other Earnings, Stat. Pay-Outs/Supervisory Pay

Board Activities 2022-23

Appeal Sitings and Meetings

Appeal Sitings

During 2022-23, sitings were scheduled on Thursdays with Authorized Charge appeals typically heard in the morning and Insured Benefits appeals heard in either the morning or afternoon. Whenever possible, hearings for Home Care and other types of appeals were also scheduled on Thursdays. Flexibility was provided to use other week days when necessary.

For the most part, the parties¹⁰ attended remotely using MS Teams either by teleconference or videoconference, the staff participated at the Board’s office located at 102 – 500 Portage Avenue, Winnipeg, Manitoba.

Near the end of the fiscal year after restrictions loosened, an in person hearing was held. The parties participated at the Board’s office located at 102 – 500 Portage Avenue, Winnipeg, Manitoba.

During 2022-23 the Board held 56 sitings for the purpose of hearing appeals and considering complex motions:

# Sitings Held	Type of Appeal
14	Authorized Charges
39	Insured Benefits
3	Home Care
0	Personal Care Home
0	Others

Figure 3 – Sitings Held in 2022-23

On average, the Board heard three appeals at each sitting for Authorized Charge appeals. Generally, the Board heard one to two appeals at a sitting for Insured Benefits and other types of appeals. At times, if there is more than one rate year being appealed by the same Appellant, the Board will hear both at the same time, which is also a reason why sitings held could be lower than the number of appeals received.

For Authorized Charges appeals, there were 16 scheduled for hearing. Two (2) were cancelled and re-scheduled and one was heard but got adjourned to a later date as the Board require the Appellant to submit additional evidence from Canada Revenue Agency.

For Insured Benefits appeals, there were 43 scheduled for hearing, two (2) were settled during the hearing and another two (2) were settled before the hearing. There were two (2) other appeals scheduled but were adjourned and cancelled for other reasons.

For Home Care appeals, three (3) were scheduled and heard.

For Personal Care Home Appeals, no hearings were scheduled or heard.

¹⁰ The “parties” are defined as the appellant (the person who the appeal is about) and the respondent (the authority who made the decision that is being appealed; i.e., Manitoba Health or a regional health authority and their representatives).

It is noteworthy that 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) 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.

There was also a delay on a couple of hearings as the appellant was hopeful that in-person hearings would resume in the near future, this delay creates challenging schedules later and causes a backlog.

Additionally, there was a virtual and in person training session offered by Manitoba Council of Administrative Tribunals Inc. (MCAT) in this fiscal year. Three (3) new board members and two (2) office staff participated in a virtual training and one (1) new board member participated in an in-person training. New board members also participated in an orientation with the Board Chairperson and office staff as part of their onboarding.

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 2022-23, there were one request made by parties to an appeal to conduct hearings in the French language.

Composition of Board Quorums/Panels

Taking into consideration the nature of each type of appeal, the Board sits in three (3) member quorums/panels.¹¹

The Board has decided that a five (5) member panel should be structured for complex appeals and that a physician should be scheduled on a panel when there is a medical focus to the issue and that a lawyer be scheduled on a panel when there is a jurisdictional issue.

Board members are scheduled on a rotating basis based on availability, utilizing their various areas of expertise as required. Due to the medical nature of most Insured Benefits 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

A general meeting was held virtually on January 19, 2023 at which the board members reviewed the draft fiscal year-end report statistics, annual report and governance policies. The board also brought forward issues for discussion with the Minister.

¹¹Section 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."

Appeal Sitings and General Meetings Statistics

A review of the appeals received, the Board's sittings and general meetings held in the current and past four (4) fiscal years indicates the following:

Appeals Received					
Type	2022-23	2021-22	2020-21	2019-20	2018-19
Authorized Charges	49	37	50	52	60
Request for Waiver of Authorized Charge ¹²	1	0	0	1	0
Insured Benefits	79	33	39	36	35
Hepatitis C Compassionate Assistance Program	0	0	0	0	0
Home Care Program	6	12	5	8	12
Personal Care Home	2	3	2	2	3
Other Appeals	1	0	0	1	4
Total	137	85	96	100	113

Figure 4 – Review of Appeals Received

As can be seen by the chart in Figure 4 above, the number of appeals received increased by 62% in 2022-23 in comparison to 2021-22. The reason for the increase of appeals was largely related to an increase in Insured Benefits appeals. Note: The figures provided in table 4 show that appeals filed with the Board fluctuate from year to year and consequently are unpredictable.

Appeals Heard					
Type	2022-23	2021-22	2020-21	2019-20	2018-19
Authorized Charges	14	25	28	22	29
Request for Waiver of Authorized Charges	0	0	0	0	0
Insured Benefits	39	28	16	26	15
Hepatitis C Compassionate Assistance Program	0	0	0	0	0
Home Care Program	3	6	1	4	7
Personal Care Home	0	2	0	0	0
Other Appeals	0	0	0	1	1
Total¹³	56	61	45	53	52

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 2022-23 are less than the number of appeals heard in the previous fiscal year.

