Manitoba Health Appeal Board

Annual Report

April 1, 2017 - March 31, 2018

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Table of Contents

BOARD ACTIVITIES 2017-18

Message from the Chairperson

This is the annual report of this Board for April 1, 2017 to March 31, 2018. It is published as part of the statutory mandate to provide a transparent and accountable process for resolving disagreements within certain parts of our province's health care system.

This was the 24th year of this tribunal's existence. The number of appeals filed and hearings held appears to be growing over time, and this past year was one of the busiest in many years.

Increased filings notwithstanding hearings continue to be held promptly. That is first and foremost a credit to the staff at the Board: Bob Sample, Doreen Cote and Tracey Schaak. The office runs pleasantly and professionally, the parties to the appeals and the Board members who adjudicate them are well served.

I also believe that this tribunal serves as a positive example of access to justice needs being met, both in terms of the ability of people to navigate the process as well as the speed with which matters are resolved. Courts in our country, and many administrative tribunals like this one, are plagued with issues of backlog, delay and procedural roadblocks. This Board is an example of a body where matters are resolved quickly, often within a few months of the matter arising. That is exceptional, many tribunals similar to ours, and certainly the courts, take years to resolve cases.

The files are also, in most cases, resolved with minimal costs. There are no filing fees, or user fees of any kind, and though lawyers appear from time to time many parties are self-represented.

I think that this Board should be recognized as a tribunal that has functioned well in handling the matters it has the responsibility to deal with, and I have every confidence that this will continue in the year to come.

Grant Driedger
Chairperson

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 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 is an independent quasi-judicial administrative tribunal established pursuant to section 9 of *The Health Services Insurance Act*.[1]

In general, the Board is responsible for:

a) hearing and determining appeals as specified under *The Health Services Insurance Act* and its regulations*, The Emergency Medical Response and Stretcher Transportation Act* and the Charges Payable by Long Term Patients Regulation made under *The Mental Health Act*;

b) performing any other duties assigned by any act of the Legislature or any regulation;

c) performing any other duties assigned by the Minister.

Specifically, the Board hears a wide range of appeals, including decisions where a person has been:

- assessed an authorized charge (daily rate) in a personal care home, a hospital or other designated health facility and is dissatisfied with a review decision made by Manitoba Health;
- refused registration as an insured person under *The Health Services Insurance Act*;
- denied entitlement to a benefit under *The Health Services Insurance Act* (for example, out-of-province medical services, transportation subsidies, plastic surgery);
- refused an approval to operate a laboratory or a specimen collection centre, or conditions have been imposed on their approval, or their approval has been revoked;
- refused an approval to operate a personal care home, or conditions have been imposed on their approval, or their approval has been revoked;
- refused a licence to operate an emergency medical response system or a stretcher transportation service or had the licence suspended or cancelled;
- refused a licence to act as an emergency medical response technician, stretcher attendant or ambulance operator or had the licence suspended or cancelled;
- denied financial assistance under the Manitoba Hepatitis C Compassionate Assistance Program;
- issued a decision by a regional health authority regarding eligibility, type or level of service under the Manitoba Home Care Program and is dissatisfied with the decision;
- issued a decision by a regional health authority assessment panel in relation to an application for personal care in a personal care home and is dissatisfied with the decision.

[1]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, 2017 to March 31, 2018, the Board consisted of the following members:

1. Grant Driedger, Chairperson[2]
2. Richard Kennett, B.A., B.Ed., M.Ed., Vice-Chairperson
3. Kristine Barr, B.A., LL.B.[3]
4. Patrick Caron
5. Bonnie Cham, M.D., FRCPC[4]
6. Andrea Doyle[5]
7. Roger Gingerich, BSc, M.D.
8. Elaine Graham[6]
9. Joan Holmstrom, LLB[7]
10. Dr. Allen Kraut, M.D., FRCPC
11. Howard Mathieson, B.A., B.Ed.[8]
12. Alan M. McLauchlan
13. Jagjit Polly Pachu, RCT (Advanced)
14. Priti Shah, B.A., LLB., C. Med

[2] Grant Driedger was appointed as Chairperson of the Board effective May 1, 2017 (OIC 00105/2017)

[3] Kristine Barr's term as a Board member was revoked effective April 30, 2017 (OIC 00105/2017)

[4] Bonnie Cham resigned from the Board on March 8, 2018 (OIC 136/2018)

[5] Andrea Doyle was appointed as a Board member effective July 11, 2017 (OIC 0024/2017)

[6] Elaine Graham was appointed as a Board member effective May 1, 2017 (OIC 00105/2017)

[7] Joan Holmstrom was appointed as a Board member effective May 1, 2017 (OIC 00105/2017)

[8] Howard Mathieson's term ended April 30, 2017 after serving the maximum number of years as a Board member (OIC 00105/2017)

Board Biographies

Grant Driedger Appointed May 1, 2017

Mr. Driedger was appointed Chairperson of the Board effective May 1, 2017.

Mr. Driedger practices law as a partner at the firm of Smith Neufeld Jodoin LLP, based in Steinbach. He has served as a Bencher with the Law Society of Manitoba since May of 2014, a role which has included adjudication in hearings of the Discipline Committee and the Admissions and Education Committee. Previously he has served as an adjudicator with the Pipeline Arbitration Committee, a federal tribunal which hears cases arbitrating compensation disputes regarding pipelines, and has also chaired many hearings involving Canada Pension Plan benefits as a member of the Canada Pension Plan Review Tribunal. He resides in Grunthal with his wife and three children, where he has been actively engaged in a variety of volunteer activities, including coaching minor hockey; serving on the board of various community organizations; and engaging in church related endeavours.

Richard Kennett Appointed October 26, 2011

Mr. Kennett was appointed Vice-Chairperson of the Board effective March 12, 2014.

Richard grew up in England. In 1970, he came to Winnipeg as a young teacher and worked for the Winnipeg School Division for 30 years. From 2000 to 2010, he created and managed a Manitoba Justice youth crime prevention program called “Lighthouses”. From 1992, Richard has been constantly active as a volunteer mediator and restorative conference facilitator through the Winnipeg community justice committee movement and through the agency called Mediation Services. He and his partner have been married 41 years and have two fine sons.

