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MANITOBA HEALTH
APPEAL BOARD

ANNUAL REPORT

APRIL 1, 2023 - MARCH 31, 2024



This communication is available in multiple formats upon request.



Manitoba Health Appeal Board Annual Report April 1, 2023 to March 31, 2024

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Message from the Chair

I am pleased to present this report for the period April 1, 2023 to March 31, 2024 for the Manitoba Health Appeal Board (MHAB). 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 has served 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.

This was a unique year for MHAB encompassing three significant opportunities for innovation and continuous improvement. The appeals received increased in volume and complexity creating a backlog of appeals to be heard. The Board office underwent security upgrades. MHAB transitioned from virtual hearings to a hybrid hearing model, offering parties a choice for in-person or virtual. MHAB also increased in membership size from a 16-member roster to an 18-member roster, this assisted with the additional hearing sitting requirements.

Through continuous improvement initiatives, MHAB bridged its services with the advocacy unit at the Public Interest Law Center. MHAB is now able to offer a referral service for advocacy representation provided through Legal Aid services.

MHAB recognized its Shared Journey toward Truth and Reconciliation in November of 2023 and began sharing a land acknowledgment at the commencement of all hearings.

MHAB also adopted an online e-form offering an accessible electronic application to Manitobans on our website, an avenue to request a referral to an advocate, and other enhanced features for additional security and increased accessibility for Manitobans.

The Board looks forward to engaging in initiatives that foster and advance its priority of providing a secure, accessible, and timely adjudication platform for 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 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 the 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 concerning 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 refer 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. Members continue to hold office until they are reappointed, a successor is appointed or the appointment is revoked.

During the fiscal year April 1, 2023 to March 31, 2024, the Board increased from 16 members to 18 members and consisted of the following members:

1. Joan Holmstrom, LL.B., Chairperson
2. Dr. Rajinder Bhullar, Vice-Chairperson
3. Teresa Banman²
4. Ian Craven
5. Andrea Doyle, B.Sc., LL.B.
6. Donald Dunnigan³
7. Robert Duttchen CD, PAPM
8. Dr. Roger Gingerich, B.Sc., M.D.⁴
9. Elaine Graham
10. Lisa Fainstein, LL.B, B.A, C. Med.⁵
11. George Kolomaya
12. Dr. Allen Kraut, M.D., FRCPC
13. Kevin McKnight⁶
14. Edna Nabess
15. Alana Parashin, LL.B
16. John Peters, B.A., M.Ed.
17. Dr. William Pope, MD, LL. B, FRCPC
18. Kimberly Stephen⁷

Board Administrative Staff

Administrative Staff

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

During 2023-24 the Board's staff consisted of the following individuals:

- | | |
|----------------------|---------------------------------------|
| 1. Amanda Cloutier | Administrator |
| 2. Rolan Tan | Hearing Officer ⁸ |
| 3. Flordeliza Leones | Administrative Assistant ⁹ |
| 4. Khushi Kalra | Research Associate (STEP Student) |
| 5. David Sopotyk | Administrative Clerk (STEP Student) |

² Teresa Banman was appointed as a member of the Board effective May 10, 2023 by Order in Council No. 138/2023

³ Donald Dunnigan was appointed as a member of the Board effective May 10, 2023 by Order in Council No. 138/2023

⁴ Dr. Roger Gingerich resigned as a member of the Board effective February 22, 2024.

⁵ Lisa Fainstein resigned as a member of the Board effective July 24, 2023

⁶ Kevin McKnight was appointed as a member of the Board effective July 5, 2023 by Order in Council No. 228/2023

⁷ Kimberly Stephen was appointed as a member of the Board effective May 10, 2023 by Order in Council No. 138/2023

⁸ Rolan Tan has been reclassified from his position as Office Manager to Hearing Officer in August 2023. He also acted as Administrator from November to December 2023.

⁹ Flordeliza Leones acted as hearing officer from August to September of 2023.