The number of appeals heard in 2022-23 may be slightly lower than the total number of appeals heard in 2021-22 for the following reasons:

- 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, the appeal process hasn't

¹² As of 2017-2018, the Board is no longer accepting Request for Waiver of Authorized Charge appeals. Following the Board's policy, the appeal was returned and the Appellant was informed that the Board has no jurisdiction to hear request for waiver appeals.

¹³This 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.

been completed in full, Appellants are away on vacation, or they require additional time to gather their evidence, and unique to this time was one appeal waiting to return to an in-person hearing when that would be possible.

- Appellants submitted new information to the Respondent and the Respondent was in the process of reviewing the new information.
- There were number of appeals scheduled but were settled before the hearing.

Below is a chart comparing total sittings and meetings over the past five (5) years.

Sittings and General Meetings			
Fiscal Year	# of Appeal Sittings	# of General Meetings	Total Appeal Sittings/ General Meetings
2022-23	56	1	57
2021-22	61	1	62
2020-21	45	0	33
2019-20	53	1	54
2018-19	32	0	32

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

APPEALS

The following is a statistical summary of appeals received and heard for 2022-23.

Authorized Charge Appeals

Appeals Received

The Board received 49 Authorized Charge appeals. The following figure shows the breakdown by regional health authority (RHA) of the 49 Authorized Charges appeals received in 2022-23:

RHA	Appeals
Interlake-Eastern	5
Northern	1
Prairie Mountain	11
Southern Health-Santé Sud	11
RHA Subtotal	28
Winnipeg	21
Total	49

Figure 7 – Breakdown by RHA of Appeals Received

Appeals Heard

The Board held 14 hearings for Authorized Charge appeals. One (1) appeal was heard and adjourned to a later date. There were three (3) hearings that addressed two rate year appeals in the same sitting as it was the same Appellant. For this reason, there will be a different total of hearings from the total number of hearing dispositions.

The disposition of the 13 decisions by the Board in 2022-23 is as follows:

Disposition	Number	%
Appeals dismissed	9	56%
Appeals allowed to minimum charge	1	6%
Appeals allowed to other rate	6	38%
Total	16	100%

Figure 8 – Disposition of Authorized Charge Appeals

In addition to the above-noted appeals that were heard, 17 Authorized Charge appeals were closed prior to a hearing being held for the following reasons:

Manitoba Health amended its review decision	11
Withdrawn by Appellant for other reasons	3
Stuck off (no standing)	1
Appellant deceased prior to hearing ¹⁴	0
Appeal filed prematurely ¹⁵	<u>2</u>
Total	<u>17</u>

The withdrawal of **11** Authorized Charge appeals occurred because Manitoba Health 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 was **19** appeals pending at the end of the fiscal year and carried forward to 2023-24.¹⁶

Insured Benefits Appeals

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

Appeals Received

The Board received **79** Insured Benefits appeals in 2022-23, which is an increase from the previous fiscal year's total of **33**¹⁷.

Multiple Issues with Insured Benefits Appeals Received

It is to be noted that there can be more than one issue involved with an Insured Benefits 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.

¹⁴ 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.

¹⁵ 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.

¹⁶ Appeals were carried forward for the following reasons: 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.

¹⁷ In addition, there were 12 appeals brought forward from the previous fiscal year.

Appeals Heard

The Board held 39 hearings for Insured Benefits appeals, which is an increase from the previous year's total of 28. The disposition of the 39 Insured Benefits appeals scheduled for a hearing by the Board is below. There was one (1) hearing that addressed two Appellants in the same sitting. For this reason, there will be a different total of hearings from the total number of hearing dispositions.

Disposition	Number	%
Appeals allowed	1	3%
Appeals dismissed	35	87%
Referred back to the Minister	2	5%
Appeal hearing commenced but did not proceed ¹⁸	2	5%
Total	40	100%

Figure 10 – Disposition of Insured Benefits Appeals

The report shows that 87% 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. Worthy to note that 2 appeals were referred back to the Minister for consideration.

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 benefits appeals that are commonly not met by appellants are:

- Manitoba Health 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.
- Proof of satisfactory evidence the person is legally entitled to work in Manitoba under one or more work permits totaling 12 consecutive month or more.

¹⁸ At the commencement of the hearing, the respondent informed the Board that they are granting coverage to the Appellant. The Board determined that there was no longer basis for the appeal hearing to proceed.

In addition to the above-noted appeals that were heard, 22 Insured Benefits appeals were closed prior to a hearing being held for the following reasons:

Withdrawn as Manitoba Health approved payment	6
Withdrawn as Manitoba Health approved registration /coverage	0
Withdrawn by Appellant for other reasons	13
Appeal filed prematurely	0
Issue resolved by the parties	0
Struck-off (no jurisdiction)	<u>3</u>
Total	22

There were **26** appeals pending at the end of the fiscal year and carried forward to 2023-24. Appeals were carried over to the next fiscal year because:

- Appeals 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;
- 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 and;
- There were six (6) appeals already heard but decisions were pending at the end of the fiscal year.

Home Care Program Appeals

Appeals Received

The Board received six (6) appeals from decisions related to the provision of home care services in the province in 2022-23, which was a decrease from the previous fiscal year's total of 12¹⁹.