Kristine K. Barr Appointed May 1, 2012

Kristine completed her Law degree at the University of Manitoba in 2005 and received her call to the bar in 2006. Kristine currently practices labour law with the Canadian Union of Public Employees (CUPE) in the Manitoba regional office. Kristine chaired the Social Services Appeal Board from 2005-2012. In this capacity, she served as an executive member of the Manitoba Council of Administrative Tribunals and co-chaired the annual MCAT Conference. Kristine is committed to social justice, equality and human rights issues and has served as the National Chair of SOGIC, the Sexual Orientation and Gender Identity Section of the Canadian Bar Association. Kristine was a founder of the Teen Talk program at Klinic Community Health Centre where she previously worked as a Program Coordinator and co-ordinated the provincial teen pregnancy campaign “If you think it can’t happen to you, think again”. Kristine was an elected School Trustee with the Winnipeg School Division from 1998-2014. Kristine Barr’s term as a Board member was revoked effective April 30, 2017.

Patrick Caron Appointed October 26, 2011

Patrick has been with the Internal Trade Secretariat since April 2008 working on Interprovincial trade issues. He is the managing director at the Secretariat and has been managing since June 2014. He has a pan-Canadian life experience, being born in Quebec and raised in Western

Canada. His post-secondary background is firstly in Political Science from University of Alberta and this was followed by Journalism/Communication at Mount Royal University. He has a few years work experience as a reporter in Rural Manitoba. Prior to working at the Secretariat he worked for 5 years at the Government of Manitoba.

Bonnie Cham, M.D., FRCPC Appointed March 16, 2011

Dr. Cham graduated from the Faculty of Medicine at the University of Manitoba in 1982. Following specialty training in Pediatrics, Hematology and Oncology (at U of Manitoba and UBC), she was appointed to the Faculty of Medicine, University of Manitoba and active staff at CancerCare Manitoba where she was involved in research and patient care until 2010. During that time she also worked as a consultant at Canadian Blood Services and was Director of the Manitoba Rh program. An interest in ethics led her to complete a Graduate Diploma in Bioethics from Monash University in 1999. She was a volunteer on the Manitoba Medical Association Ethics Committee, followed by a term as Chair of the Canadian Medical Association's Committee on Ethics from 2005-2009. She is currently the Medical Director of Clinical Ethics at Health Sciences Center. Bonnie Cham resigned from the Board on March 8, 2018.

Andrea R. Doyle, B.Sc., LL.B. Appointed July 11, 2017

Andrea is a lawyer with the firm Thompson Dorfman Sweatman LLP ("TDS"). After articling at TDS, she 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 Manitoba Bar Association Council and has been a member of the University of Winnipeg Alumni Association Council.

Dr. Roger Gingerich, BSc, M.D. Appointed November 2, 2016

Dr. Gingerich 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.

Joan Holmstrom, LLB Appointed May 1, 2017

Joan Holmstrom is a lawyer and is the Director of Education at the Law Society of Manitoba. Joan received her law degree from the University of Manitoba in 1989 and was called to the Bar of Manitoba in 1990. She practiced in the field of civil litigation, specializing in insurance work, until 2004 when she joined the Law Society of Manitoba. She has been the Director of Education since 2014. She also presently serves on the executive of the Manitoba Highland Dancers' Association.

Allen Kraut, M.D., FRCPC Appointed May 1, 2015

Dr. Kraut 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. For the past 27 years he has been an attending physician in Internal Medicine at the Health Sciences Center (HSC), and practiced 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.

Howard Mathieson Appointed June 27, 2007

Howard was employed at the University of Winnipeg from 1970 to 2000 where he was an instructor and administrator in the Collegiate Division. During his tenure he served as both an instructor and Associate Dean. He was active in University affairs and committees, notably the University Senate, its' Athletic Board and was active as a basketball coach. He also participated as a member of the Collegiate CAUT bargaining team. Following retirement he was appointed to the Public Schools Finance Board where he served prior to his appointment to the Manitoba Health Appeal Board. Howard's term ended April 30, 2017 after serving the maximum number of years as a Board member.

Alan M. McLauchlan Appointed February 1, 2014

Alan 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.

Jagjit Polly Pachu Appointed October 26, 2011

For the past 27 years, Polly has worked as a Cardiology Technologist at St. Boniface General Hospital (SBGH) specializing in Exercise Tolerance Testing – Echo Dobutamine, Cardiac Imaging, Nuclear Testing and Electrocardiograms and now works part-time at Victoria General Hospital in the same capacity. She was a Paramedical Technologist for Medox and Bodimetric Profiles where she provided paramedical services for life insurance companies. She was elected National President and Vice-President of the Canadian Society of Cardiology Technologists and she is presently the Director. She was also a former Vice-Chair for the Licence and Suspension Appeal Board as well as a Union Representative for the Manitoba Association of Health Care Professionals. Currently, she is an interpreter for the Immigrant Center, Vice President of the Immigrant Women's Association of Manitoba, a member of the SBGH Workplace Safety and Health Committee and a member of the Manitoba Federation of Labour Occupational Health Centre.

Priti Shah Appointed January 16, 2016

Priti Shah is a lawyer, mediator, arbitrator, investigator and facilitator and operates PRAXIS Conflict Consulting in Winnipeg. She received her Bachelor of Arts in 1986 and her Bachelor of Laws in 1989, both from the University of Manitoba. She was called to the Bar of the Law Society of Manitoba in 1990 and has experience in the practice of law in both the public and private sectors. Priti has travelled to 64 countries and represented the Government of Canada and the Organization for Democratic Institutions and Human Rights in September 1998 as an observer of the parliamentary elections in Bosnia & Herzegovina. She is committed to international development and in 2014 completed her seventh Habitat build.

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 2017-18 the Board's staff consisted of the following individuals:

Bob Sample	Administrator
Doreen Côté	Office Manager
Tracey Schaak	Administrative Assistant

Appeals and Hearings

Appeals

Appeals coming before the Board vary in nature. Overall, the appeals heard by the Board during 2017-18 related to decisions regarding payment of benefits with respect to insured medical services and/or travel subsidies, 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.

With respect to Insured Benefit appeals, the Board has developed an Information Checklist that is provided to appellants on Insured Benefit appeals in advance of the hearing. This checklist is meant to assist appellants by making them 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 in person 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 Benefit 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 his/her 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 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 reasons for decision.

Pursuant to Board policy, the recordings are maintained in CD format and are securely 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 decision[9] 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.[10]

The Board's decision with reasons is prepared in written format and issued to all parties generally within four weeks after 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 Queen'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 Queen's Bench by any party for the 2017-2018 year.

Canadian Legal Information Institute (CanLII)

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

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

FINANCIAL INFORMATION 2017-18

In 2017-18, the annual operating budget for the Manitoba Health Appeal Board was $139,000, and the annual salaries budget was $200,000.00.

Operating Budget

The annual operating budget expenditures were $163,514 for an over expenditure of $24,514.