Appeals and Hearings

Appeals

Appeals coming before the Board can be complex and vary in nature. Overall, the appeals heard by the Board during 2023-24 related to decisions regarding payment of benefits concerning 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 hearing appeals. All parties appearing before the Board are provided with a copy of the Board's Rules of Procedure when 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 2023/2024 fiscal year, parties transitioned from virtual hearings to a hybrid model offering a choice to appellants, in-person or virtual hearings. While some applicants appreciated the option of in-person, the majority of applicants continued to choose a virtual option for the format of their hearing. This was especially true for Manitobans from rural or northern communities due to the increased costs associated with traveling to an in-person hearing. This year the Board has adopted an Information Checklist for parties to use as a guide throughout an Insured Benefit appeal. This checklist is meant to assist appellants by ensuring that they are aware of the type of information the Board may find pertinent to their position and the nature of evidence the Board can 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 as their representative. A small portion of appellants were represented by legal counsel this year. While some appellants chose to self-represent themselves or have a family member act on their behalf, others identified in their application that they required assistance obtaining legal services. MHAB bridged these individuals with the advocacy unit within the Public Interest Law Center. This service was most used in Insured Benefit appeals. 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. The regional health authorities have 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 assist the Board in the preparation of its written reasons for decision.

The recordings are maintained securely and are retained 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. The cost of the access request 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 decision¹⁰ 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.¹¹

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. All decisions of the Board are posted to the Canadian Legal Information Institute (CanLII) website for transparency, fairness, educational and research value in redacted format.

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 was one (1) application for judicial review filed in the Manitoba Court of King's Bench for the 2023-24 year.

¹⁰Section 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."

¹¹The powers of the Board on appeal is set out in Section 10(5) of The Health Services Insurance Act.

FINANCIAL INFORMATION 2023-24

In 2023-24, the annual operating budget for the Manitoba Health Appeal Board was \$127,000, and the annual salaries budget was \$189,202.

Operating Budget

The annual operating budget expenditures were \$175,042 for an over expenditure of \$ 48,042. The over expenditure was largely a result of the requirement to have temporary on-site security.

Operating Budget: 2023-24 Manitoba Health Appeal Board				
Budget				\$127,000
Less Actuals				
Board Remuneration (per diems)	\$102,970			
Other Expenditures	\$72,072			
Total Actuals				<u>\$175,042</u>
Variance (under budget)				<u>\$ 48,042</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 \$263,267 for an over-expenditure of \$74,065. This was largely a result of the MGEU collective agreement retroactive salary payments.

Salaries Budget: 2023-24 Manitoba Health Appeal Board				
Description	FTE ^[1]	Estimate	Actual	Variance Over (Under)
Staff Salaries	3 FTE	\$166,699	\$211,730	\$45,031
Employee Benefits	3 FTE	\$22,503	\$51,537	\$29,034

Figure 2 – Salaries Budget

^[1] Full time equivalents

Board Activities 2023-24

Appeal Sittings and Meetings

Appeal Sittings

During 2023-24, sittings were scheduled on Thursdays. Whenever possible, hearings for Home Care and other types of appeals were also scheduled on Thursdays. There is flexibility to use other weekdays when necessary.

The parties¹² attended either in person at the Board's office located at 102-500 Portage Avenue, Winnipeg, Manitoba or virtually using Microsoft Teams.

During 2023-24 the Board held 114 sittings. 83 sittings were to hear appeals and 31 were late-filed bench motions:

# Sitings Held	Type of Appeal
31	Late-filed Bench Motions
29	Authorized Charges
50	Insured Benefits
2	Home Care
0	Personal Care Home
2	Others

Figure 3 – Sitings Held in 2023-24

The Board's docket typically contains one to three appeals for each sitting for Insured Benefits/Authorize Charge Appeals and one appeal for other types of appeals.

It is noteworthy that there were 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) Manitoba Health amended its review decision regarding authorized charges;
- 4) Regional health authority amended its decision to the satisfaction of the appellant;
- 5) Appellants withdrew their appeals and;
- 6) Hearings were rescheduled at the request of the parties for various reasons.

A breakdown of appeals scheduled is as follows:

# of Scheduled Appeals	Appeal Type	Reason for Cancellation	# of Cancellations
39	Authorize Charge	Withdrawal	10
60	Insured Benefit	Withdrawal	10
60	Insured Benefit	Adjourned/Rescheduled	3
60	Insured Benefits	Settlement at hearing	1
4	Home Care	Withdrawal	2

¹² 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).

French Language Appeal Hearings

MHAB provides an active French language service offer to all Manitobans and hears citizens directly in the official languages of their choice. During 2023-24, there was one (1) request made by a party to an appeal to conduct their hearing in the French language.

Composition of Board Quorums/Panels

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.

