

# Manitoba Health Appeal Board

Annual Report  
**April 1, 2021 - March 31, 2022**



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## Message from the Chair

I am pleased to present this report for the period April 1, 2021 to March 31, 2022 for the Manitoba Health Appeal Board. It is published as part of this Board's role to provide a transparent and accountable process for resolving disagreements within certain parts of our province's health care system.

Since its inception in 1993, this tribunal serves as a positive example of how to meet the public's need for access to justice on a cost effective and timely basis. Most matters before this Board are resolved quickly, often within a few months of arising. Similar to the previous year, the Board continued to face challenges with continuing to carry-on their business under the fluid COVID-19 pandemic waves. Looking at carrying out the boards functions in a safe manner, the board introduced hearings conducted using Microsoft Teams, which gave a more personal touch for the public who chose to participate using video conference. The Board introduced an acting Administrator, Erin Wills this year. The Board would like to thank Erin Wills for and the staff at MHAB for keeping the files moving and adapting to new technologies. The support staff who dedicated themselves to reducing the backlog of appeals this year were Rolan Tan and Dana Malabuyoc.

The Board also wants to wish a warm farewell to Richard Kennett, former Vice Chair of the Board. Richard served on the board for 10 years. The Board thanks Richard for his Public Service to Manitobans and wishes him best of luck in his future endeavors.



**Joan Holmstrom**  
Chair

# History, Jurisdiction and Process

## History

### Manitoba Health Appeal Board

- On March 31, 1993, the amalgamation and integration of the Manitoba Health Services Commission and the Department of Health was finalized with the proclamation of The Health Services Insurance and Consequential Amendments Act.
- On April 1, 1993, the former Manitoba Health Services Commission ceased to exist as a corporate entity and its staff and operations were amalgamated with the Manitoba Department of Health.
- At the same time, the proclamation of the *Act* established the Manitoba Health Appeal Board to hear and determine a wide range of specific appeals, including review of Authorized Charges for personal care homes, eligibility/coverage for Insured Benefits, licenses for operation of a laboratory or a personal care home and other matters prescribed by regulation.
- In June 1998, the Act was amended to change the name of the Board to the Manitoba Health Appeal Board.
- In 2001, the Minister of Health assigned the Manitoba Health Appeal Board as the authority to hear appeals under the new Manitoba Hepatitis C Compassionate Assistance Program.

### Appeal Panel for Home Care

- On May 26, 1994, the Minister of Health announced two new committees for the Continuing Care program; one of which was the Appeal Panel for Home Care. The Panel consisted of seven members and its mandate was to hear appeals from people who disagreed with decisions regarding their eligibility for, or changes to, home care service. It reported directly to the Minister of Health and was not legislated.

### Amalgamated Manitoba Health Appeal Board

- In May 2006, the Appeal Panel for Home Care and the Manitoba Health Appeal Board were amalgamated under the Manitoba Health Appeal Board, which assumed responsibility for hearing Home Care appeals.

## Previous Changes to Legislation

- On November 17, 2008, the Manitoba Health Appeal Board Regulation (M.R. 175/2008) was enacted to formalize an individual's right to appeal decisions made by a regional health authority with respect to eligibility for and/or the type or level of Home Care services.
- On January 9, 2009, the Minister of Health formally assigned the Manitoba Health Appeal Board the duty to conduct appeals regarding Home Care services brought pursuant to Manitoba Health Appeal Board Regulation 175/2008.

## Jurisdiction

The Manitoba Health Appeal Board is an independent quasi-judicial administrative tribunal established pursuant to section 9 of The Health Services Insurance Act.<sup>1</sup>

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, medically required 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;

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<sup>1</sup>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.

- 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;
- decision made by Shared Health or a regional health authority regarding eligibility, type or level of service under the Manitoba Home Care Program and is dissatisfied with the decision;
- decision made 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.