Operating Budget: 2017-18
Manitoba Health Appeal Board

Budget		$139,000
Less Actuals		
Board Remuneration (per diems)	$110,166	
Other Expenditures	$53,348	
Total Actuals		$163,514
Variance (over budget)		($24,514)

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 $216,892.00 for an over expenditure of $16,892.00.

Salaries Budget: 2017-18 Manitoba Health Appeal Board				
Description	**FTE[11]**	**Estimate**	**Actual**	**Variance Over (Under)**
Staff Salaries	3 FTE	$180,000	$181,228	$1,228
Employee Benefits	3 FTE	$20,000	$35,664	$15,664

Figure 2 – Salaries Budget

[11] Full time equivalents

Board Activities 2017-18

Appeal Sittings and Meetings

Appeal Sittings

During 2017-18, sittings of the Board were scheduled on Thursdays with Authorized Charge appeals usually heard in the morning and Insured Benefit appeals in the afternoon. Whenever possible, hearings for Home Care and other types of appeals were also scheduled on Thursdays, with flexibility to use other week days when necessary.

Sittings of the Board are usually held at the Board's office located at 102 – 500 Portage Avenue, Winnipeg, Manitoba but on occasion, the Board will attend to other locations in Manitoba to hear appeals.

For the most part, the parties[12] attended in person for the hearing of appeals. However, the parties are also offered the option of participating by teleconference and many did so, particularly for appeals of Authorized Charges and for those parties who reside in rural communities. Participation via videoconferencing is another option that is available to the parties although access to the equipment is limited and dependent on a third party.

During 2017-18 the Board held fifty-one sittings for the purpose of hearing appeals and considering complex motions:

# Sittings Held	Type of Appeal
12	Authorized Charges
27	Insured Benefit
8	Home Care
1	Personal Care Home Placement
1	Hepatitis C
2	Other

Figure 3 – Sittings Held in 2017-18

On average, the Board heard three appeals at each sitting for Authorized Charge appeals. Generally, the Board heard only one appeal at a sitting for Insured Benefit and other types of appeals.

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 2017-18, there were no requests made by parties to an appeal to conduct hearings in the French language.

[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).

Composition of Board Quorums/Panels

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

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

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

During 2017-2018, the Manitoba Health Appeal Board met for a general meeting on March 1, 2018 to discuss a number of issues relevant to the work of the Board which included Board advocacy with appeal decisions, resolutions of appeal issues agreed to during an appeal hearing, requests for copies of hearing recordings, posting redacted decisions on the CanLII web page, quorums for appeal panels, issues for discussion with meeting with the Minister. The meeting had an educational component with a presentation from Board external counsel on "Conduct of a Hearing".

Appeal Sittings and General Meetings Statistics

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

Appeals Received					
Type	2017-18	2016-17	2015-16	2014-15	2013-14
Authorized Charges	60	44	90	86	72
Request for Waiver of Authorized Charge	1	3	5	1	0
Insured Benefits	51	45	42	24	30
Hepatitis C Compassionate Assistance Program	3	0	0	0	0
Home Care Program	18	17	10	8	5
Personal Care Home	3	8	3	4	4
Other Appeals	4	0	2	1	1
Total	**140**	**117**	**152**	**124**	**112**

Figure 4 – Review of Appeals Received

[13]Section 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."

As can be seen by the chart in Figure 4 above, there was an increase of twenty-three appeals received by the Board over the previous fiscal year.

The reason for the increase of appeals for 2017-18 in comparison to the 2016-17 fiscal year was, for the most part, related to an increase in Authorized Charge appeals and Insured Benefit appeals. The figures provided in table 4 show that appeals filed with the Board fluctuate from year to year and consequently are unpredictable.

One Request for Waiver of Authorized Charge appeal was received but did not proceed to appeal because the Board decided at an Annual General Meeting that it did not have the jurisdiction to hear that type of appeal. Consequently, the Board is no longer accepting Request for Waiver of Authorized Charge appeals.

Appeals Heard					
Type	2017-18	2016-17	2015-16	2014-15	2013-14
Authorized Charges	21	22	47	27	35
Request for Waiver of Authorized Charges	0	0	5	0	0
Insured Benefits	26	28	18	11	17
Hepatitis C Compassionate Assistance Program	1	0	0	0	0
Home Care Program	8	12	5	7	2
Personal Care Home	1	0	1	2	0
Other Appeals	2	0	2	0	0
Total[14]	**59**	**62**	**78**	**47**	**54**

Figure 5 – Comparison of Appeals Heard

As can be seen by the chart in Figure 5, there was a decrease of three appeals heard by the Board over the previous fiscal year.

The number of appeals heard in 2017-18 is less than the total number of appeals received for the following reasons:

- Some appellants withdrew their appeals because the respondent, Manitoba Health, Seniors and Active Living (MHSAL) or a regional health authority, changed its decision to the satisfaction of the appellant. The majority of decisions were changed based on additional information that was submitted by the appellant during the appeal process.

- Prior to a hearing being scheduled, some appellants withdrew their appeals because they decided not to pursue the matter any further.

- Appellants and respondents have a right to file a brief (written argument and evidence) on the appeal issues. The parties are given a specified number of weeks to submit their briefs and this process takes several weeks from the time the appeal is received. As a result, appeals received late in the fiscal year might not be heard until the following fiscal year.

- 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, appellants are away on vacation, or they require additional time to gather their evidence.

[14]This 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.

- Appellants submitted new information to the respondent and the respondent was in the process of reviewing the new information.

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

Sittings and General Meetings			
Fiscal Year	**# of Appeal Sittings**	**# of General Meetings**	**Total Appeal Sittings/ General Meetings**
2017-18	51	1	52
2016-17	44	2	46
2015-16	51	1	52
2014-15	26	1	27
2013-14	31	1	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 2017-18.

Authorized Charge Appeals

Appeals Received

The Board received sixty Authorized Charge appeals, which is an increase from the previous fiscal year's total of forty-four.

Breakdown of Authorized Charge Appeals Received by Regional Health Authority

The following figure shows the breakdown by regional health authority (RHA) of the sixty Authorized Charge appeals received in 2017-18:

RHA	Appeals
Interlake-Eastern	7
Northern	0
Prairie Mountain	6
Southern Health-Santé Sud	7
RHA Subtotal	20
Winnipeg	40
Total	60

Figure 7 – Breakdown by RHA of Appeals Received

Appeals Heard

During 2017-18, the Board held twenty-one hearings for Authorized Charge appeals, which is a decrease from the previous year's total of twenty-two.