Taking into consideration the nature of each type of appeal, the Board sits in three (3) member quorums/panels.¹³

Complex appeals involving jurisdictional issues or complex medical issues require a five-member appeal panel and the inclusion of a physician for complex medical issue appeal and a lawyer for jurisdictional appeals.

General Business Meetings

The Annual General Meeting (AGM) held on November 2, 2023, provided a comprehensive review of our organization's performance over the past year. The meeting underscored our achievements, challenges, and strategic direction moving forward.

MHAB attended the Manitoba Council of Administrative Tribunal conference & new member training. Members also took a decision writing course offered by MCAT in partnership with the law society.

MHAB was thrilled to participate in Law Day hosted by the Manitoba Bar Association. The public learned about the law, the legal profession, and the legal institutions that form the cornerstones of Canadian democracy. MHAB staff were honored to be asked to represent MHAB and share Administrative Law with Manitobans at the event.

¹³Section 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

Analysis of appeal trends indicates a noticeable increase in the volume of appeals that the office is currently supporting as seen in figure 4.

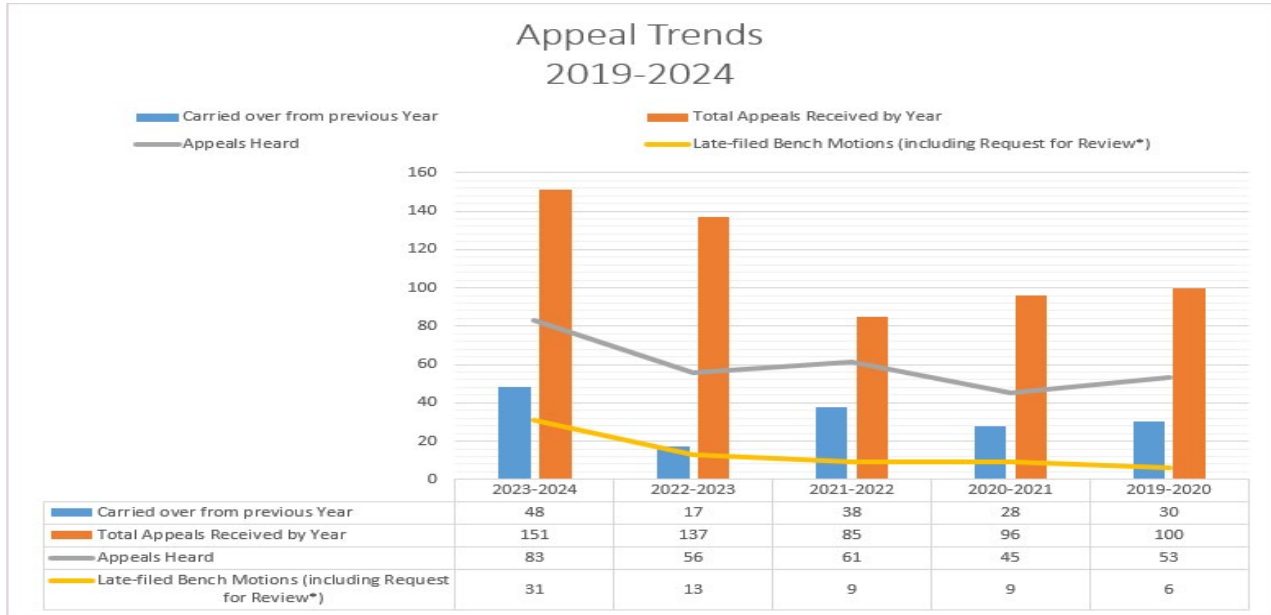


Figure 4 – Review of Appeal Trends

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:

Type	2023-24	2022-23	2021-22	2020-21	2019-20
Authorized Charges	60	49	37	50	52
Request for Waiver of Authorized Charge ¹⁴	0	1	0	0	1
Insured Benefits	83	79	33	39	36
Hepatitis C Compassionate Assistance Program	0	0	0	0	0
Home Care Program	5	6	12	5	8
Personal Care Home	0	2	3	2	2
Other Appeals	3	1	0	0	1
Total	151	137	85	96	100

Figure 5 – Review of Appeals Received

As can be seen by the comparison chart in Figure 5 above, the number of appeals received increased from the previous fiscal year by 10% in 2023-24. The reason for the increase of appeals was largely related to an increase in Authorized Charges and Insured Benefits appeals. Note: The figures provided in Figure 5 show that appeals filed with the Board fluctuate from year to year and consequently are unpredictable.