Appeals Heard

The Board held three (3) hearings for Home Care appeals, which is a decrease from the previous fiscal year's six (6) hearings. There was one (1) hearing that addressed two (2) Appellants in the same sitting. For this reason, there will be a different total of hearings from the total number of hearing dispositions. The appeal hearing held in 2022-23 were disposed of as follows:

Disposition	Number	%
Appeals allowed	2	50%
Appeals allowed in part/varied	0	0%
Appeals dismissed	1	25%
Appeals dismissed no jurisdiction	1	25%
Total	4	100%

Figure 12 – Disposition of Home Care Appeals

Two (2) appeals were pending at the end of the fiscal year and carried forward to 2023-24.

¹⁹ In addition, there were four 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	Disposition of Home Care Appeals				
	2022-23	2021-22	2020-21	2019-20	2018-19
Allowed/ Allowed In Part	2	0	0	2	2
Dismissed	1	6	1	2	5
Withdrawn (resolved by RHA)	0	0	0	3	0
Withdrawn (other)	3	1	1	1	0
Heard & Adjourned	1	0	0	0	0
Premature	1	5	0	1	0
Resolved during the hearing	0	0	0	0	0
Total	8	12	2	9	7

Figure 13 – Disposition of Home Care Appeals by Year

Breakdown by Regional Health Authority of Home Care Appeals

The following is the breakdown by regional health authority of the six (6) Home Care appeals received in 2022-23 in comparison to the appeals received in the four (4) prior fiscal years:

RHA	Appeals 2022-23	Appeals 2021-22	Appeals 2020-21	Appeals 2019-20	Appeals 2018-19
Interlake-Eastern	0	0	1	0	0
Northern	0	0	0	0	0
Southern Health	1	1	0	1	1
Prairie Mountain Health	0	1	0	0	4
RHA Subtotal	1	2	1	1	5
Winnipeg	5	10	4	7	7
Total	6	12	5	8	12

Figure 14 – Breakdown by RHA of Appeals Received

Home Care Program appeals received from regional health authorities in 2022-23 other than Winnipeg is 17% of appeals, while appeals from Winnipeg numbered received is 83%.

A summary of the Winnipeg/Other RHA proportions for the past five years is shown below. It indicates that the percentage from previous fiscal is the same with the current one. However, it still 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
2022-23	17%	83%
2021-22	17%	83%
2020-21	20%	80%
2019-20	12.5%	87.5%
2018-19	42%	58%

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

Personal Care Home Decisions

Appeals Received

The Board received two (2) appeals in relation to a panel decision.

Appeals Heard

The Board held no hearings for a Personal Care Homes decision appeal. The appeals received in 2022-23 were disposed of as follows:

Disposition	Number	%
Appeals allowed	0	0%
Appeals allowed in part/ referred back	0	0%
Appeals dismissed / premature	1	50%
Appeals dismissed / no standing	1	50%
Total	2	100%

There was no Personal Care Homes appeal that was carried over to the next fiscal year 2023-24.

Personal Care Home Placement Appeals Received					
Fiscal Year	2022-23	2021-22	2020-21	2019-20	2018-19
Appeals Received	2	3	2	2	3

Figure 16 – Comparison of Appeals Received

Other Appeals

There are “Other” types of appeals that the Manitoba Health Appeal Board has been mandated to hear by other legislative acts, regulations and programs 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
- Manitoba Hepatitis C Compassionate Assistance Program

Manitoba Hepatitis C Compassionate Assistance Program

In 2022-23, the Board received no appeals regarding a decision of the Manitoba Hepatitis C Compassionate Assistance Program to deny financial assistance.

The Emergency Medical Response and Stretcher Transportation Act

In 2022-23 there were no appeals received under this *Act* regarding the temporary suspension of a license. There was one (1) appeal received at the end of fiscal year regarding the Northern Patient Transportation Program. The appeal was carried over to the next fiscal year 2023-24.

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
2022 - 2023	1	<i>The Emergency Medical Response and Transportation Act - Northern Patient Transportation Program</i>
2021 - 2022	0	
2020 - 2021	0	
2019 – 2020	1	<i>The Emergency Medical Response and Transportation Act - Northern Patient Transportation Program</i>
2018 – 2019	1	<i>The Emergency Medical Response and Transportation Act - Northern Patient Transportation Program</i>
	2	Provincial Drug Program – Exceptional Drug Status ²⁰

Figure 17 – “Other” Appeals Received

There were two (2) appeals received regarding decisions made by the Provincial Drug Program (Exceptional Drug Status); however, the Board does not have jurisdiction to hear these appeals.

Public Communication

Communication Activities

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

Hearing Guide

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

Brochures

The Manitoba Health Appeal Board brochure is normally posted on the Board’s 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 <https://www.gov.mb.ca/health/appealboard/>

Canadian Legal Information Institute (CanLII)

The Board started to post redacted appeal decisions on the CanLII website (<https://www.canlii.org/en/mb/mbhab/>) 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.

²⁰ The Board did not have jurisdiction to hear these appeals.