Disposition of Authorized Charge Appeals Heard

The disposition of the twenty-one appeals heard by the Board in 2017-18 is as follows:

Disposition	Number	%
Appeals denied	8	38%
Appeals allowed to minimum charge	1	5%
Appeals allowed to other rate	11	52%
Appeal heard & adjourned	1	5%
Total	**21**	100%

Figure 8 – Disposition of Authorized Charge Appeals

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

Manitoba Health amended its review decision	20
Withdrawn by Appellant for other reasons	7
Appellant deceased prior to hearing[15]	4
Appeal filed prematurely[16]	2
Struck-off (failure to actively pursue)	2
Total	**35**

The withdrawal of twenty authorized charge appeals occurred because MHSAL 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 fourteen appeals pending at the end of the fiscal year and carried forward to 2018-2019.[17]

Insured Benefit Appeals

The vast majority of Insured Benefit 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.

[15] 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.

[16] 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.

[17] Appeals were carried forward for the following reasons: appellants had not yet obtained and/or submitted financial documents or other relevant evidence for their appeal hearing, 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.

Appeals Received

The Board received fifty-one Insured Benefit appeals in 2017-18, which is an increase from the previous fiscal year's total of forty-five.

Multiple Issues with Insured Benefit Appeals Received

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

Appeals Heard

During 2017-18, the Board held twenty-six hearings for Insured Benefit appeals, which is a decrease from the previous year's total of twenty-eight.

Insured Benefit Appeals Heard				
2017-18	2016-17	2015-16	2014-15	2013-14
26	28	18	11	17

Figure 9 – Comparison of Appeals Heard

Disposition of Insured Benefit Appeals Heard

The disposition of the twenty-six Insured Benefits appeals heard by the Board is as follows:

Disposition	Number	%
Appeals approved	5	19%
Appeals denied	19	73%
Appeal heard & adjourned	1	4%
Appeal resolved during hearing	1	4%
Total	**26**	**100%**

Figure 10 – Disposition of Insured Benefit Appeals

The report shows that seventy-three percent 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.

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 benefit appeals that are commonly not met by appellants are:

- MHSAL 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.

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

Withdrawn as Manitoba Health approved payment	8
Withdrawn by Appellant for other reasons	14
Appeal Filed Prematurely	1
Struck-off (failure to actively pursue)	1
Total	24

There were twenty five appeals pending at the end of the fiscal year and carried forward to 2018-2019. Appeals were carried over to the next fiscal year because:

- they 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, and

- 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.

Manitoba Hepatitis C Compassionate Assistance Program Appeals

Manitobans who became infected with Hepatitis C (HCV) after receiving a transfusion of blood or blood products before January 1, 1986 or between July 1, 1990 and September 28, 1998 in Manitoba may be eligible for a one-time payment of $10,000 through the Manitoba Government's Hepatitis C Compassionate Assistance Program.

Persons who apply for and are denied financial compensation through this program have the right to appeal the decision to the Board.

Appeals Received

In 2017-2018, the Board received three appeals regarding a decision of the Manitoba Hepatitis C Compassionate Assistance Program to deny financial assistance.

Of the three appeals received, one was heard and denied, one was withdrawn as Manitoba Health, Seniors and Active Living decided to grant the application for financial compensation, and one was filed prematurely (i.e., there was no decision made by the Manitoba Hepatitis C Compassionate Assistance Program from which to appeal).

Since the inception of the Manitoba Hepatitis C Compassionate Assistance Program in 2001, the Board has received forty-four appeals, the outcomes of which are as follows:

Disposition	Number	%
Appeals heard & denied	11	25%
Appeals heard & allowed	3	7%
Appeals rejected	2	4%
Appeals withdrawn/abandoned	28	64%
Total Number of Appeals Received	**44**	**100%**

Figure 11 – Disposition of Hepatitis C Compassionate Assistance Appeals

Home Care Program Appeals

Appeals Received

The Board received eighteen appeals from decisions related to the provision of home care services in the province in 2017-18, which is an increase from the previous fiscal year's total of seventeen.

Appeals Heard

During 2017-18, the Board held eight hearings for Home Care appeals, which is a decrease of four from the previous fiscal year.

Disposition of Home Care Program Appeals Heard

The eight appeal hearings held in 2017-18 were disposed of as follows:

Disposition	Number	%
Appeals approved	2	25%
Appeals allowed in part/varied	1	12.8%
Appeals denied	3	36.5%
Appeal heard & adjourned	1	12.8%
Appeal resolved during the hearing	1	12.8%
Total	**8**	**100%**

Figure 12 – Disposition of Home Care Appeals

In addition to the appeals that were heard, seven appeals were withdrawn by the appellant. Four of the seven appeals were withdrawn as the regional health authority amended its decision and the issue under appeal was resolved.

Four appeals were pending at the end of the fiscal year and carried forward to 2018-19.

The Home Care appeals heard over the past five years were disposed of as follows:

Disposition of Home Care Appeals Heard					
Disposition	2017-18	2016-17	2015-16	2014-15	2013-14
Allowed/ Allowed In Part	3	6	2	3	0
Denied	3	6	3	3	0
Withdrawn	0	0	6	1	1
Heard & Adjourned	1	0	0	0	0
Resolved during the hearing	1	0	0	0	0
Referred Back	0	0	0	0	1
Total	**8**	**12**	**11**	**7**	**2**

Figure 13 – Disposition of Home Care Appeals Heard by Year

Breakdown by Regional Health Authority of Home Care Appeals

The following is the breakdown by regional health authority of the eighteen Home Care appeals received in 2017-18 in comparison to the appeals received in the four prior fiscal years:

RHA	Appeals 2017-18	Appeals 2016-17	Appeals 2015-16	Appeals 2014-15	Appeals 2013-14
Interlake-Eastern	2	4	2	0	0
Northern	1	1	0	0	0
Southern Health	0	1	0	0	2
Prairie Mountain Health	2	0	0	0	0
RHA Subtotal	5	6	2	0	2
Winnipeg	13	11	8	8	3
Total	**18**	**17**	**10**	**8**	**5**

Figure 14 – Breakdown by RHA of Appeals Received

Home Care Program appeals received from regional health authorities in 2017-18 other than Winnipeg numbered five or twenty-eight percent of appeals, while appeals from Winnipeg numbered thirteen or sixty-two percent.

A summary of the Winnipeg/Other RHA proportions for the past five years is shown below. It indicates that percentages vary, as is to be expected with small data sets, but 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**
2017-18	28%	72%
2016-17	35%	65%
2015-16	20%	80%
2014-15	0%	100%
2013-14	40%	60%

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

Personal Care Home Placement Decisions by an Assessment Panel

Appeals Received

The Board received three appeals in relation to assessment panel decisions.

