

MANITOBA HEALTH APPEAL BOARD POLICIES

DATE CREATED: NOVEMBER 28, 2016

POLICY TITLE

REQUEST FOR WAIVER

POLICY STATEMENT #6

BACKGROUND

A Request for Waiver is a provision located at section 6.4(1) of Regulation 52/93, the Personal Care Services Insurance and Administration Regulation. That regulation allows a person to request that an authorized charge per diem rate be reduced below the prescribed minimum daily rate based on specific conditions.

The Board has heard Request for Waiver appeals. Two appeals were heard in 2011. Both appeals failed based on the merits of each appeal.

At an April 2015 appeal hearing, Manitoba Health, Seniors and Active Living (MHSAL) argued the Board's jurisdiction to hear Request for Waiver appeals. MHSAL argued that the Board only has jurisdiction where that is specifically given to them by statute. The Board's jurisdiction is set out in section 10 of *The Health Services Insurance Act* (the *Act*) and that jurisdiction is limited to matters where someone has been denied a benefit under the *Act*, or where an appeal to the Board is prescribed by regulation.

MHSAL argued that a waiver is not a benefit because benefits are defined in the *Act* as "benefits that are designated in the regulations as benefits". The regulations do not describe a waiver as a benefit and Regulation 52/93 is silent about the right to appeal to the Board.

The appeal panel agreed with the MHSAL argument and dismissed the appeal. The MHAB continued to accept and schedule Request for Waiver appeals pending an opportunity of the full Board to discuss the matter and make a policy decision concerning the acceptance of these types of appeals.

At the November 26, 2015 Manitoba Health Appeal Board Annual General Meeting, the Board discussed the issue of Request for Waiver appeals. The Board decided to request an opinion from its legal counsel.

It was the opinion of legal counsel that the Board does not have jurisdiction to hear appeals of decisions which are made under s. 6.4 of regulation 52/93.

POLICY

The Board does not have jurisdiction to hear appeals of decisions which are made under s. 6.4 of regulation 52/93.

Where an Appellant wants to file a Request for Waiver appeal they will be advised that the Board does not have the jurisdiction to hear that type of appeal.

However, the Board will exercise its due diligence and ensure the nature of the appeal, by requesting and reviewing a copy of the MHSAL decision letter from the Appellant.