¹⁴ 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.

Appeals Heard					
Type	2023-24	2022-23	2021-22	2020-21	2019-20
Authorized Charges	29	14	25	28	22
Request for Waiver of Authorized Charges	0	0	0	0	0
Insured Benefits	50	39	28	16	26
Hepatitis C Compassionate Assistance Program	0	0	0	0	0
Home Care Program	2	3	6	1	4
Personal Care Home	0	0	2	0	0
Other Appeals	2	0	0	0	1
Late-filed Bench Motions	31	13	9	9	6
Total¹⁵	114	69	70	54	59

Figure 6 – Comparison of Appeals Heard

As can be seen by the comparison charts in Figure 6 & 7, additional sittings were scheduled to accommodate the back-log in appeals carried over from the previous fiscal year and the increase in new appeals received to ensure timely access to the appeals process.

Sittings and General Meetings				
Fiscal Year	# of Appeal Sittings	# of Late-Filed Bench Motions	# of General Meetings	Total
2023-24	83	31	1	115
2022-23	56	13	1	70
2021-22	61	9	1	71
2020-21	45	9	0	54
2019-20	53	6	1	60

Figure 7 – Comparison of Number of Sittings and General Meetings Held

APPEALS

The following is a statistical summary of appeals received and heard for 2023-24 by appeal type.

Authorized Charge Appeals

Appeals Received

The Board received 60 Authorized Charge appeals. This increase was largely due to the end of the rate freeze at Manitoba Health, Seniors and Long Term Care. Figure 8 breakdowns appeals by Regional Health Authority (RHA) in 2023-24.

RHA	Appeals
Interlake-Eastern	10
Northern	1
Prairie Mountain	11
Southern Health-Santé Sud	10
RHA Subtotal	32
Winnipeg	28
Total	60

Figure 8– Breakdown by RHA of Appeals Received

¹⁵This 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.

Appeals Heard

The Board held 29 hearings for Authorized Charge appeals. There were two (2) hearings that addressed two rate year appeals and one hearing that addressed three 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 33 decisions by the Board in 2023-24 is as follows:

Disposition	Number	%
Appeals dismissed	20	56%
Appeals allowed to minimum charge	3	6%
Appeals allowed to other rate	10	38%
Total	33	100%

Figure 9 – Disposition of Authorized Charge Appeals

In addition to the above-noted appeals that were heard, 34 Authorized Charge appeals were closed prior to a hearing being held for the following reasons:

Manitoba Health amended its review decision	23
Withdrawn by Appellant for other reasons	9
Stuck off (no standing)	0
Appellant deceased prior to hearing ¹⁶	0
Appeal filed prematurely ¹⁷	<u>2</u>
Total	<u>34</u>

The withdrawal of **23** 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 were **11** appeals pending at the end of the fiscal year and carried forward to 2024-25.¹⁸ This backlog was largely due to appeals opened prior to the end of the fiscal year that were not able to be scheduled.

Insured Benefits Appeals

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

Appeals Received

The Board received **83** Insured Benefits appeals in 2023-24, which is an increase from the previous fiscal year's total of **79**¹⁹.

¹⁶ 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.

¹⁷ 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.

¹⁸ Appeals were carried forward for the following reasons: appeals were filed closer to the end of the fiscal year; the respondent was in the process of reviewing documents that were submitted by the appellant.

¹⁹ In addition, there were 26 appeals brought forward from the previous fiscal year.

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 and appeals appearing before the board can be complex in nature. For example, an appellant may appeal Manitoba Health’s denial to pay benefits as well as a travel subsidy related to a medical service that was provided out of the province.

Appeals Heard

The Board held 50 hearings for Insured Benefits appeals, which is an increase from the previous year’s total of 39. The disposition of the 50 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. There was one (1) hearing that was adjourned and reconvened on a later date.

Disposition	Number	%
Appeals allowed	4	8%
Appeals dismissed	38	76%
Referred back to the Minister	6	12%
Appeal hearing commenced but did not proceed ²⁰	2	4%
Total	50	100%

Figure 10 – Disposition of Insured Benefits Appeals

The report shows that 76% 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 6 appeals were referred back to the Minister for further 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 on or more work permits totaling 12 consecutive month or more.