Appeals Heard

The Board held one hearing for an assessment panel decision appeal. The appeal was dismissed because the Board decided that the issue at appeal fell outside of its jurisdiction.

Two appeals received were closed prior to a hearing being held for the following reasons:

- one was withdrawn because the relevant regional health authority's assessment panel reversed its initial decision and approved the individual's paneling for personal care;
- one was withdrawn for other reasons.

Personal Care Home Placement Appeals Received				
2017-18	2016-17	2015-16	2014-15	2013-14
3	8	3	4	4

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 and regulations and 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

The Emergency Medical Response and Stretcher Transportation Act

There was one appeal received under this *Act* regarding the temporary suspension of a licence, which was withdrawn as a resolution was reached between the Appellant and the Respondent.

In addition, there were three "Other" appeals received in 2017-18.

- One appeal dealt with an individual wanting to appeal decisions that were made pursuant to *The Mental Health Act*. The issues were not within the Board's jurisdiction and the individual was directed to consult with legal counsel.
- The second appeal dealt with a person who appealed a decision from the Medical Assistance in Dying Program with the Winnipeg Regional Health Authority. A decision was made by the Board on the issue of its jurisdiction to hear the matter.
- The third appeal related to a decision to deny coverage for the costs of acquiring orthotics, a pair of bionic knee braces. The orthotic fell under the provision of section 71 of the *Act* through the Prosthetic, Orthotic and other Medical Devices (POMD) Insurance Regulation.

The particular bionic knee brace was not listed in the POMD and consequently the appeal failed because payment could only be made for devices identified in the Regulation. The appeal decision did comment on updating or amending the Regulation more frequently to allow for expenses for new services and devices not previously in existence.

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
2017-2018	1	*The Emergency Medical Response and Transportation Act*
	1	Medical Assistance in Dying (MAiD)
	1	Provincial Drug & Ancillary Program
	1	*Mental Health Act* – issue outside the Board's jurisdiction
2016-17	0	
2015-16	1	Laboratory Specimen Collection Centre Licence
	1	Cleft Lip and Palate Program
2014-15	1	Laboratory License
2013-14	1	*The Emergency Medical Response and Transportation Act*

Figure 17 – "Other" Appeals Received

Board Member Training

During 2017-18, the Board and staff of the MHAB engaged in training and educational activities offered by the Manitoba Council of Administrative Tribunals, the Crown Corporations Council, a Webinar educational "Ethics in Administrative Tribunals" and various offerings from Manitoba Health, Seniors and Active Living.

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. During the 2017-2018 fiscal year the brochure was removed from the website because it was being revised. The revisions will be completed in the 2018-2019 fiscal year and the brochure will be reposted on the 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:

http://www.manitoba.ca/health/appealboard

Canadian Legal Information Institute (CanLII)

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

Appeal Decision Summaries

NOTE: You are encouraged to read the full redacted text of each appeal decision which can be found on the CanLII website https://www.canlii.org/en/mb//. What follows are summaries of appeal decisions.

Insured Benefit Decision 2017-009-IB – Lyme Disease – The Need for Prior Approval from Manitoba Health - The need for a Referral from an Specialist in the Appropriate Field

ISSUE: Should the Respondent have denied benefits to the Appellant for the costs for Lyme disease testing at a lab in the United States?

The Appellant consulted her family doctor many times in 2016 because she felt increasingly unwell, dizzy, tired, feverish, and was gaining weight rapidly. In May 2016 she consulted with her physiotherapist who commented on observed swelling. In June 2016, the Appellant mentioned this to her family doctor, who ordered blood samples, that she might have Lyme disease.

In June 2016 the Appellant received the results of the first ELISA test for Lyme disease and it was negative. The Manitoba provincial protocol requires that the ELISA test is done first and only if it is positive, a second test called PCR and Western Blot would be administered to confirm that Lyme disease is present in the patient.

The Appellant went back to her family doctor who drew more blood samples and referred her to a rheumatologist with an appointment in November. A second ELISA test was done in August 2016 it indicated again that no Lyme disease was detected. The Appellant started experiencing higher fevers together with other symptoms. No treatment was initiated.

The Appellant went to her family doctor again in September and October 2016 because her health was continuing to deteriorate. In November 2016 the Appellant saw the rheumatologist who was unable to identify the cause of the symptoms, and rejected a relationship to Lyme disease. The rheumatologist did not offer remedial action nor a referral to another specialist.

The Appellant attended an appointment with a second rheumatologist in November 2016, who took a blood sample to test her for lupus and said that she didn't know whether there was Lyme disease or not.

The Appellant saw her physiotherapist again who said that her lymph nodes were large and referred her to see a colleague (physiotherapist #2), who specializes in lymphatic systems and treatments. Physiotherapist #2 reported that the symptoms were compatible with those experiencing Lyme disease and recommended further testing and a consultation with a naturopath who specializes in Lyme disease.

The Appellant consulted the naturopath who recommended that a blood sample be sent to a lab in the USA for tier 2 testing (PCR and Western Blot) for Lyme disease. The cost of this test was $1,319.00 US.

It was the Respondent's denial for reimbursement of this cost that was appealed to the Board.

The test results from the USA lab came back indicating chronic Lyme disease. The naturopath directed the Appellant to a walk-in clinic. The attending doctor saw the test results, confirmed that the results indicated that the Appellant had Lyme disease and prescribed a 3-month course of doxycycline antibiotics. By March 2017, the Appellant was beginning to feel better and the improvement continued.

At appeal, the Appellant offered evidence in the form of a letter written by Manitoba Health, Public Health and Primary Care Health which was addressed to medical practitioners in Manitoba, dated September 25, 2015. Under the subtitle "Tickborne Infections in Manitoba", one of the statements read "Early treatment improves outcome: "Where early Lyme disease is suspected, treatment should be initiated without waiting for laboratory confirmation." The Appellant argued that this protocol was not followed by either her family doctor or by the two rheumatologists, in-spite of her suggestions to them that she believed she was suffering from Lyme disease.

The Appellant stated that she wanted "to play by the rules" and let the health care system in Manitoba go through its course until a diagnosis had been reached. However, her symptoms became so extreme that she used a USA lab to confirm a diagnosis of Lyme disease. She knew that Lyme disease was progressive and chronic and she could not wait longer to seek treatment.

It was the Respondent's position at appeal that approval of the Minister was required before obtaining services outside Canada and approval was not obtained. There was no evidence of a referral for this test by an appropriate specialist, as the naturopath was not a specialist within the meaning of that term in the Act and regulations.

