

MANITOBA HEALTH APPEAL BOARD GUIDELINES

DATE REVISED: JULY 19, 2018

GUIDELINE TITLE

INCOME - PRENUPTIAL OR SPOUSAL AGREEMENTS

GUIDELINE #4

GUIDELINE STATEMENT

The Board has the discretion to treat residents as single for determining income for residential charge daily rate setting purposes where:

- the resident and his/her spouse are separated as defined in *The Health Services Insurance and Administration Regulation* – Regulation 48/93 or
- where a spousal or prenuptial agreement existed prior to the date of the Appellant's paneling and
- the agreement specifically indicates that one spouse is not financially responsible for the other spouse.

PURPOSE

A guideline is needed to assist the Board:

1. to assess evidence on prenuptial and spousal agreements when submitted as grounds for reducing authorized charges;
2. in situations where, prior to paneling, the spouses were financially independent of each other.
3. To determine the appropriate income for rate setting when one spouse refuses to cooperate and to provide income information needed to establish joint income.

DEFINITIONS

The following definitions are found in the *Health Services Insurance* regulation:

“spouse”, in relation to an insured person, includes a person who is married to or cohabited with the insured person in a conjugal relationship for at least one year immediately before the insured person’s admission to a health facility;

“separated”, ...an insured person living separate and apart from his or her spouse or common-law partner because of a breakdown in their relationship and not because of a medical necessity.

GUIDELINE

Where there is a spousal or prenuptial agreement in place the Board will consider the following elements of the agreement:

- the agreement is a written legal document that is signed and dated and predates the time of paneling;
- it contains provisions that the spouses release each other from any liability for maintenance, support or shared income upon separation, death or other circumstances; or
- contains evidence of intent to keep separate and independent financial affairs

Where a legal separation or spousal agreement was entered into immediately prior to or after the date of paneling the agreement on its own shall not be grounds for a change in marital status for rate-setting purposes.

Where a spouse refuses to cooperate and to provide income information necessary to determine joint income for rate setting purposes, the Board shall consider whether the resident is unable to pay due to extenuating circumstances and may treat the resident as single for rate-setting purposes. The Board must be satisfied that:

- there is evidence of steps taken to locate and advise the spouse of his/her obligation to contribute and to obtain payment;
- there is evidence that the resident is unable to pay the assessed rate; and
- it is financially necessary to treat the resident as single for rate-setting purposes.

The Board has the discretion to consider the following when applying this guideline:

- Evidence of an intent to end the relationship, such as: a couple living separate and apart from each other (for other than medical reasons) prior to the time of paneling,
- documents showing no jointly-held assets,
- no survivor or death benefits payable to the other spouse,
- whether there are visits, gifts, communication or leisure activities between the spouses.

Appendix

Hospital Services Insurance and Administration Regulation 48/93

Definitions

1. In this regulation,

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"separated" in relation to an insured person, means an insured person living separate and apart from his or her spouse or common-law partner because of a breakdown in their relationship and not because of a medical necessity;

"spouse", in relation to an insured person, means a person to whom the insured person is married.