²⁰ 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, 26 Insured Benefits appeals were closed prior to a hearing being held for the following reasons:

Withdrawn as Manitoba Health approved payment	8
Withdrawn as Manitoba Health approved registration/coverage	4
Withdrawn by Appellant for other reasons	12
Appeal filed prematurely	1
Struck-off (no jurisdiction)	1
Total	<u>26</u>

There were **34** appeals pending in a backlog at the end of the fiscal year and carried forward to 2024-25. Appeals were carried over to the next fiscal year because:

- Limited scheduling availability.
- Appeals were opened toward the end of the fiscal year which results in the 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.

Home Care Program Appeals

Appeals Received

The Board received five (5) appeals from decisions related to the provision of home care services in the province in 2023-24, which was a decrease from the previous fiscal year's total of 6²¹.

Appeals Heard

The Board held two (2) hearings for Home Care appeals, which is a decrease from the previous fiscal year's three (3) hearings. The appeal hearings held in 2023-24 were disposed of as follows:

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

Figure 12 – Disposition of Home Care Appeals

Two (2) appeals were filed prematurely, and three (3) appeals were withdrawn by the Appellant.

²¹ In addition, there were two 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				
	2023-24	2022-23	2021-22	2020-21	2019-20
Allowed/ Allowed In Part	0	2	0	0	2
Dismissed	2	1	6	1	2
Withdrawn (resolved by RHA)	0	0	0	0	3
Withdrawn (other)	3	3	1	1	1
Heard & Adjourned	0	1	0	0	0
Premature	2	1	5	0	1
Resolved during the hearing	0	0	0	0	0
Total	7	8	12	2	9

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 five (5) Home Care appeals received in 2023-24 in comparison to the appeals received in the four prior fiscal years:

RHA	Appeals 2023-24	Appeals 2022-23	Appeals 2021-22	Appeals 2020-21	Appeals 2019-20
Interlake-Eastern	1	0	0	1	0
Northern	0	0	0	0	0
Southern Health	0	1	1	0	1
Prairie Mountain Health	0	0	1	0	0
RHA Subtotal	1	1	2	1	1
Winnipeg	4	5	10	4	7
Total	5	6	12	5	8

Figure 14 – Breakdown by RHA of Appeals Received

Home Care Program appeals received from regional health authorities in 2023-24 other than Winnipeg is 20% of appeals, while appeals from Winnipeg numbered received is 80%.

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
2023-24	20%	80%
2022-23	17%	83%
2021-22	17%	83%
2020-21	20%	80%
2019-20	12.5%	87.5%

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

Personal Care Home Decisions

Appeals Received

There was no appeal received in relation to a panel decision.

Below is a comparison of Personal Care Home appeals received over the past five years.

	Personal Care Home Placement Appeals Received				
Fiscal Year	2023-24	2022-23	2021-22	2020-21	2019-20
Appeals Received	0	2	3	2	2

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 2023-24, 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 2023-24 there were no appeals received under this *Act* regarding the temporary suspension of a license. There was one (1) appeal received regarding the Northern Patient Transportation Program (NPTP). This appeal has been withdrawn by the Appellant due to the Regional Health Authority providing coverage.

In addition, there was one (1) appeal received in 2023-24 regarding the Manitoba Possible Wheelchair Program. This appeal has been heard and dismissed due to the Board having no jurisdiction to hear this type of appeal. One (1) other appeal received by the Board is regarding the Manitoba Cleft Lip and Palate Program. This appeal has been forwarded to the next fiscal 2024-25.

There was one (1) appeal received regarding a decision made by Manitoba Public Health Inspection however, the Board does not have jurisdiction to hear this appeal. The inspection of recreational camps is a decision made under the *Recreational Camps Regulation* and *The Public Health Act* and not a decision made under *The Health Services Insurance Act*.

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
2023-2024	1	Manitoba Cleft Lip and Palate Program
	1	<i>The Emergency Medical Response and Transportation Act</i> - Northern Patient Transportation Program
	1	Manitoba Wheelchair Program (MWP)
2022 - 2023	1	<i>The Emergency Medical Response and Transportation Act</i> - Northern Patient Transportation Program
2021 - 2022	0	
2020 - 2021	0	
2019 – 2020	1	<i>The Emergency Medical Response and Transportation Act</i> - Northern Patient Transportation Program

Figure 17 – “Other” Appeals Received

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