The Respondent stated that the Board should not consider the effectiveness or adequacy of health services experienced by the Appellant in this case. The Respondent submitted that the Appellant should have returned to the family doctor and asked for the doctor "to quarterback her patient care to pursue another course of action or specialist".

The Board dismissed the appeal, based upon its mandate to decide matters in accordance with *The Health Services Insurance Act*. No matter how compassionate and understanding it may feel towards the motives and actions of the Appellant, it is bound to make its decision in accordance with the regulations. The Board found that the Respondent followed the regulations when making its decision to deny benefits for this out-of-country lab testing.

The Board sympathized with the Appellant, who became progressively ill over a period of seven months and who did all she could to comply with the process offered by the health care system. The family doctor did not follow the MHSAL directive to health care providers to prescribe antibiotics to patients who exhibit symptoms of Lyme disease.

Insured Benefit Decision 2017-011-IB – Air Ambulance Expense – Excluded Services

ISSUE: Whether the Appellant is entitled to be reimbursed for the costs of helicopter transportation from the hospital in Kenora, Ontario, to a hospital in Winnipeg.

In deciding that issue the Manitoba Health Appeal Board (the Board) needed to assess what degree of discretion it has in deviating from clear wording in the provisions of the regulations enacted by the Legislature.

The Appellant resided in Manitoba and in June of 2016 she had been treated in Winnipeg for a neurological condition. The treatment included surgery, which was performed in a Winnipeg hospital.

The Appellant was visiting the Lake of the Woods area, near Kenora, Ontario in August 2016 when she suffered a seizure and was admitted to hospital in Kenora. The doctors were not successful in alleviating the symptoms, and sought advice from the Winnipeg neuro-surgeon who had previously treated her. It was decided that the best care would be in Winnipeg, and she was transferred on an urgent basis to a hospital in Winnipeg. At all times while in the hospital in Kenora the Appellant was not able to consent or participate in a meaningful way as to the decisions being made.

The transfer was done by an Ontario based air ambulance service who issued an invoice to the Appellant for the cost of the flight. The Appellant submitted the bill to Manitoba Health for reimbursement and the claim was denied. That decision was then appealed to the Board.

The Appellant's advocate argued that there was sufficient discretion in the regulations to permit payment for a claim. He pointed to her inability to provide consent, and to the emergency nature of the situation, as reasons why this cost should be paid by Manitoba Health. It was further argued that the fact that Kenora is merely 50 kilometres from the Manitoba border should also be considered.

The Respondent argued that the regulations exclude the costs of ambulance services, whether within or outside of Manitoba. It argues that the Board does not have jurisdiction to make equitable remedies, and that it must apply the relevant regulations in accordance with their plain meaning.

The Board determined that applicable regulations excluded payment for claims regarding transportation or ambulance services and the appeal was dismissed.

While sympathizing with the Appellant's circumstances the Board noted that it has no policy making power and it has no inherent jurisdiction to grant equitable remedies. Its powers are limited to interpreting The Health Services Insurance Act and the relevant regulations.

The fact that Kenora is near the Manitoba border, and that the Lake of the Woods region hosts many Manitoban cottage goers over the course of each summer, is not relevant. Borders matter. What applies on one side may not on the other, as the laws of the land apply within a particular geographical space. The passionate argument for fairness and equity can not be accepted without a proper statutory foundation.

Insured Benefit Decision 2017-020-IB – Medically Required

ISSUE: Whether there was sufficient evidence to demonstrate that the procedure at issue was medically required.

The Appellant sought pre-approval for funding of a surgery, to be performed by a plastic surgeon, that would remove two masses of tissue from her inner thighs. A Request for Prior Approval had been submitted by a plastic surgeon, in which he indicated that the masses needed to be excised, and that the Appellant had "difficulty ambulating". The Respondent denied the request, and stated that the request had not set out sufficient information to demonstrate why the procedure was medically required.

Following that denial by the Respondent, the Appellant's family doctor wrote two letters in support of funding the procedure, setting out reasons why the surgery was not cosmetic in nature and was needed for medical reasons. The Respondent's position was that the medical information needed to come from, or at least be adopted by, the surgeon who would actually perform the operation, rather than the family doctor.

In her testimony at appeal the Appellant testified that the excess lumps of tissue were each approximately the size of a grapefruit. She said that they inhibited her ability to walk, to do leg lifts, and even limited exercises such as swimming. She testified that following the birth of her son she had experienced extreme weight gain. Then, eventually, after seeing a series of doctors, she was diagnosed with a hernia. Following the surgery to remove the hernia these two masses developed on her inner thighs. She testified that the surgeon that performed the hernia had

advised her to do leg lifts as a way to rehabilitate herself following surgery. She testified that these lumps of tissue prevented her from being able to do leg lifts.

The Board concluded that the Appellant had provided sufficient evidence that the procedure was medically required. The initial Request for Prior Approval from the plastic surgeon lacked adequate information to justify a finding of medical need. However, the later information provided by the family doctor, bolstered by the Appellant's direct testimony before this Board, was sufficient to support the claim.

The Respondent's policy position that the evidence in support of medical necessity ought to come from the surgeon who would actually perform the procedure may, in most circumstances, be reasonable. However, the Board decided that the applicable regulations are not that narrow and they contain no such limitation. On the facts of this case the Board was satisfied that the totality of the evidence from the Appellant, the family doctor and the plastic surgeon was enough to support the claim. The appeal was allowed.

Authorized Charge Decision 2017-014-AC – Should Interest Income be Included in Calculating Income

ISSUE: Determination of appropriate residential daily rate for stay in a personal care home

The Appellant was a resident of a Personal Care Home and she was assessed an authorized charge of $81.60 per day based on a net income of $40,298.00. A review conducted by the Residential Charge Program, Manitoba Health, Seniors and Active Living (MHSAL) confirmed the daily rate of $81.60.

The Appellant's son and POA attended before the Manitoba Health Appeal Board (the Board) and argued that a certain amount of interest income should not be included in calculating her income, because although the interest was earned, it was locked into term deposits that were not readily accessible. He argued that an amount of approximately $10,332.00 should be deducted from her income, which was the amount earned from term deposits which were locked in. Deducting that sum from her total income would then reduce her income below the maximum amount, thereby reducing the daily rate payable by the Appellant. He submitted that because they could not access the term deposit funds without an interest penalty that money was not really available for the Appellant's use and benefit, and therefore there was a shortage of funds available to service her daily needs.

The Respondent argued that the term deposit income was income, and nothing in the Manitoba Health policies or the regulations permitted exclusion of it from the income calculation.

The Board noted in its decision that the term deposits were not unavailable to the Appellant. They could be accessed, subject only to some interest penalty. The Appellant herself was 85 years old, and apparently has significant health limitations that restrict her to the personal care home. The Appellant's son indicated that at least one of the term deposits was quite large, and there were a number of smaller ones. It was the Board's position that it should not be a particularly severe hardship to pull money out of one or more of the smaller term deposits if the Appellant herself has financial needs, or if that money could be used to improve her quality of life. While that might result in some small depletion of the estate value, nothing in the evidence suggested that this would pose any difficulty for the Appellant herself.

From a policy stand point, the Board wants to encourage families to use the funds of a person in personal care for the maximum benefit of that person, rather than to limit the resources available to her benefit in order to preserve the maximum value of the estate. While there is nothing wrong with prudent estate planning, that ought not to be the primary purpose.

The Board dismissed the appeal and confirmed the daily rate at $81.60.

Authorized Charge Decision 2017-015-AC – Impact of Commitments made to Financially Support Children and their Families

ISSUE: Determination of appropriate residential daily rate for stay in a personal care home

The Appellant was a resident of a Personal Care Home and she was assessed an authorized charge of $81.60 per day based on combined family income of $76,093. A review conducted by the Residential Charge Program, Manitoba Health, Seniors and Active Living (MHSAL) confirmed the daily rate of $81.60.

For the 2016/17 rate year, the Appellant's husband provided an estimated $34,000 of financial assistance to his daughter and her family, as they were in financial difficulty and had recently declared personal bankruptcy. In addition, the Appellant's husband had also provided financial assistance to his son and family to assist them purchasing a home in another province. These additional expenditures have made it difficult for him to pay the daily rate that has been set for his wife's stay in a personal care home.

The Appellant's husband prepared a schedule of estimated personal expenses for the year ending July 31, 2016, which reached a total of $84,263.29. It was clear to the Board that portions of these expenses were not for the Appellant or her husband, but for their children and grandchildren.

At the hearing, the Appellant's husband and their daughter explained their circumstances in detail. He had assisted his daughter and her three children with household expenses including food, mortgage, house insurance, house maintenance, recreational equipment and activities, vehicle tires and rims, vehicle maintenance costs, and other miscellaneous items. His liquid assets had been dramatically reduced, partially because of a $20,000.00 contribution he made to their son for buying a home. The Appellant's husband stated "My son, as does my daughter, will call me when they need financial assistance and I will respond to their beck and call. I feel that this support will continue as their families grow and until such time as I can no longer afford to assist them."

The Appellant's daughter talked about the stresses her family has experienced, resulting in the declaration of personal bankruptcy and that $15,000 of Registered Education Savings Plan (RESP) funds had to be liquidated. Up until January 2017, they were paying $4,000 per month for a nanny to live in their basement to provide care and supervision for the grandchildren. The daughter stated that if relief cannot be provided, perhaps they should "pull mum out of the home" to be cared for by the Appellant's husband, however the husband said that he would not be able to care for his wife.

It was the Respondent's position that the estimated $34,000 in financial assistance provided by the Appellant's husband to their children, could not be deducted from the 2015 net income, as the amounts were discretionary.

The Board dismissed the appeal and confirmed the daily rate at $81.60. The Board referred to a statement from the Appellant's husband's which noted that it was the children that are really the issue in this matter. The Board concluded that the welfare of the Appellant was of considerable importance. In this regard, the Board strongly urged the Appellant's family to consider any future changes in the Appellant's care to be made in the Appellant's best interest and not governed by the financial interests of the adult children or grandchildren.

The payment of the daily rate is an obligation that is met by all Manitobans in personal care homes. The Respondent stated at the hearing that the estimated daily cost of providing personal home care services is $250.00, and the maximum Manitobans, including the Appellant, are required to pay is $81.60.

Authorized Charge Decision 2018-006-AC – House in the Community

ISSUE: Determination of appropriate residential daily rate for stay in a personal care home

The Appellant was a resident of a Personal Care Home and was assessed an authorized charge of $81.60 per day based on a net income of $39,872.39. A review conducted by the Residential Charge Program, Manitoba Health, Seniors and Active Living (MHSAL) confirmed the daily rate of $81.60. A further reconsideration by the Residential Charge Program reduced the daily rate to $80.80 based on an adjustment to the net income related to allowable expenses.

The Appellant is requesting consideration from the Manitoba Health Appeal Board (the Board) to lower her assessed rate because the family has not yet sold her house in the community, due to a number of family events and personal circumstances in 2017. Paying the daily rate as well as paying the basic utilities in her house has been a financial hardship. They plan to place the house on the market in 2018.

The Respondent's Policy regarding "Duplicate Housing Expenses" states that where a client has incurred housing expenses as a result of not being able to sell a home upon admission to a personal care home, it will consider financial relief for property taxes, utilities, household insurance, and security monitoring expenses for a period of up to four months from the original effective date of charge.

The Board allowed the appeal and reduced the daily rate to $76.10. The net income was adjusted based on the Board's application of its Guideline entitled "Expenses - Maintaining a Home or other Property/Assets in the Community". The Guideline provides for an adjustment to be made related to the costs of maintaining the house in the community:

> "Where a resident of a personal care home, who does not have a spouse in the community and wishes to maintain her home in the community, any costs associated therewith will generally not be considered eligible as deductions for rate-setting purposes. However, the Board has the discretion to grant relief for reasonable household costs for a period of up to one year after the date the resident was first charged a daily rate where a resident of a personal care home has a house in the community that is for sale or is being readied for sale."

The Respondent provided relief for the first four months following the Appellant's move to the personal care home. The Board is able to grant relief for a further eight months to reach the limit of one year. However, residential charges are set between August 1 to July 31 so, in this appeal which is for the 2016/17 year, there are only three months remaining (May 1 to July 31, 2017) for which relief can be provided. If the Appellant wished to appeal her residential charge for 2017/18, another panel of the Board may consider granting relief for the final 5 months of its 12 month limit.

Other Appeal Decision 2018-0012-OTHER – Knee Brace – Prosthetic, Orthotic and Other Medical Device Insurance Regulation

ISSUE: Whether there was any basis for the Board to overturn the MHSAL decision regarding reimbursement to the Appellant for the knee braces he purchased.

The Appellant was a 78 year old resident of Manitoba who suffered injuries to his knees, particularly his right knee, in the early 1960s. Despite these injuries, the Appellant had led a very active life with the result that he now experiences extreme pain in his knees accompanied by difficulty rising from seated positions without assistance. In addition to arthritis, the Appellant has knee caps that have become displaced to the side which further complicate his condition and treatment options. The Appellant has been on and off the wait list for knee replacement surgery for the last few years. Over the years he has tried a few knee braces but none have provided sufficient relief and assistance.

In the summer of 2017, a new kind of brace was brought to his attention by family residing in another province. This new brace is referred to as the Levitation brace and is described as a bionic knee brace containing spring loaded technology. The Appellant advised that he looked into travelling to acquire the brace but someone suggested to him that he ought to check with MHSAL to see if the brace would be covered if he bought it in another province. He called MHSAL and claims that he was told that orthotic braces were covered if purchased in Manitoba and he would need to submit the receipt and a doctor's note to be reimbursed.

The Appellant obtained a note from a local physician prescribing a bionic knee brace for each knee. He then sent his measurements to the manufacturer of the Levitation brace and was sent a pair of Levitation knee braces along with an invoice for $4,939.00 plus GST. He paid this invoice and submitted the invoice along with the doctor's note to MHSAL. MHSAL wrote to the Appellant advising that it could not provide reimbursement as "Levitation or Bionic knee braces are not listed under the current prosthetic and orthotic fee schedule". This schedule is found in the Prosthetic, Orthotic and other Medical Devices Insurance Regulation (POMD Regulation) of *The Health Services Insurance Act*, CCSM c. H35 (the Act). The Respondent confirmed that the schedule had not been updated in the last 15 to 20 years.

The Appellant has experienced a significant decrease in his symptoms of pain and can more easily rise from a seated position without depending upon the assistance of others since he started using the Levitation braces. He is not certain knee replacement surgery will be successful given the condition of his displaced knee caps but he has had improvements in his life since he started using the Levitation braces.

It was the Appellant's position at appeal that it should not matter whether the knee braces are specifically listed on the schedule in the POMD Regulation so long as he needs them and so long as they work for him.

It was the Respondent's position that it must follow the Act and the POMD regulation and there is no provision in either to allow for reimbursement for this particular knee brace. It does not have discretion to pay for items not listed in the schedule found in the POMD Regulation.

The Board dismissed the appeal and stated that the insurance coverage provided for under the Act and regulations does not extend to every expense incurred by a resident in relation to health issues.

Under section 3 of the POMD, a schedule of orthotics, also referred to as a tariff, appears setting out numerous orthotic items and an amount that MHSAL will pay with respect to each item. There is no provision in the POMD Regulation to consider payments on account of items not specifically listed. Short of there being such a provision, there is nothing that MHSAL can do if an item is not found on the tariff.

The Board sympathized with the Appellant's plight in that the orthotic he purchased is simply too new to have made the tariff. However, the Board's mandate is to decide matters before it in accordance with *The Health Services Insurance Act* and its regulations.

The Board noted that in the future the tariffs found in the POMD regulation, and similar regulations enacted under the Act, may be updated more frequently, or at least be amended to include provisions for new services and devices not previously in existence, or considered to be reimbursed if they are medically required. Until that occurs there can be no coverage for devices created with new techniques and innovations, no matter how beneficial.

Personal Care Home Placement Appeal Decision 2017-001-PCHP – Move to Special Needs Behaviour Unit

ISSUES:

(1) Whether or not the Board had the jurisdiction to review the decision of a Regional Health Authority as to which facility a personal care home resident would be placed in.

(2) Whether or not the Respondent should be directed to remove the Appellant from one facility, and place her in another one.

The Appellant had lived in her family home together with her husband for many years. In September 2013 the Appellant fell at home and was not able to get up even with the assistance of her husband. An ambulance was called and treatment for the injuries required her to be admitted to hospital. During the hospital stay it became clear that her long-term physical limitations would require placement in a PCH. She was paneled in November of 2013 and in January of 2014 she was placed in a PCH. In November of 2014 she was transferred to another PCH, one which her family preferred ("the Primary PCH").

The Appellant's health history included battles with mental health issues. These mental health issues played a role in the difficulty the Primary PCH had in caring for the Appellant. During her time at the Primary PCH the care team struggled to cope with her aggressive behavior, verbal abuse, and conduct of that nature. Over a period of about three years there were approximately 30 written reports recorded by staff complaining about the Appellant's conduct.

The Appellant's family testified that they were very aware of the incidents, and of the general difficulty that the Primary PCH had in coping with the Appellant. They did not dispute that these incidents occurred, but felt that her behavior could be managed best by adapting the approach to dealing with her.

After approximately three years the Transition Advisory Panel (TAP) considered the Appellant's situation and concluded that a transfer out of the Primary PCH was necessary. In August 2017, the Appellant was transferred to the Special Needs Behaviour Unit ("SNBU") at a second facility.

Family members argued that after the transfer to the SNBU the Appellant's physical and mental health had deteriorated. They felt that the transfer did not adequately consider the impact on her mental, spiritual and physical needs. The family submitted that better care could have been provided at that Primary PCH by an improved manner of approach. The Appellant made friends with many residents there, and felt at home. They believed that a transfer back to the first facility would assist in helping the Appellant recover her previous level of well-being.

Staff of the SNBU reported improvements in certain aspects of the Appellant's behavior since the transfer. In particular, some of her most aggressive tendencies have modified.

The Respondent submitted evidence showing that the SNBU was staffed at higher levels than a standard PCH. A standard PCH had a staffing level funded at 3.6 hours of resident care per day. A SNBU is funded to be staffed at 6.9 hours per day per resident, resulting in more staff available to provide care to residents with higher needs.

The Respondent argued that it is providing a greater, more intensive, level of care to the Appellant at the SNBU than was provided at the prior facility. The prior PCH had exhausted the limits of their abilities in attempting to care for the Appellant.

This Appeal required the Board to determine whether it had jurisdiction to reverse the decision of a Regional Health Authority as to where a personal care home resident was placed. The Respondent argued that the Board had no jurisdiction to intervene in its decision making as to how it delivered care. While it acknowledged that the Board had the authority to make a determination in regards to whether a person had been denied a health care benefit, the Respondent submitted that the manner in which it provided that health care, and in particular which facility the care was provided in, was not within the authority of the Board to review.

The Board noted that it is an administrative tribunal, created by a statute, *The Health Insurance Services Act*. That means that this Board has no "inherent jurisdiction", it can do only what that Act specifically says it has the power to do.

The Board decided that it did not have jurisdiction to overturn a Regional Health Authority's decision as to which facility a resident should be placed in. The Board's jurisdiction allows it to intervene in assessing whether a person has been denied a benefit. But, not further. It cannot interject in how the Respondent delivers the benefits that a person is entitled to.

Given the decision as to jurisdiction it was not necessary to consider the reasonableness of the Respondent's decision making, as to the placement of the Appellant.