## 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, 2021 to March 31, 2022, the Board consisted of the following members:

1. Joan Holmstrom, LL.B., Chairperson
2. Richard Kennett, B.A., B.Ed., M.Ed., prior Vice-Chairperson <sup>2</sup>
3. Dr. Rajinder Bhullar, Vice-Chairperson<sup>3</sup>
4. Andrea Doyle, B.Sc., LL.B.
5. Dr. Roger Gingerich, B.Sc., M.D.
6. Elaine Graham
7. Dr. Allen Kraut, M.D., FRCPC
8. Alan M. McLauchlan
9. John Peters, B.A., M.Ed.
10. Monica Wood
11. Ian Craven
12. Gerard Simard, LL.B.<sup>4</sup>
13. Lisa Fainstein, LL.B, B.A, C. Med. <sup>5</sup>
14. Robert Duttchen CD, PAPM <sup>6</sup>
15. Edna Nabess <sup>7</sup>

## Board Biographies

### Joan Holmstrom, LL.B

Appointed May 1, 2017

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

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

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<sup>2</sup> Richard Kennett's term expired effective December 15, 2021

<sup>3</sup> Dr. Rajinder Bhullar was appointed Vice-Chairperson effective December 15, 2021 by Order in Council No. 470/2021

<sup>4</sup> Gerard Simard resigned from the Board effective July 2021

<sup>5</sup> Lisa Fainstein was appointed as a member of the Board effective December 15, 2021 by Order in Council No. 470/2021

<sup>6</sup> Robert Duttchen was appointed as a member of the Board effective December 15, 2021 by Order in Council No. 470/2021

<sup>7</sup> Edna Nabess was appointed as a member of the Board effective December 15, 2021 by Order in Council No. 470/2021



## Board Biographies Cont'd

### **Dr. Rajinder Bhullar, Vice-Chairperson**

Appointed August 7, 2019

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

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

### **Ian Craven, CPA, CMA, MBA**

Appointed August 7, 2019

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

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

Appointed July 11, 2017

Andrea Doyle is a lawyer with the firm Thompson Dorfman Sweatman LLP ("TDS"). She graduated from the University of Manitoba, Faculty of Law in 2009 and was called to the Manitoba Bar in 2010. Andrea has a broad practice that includes administrative law, bankruptcy and insolvency law, civil litigation and corporate and commercial law. She is fluently bilingual in English and in French. Andrea is a member of the Canadian Bar Association French Speaking Common Law Members Section Executive. She has previously been a member of the Manitoba Bar Association Council and the University of Winnipeg Alumni Association Council.

### **Robert (Rob) A. Duttchen, CD, PAMP**

Appointed December 15, 2021

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

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

Appointed December 15, 2021

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

**Dr. Roger Gingerich, B.Sc., 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.

**Elaine Graham**

Appointed May 1, 2017

Elaine Graham is a retired as manager of a printing company. She graduated with a Bachelor of Commerce from the University of Manitoba in 1975. She worked in the Winnipeg banking industry before getting married and moving to Portage la Prairie, where she still resides. She has worked for the federal government in HR, owned her own photo shop and worked part-time teaching for Red River College when her children were in preschool. She is very active in her home community, having served as president of the Curling Club and promotions chair for various events including; World Jr. Curling, Provincial Curling and Manitoba Games. She brought Big Sisters to Portage and more recently started a pickleball club. Elaine brings a balanced perspective to the MHAB as part-owner of a medical clinic, wife of a chiropractor, mother of a chiropractor, naturopath and massage therapist.

**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. He was an attending physician in Internal Medicine at the Health Sciences Center (HSC) for 30 years, and practices clinical occupational medicine at the Manitoba Federation of Labour Occupational Health Clinic and the HSC. Dr. Kraut has served as a consultant to a variety of labour, industry and government organizations in the field of occupational health.

**Richard Kennett, B.A., B.Ed., M.Ed. (prior Vice-Chairperson)** Appointed October 26, 2011

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

From 1970 to 2000, Richard Kennett was a teacher and vice principal in the Winnipeg School Division. From 2000 to 2010, he developed and managed a Manitoba Justice youth crime prevention funding program called "Lighthouses". The program provided grants to community groups across Manitoba to engage youth outside school hours in safe and productive settings. He has served on the following governance boards – Mediation Services, The Community Unemployed Help Centre and The John Howard Society. From 1995 to 2004, he received extensive training in the facilitation of restorative justice interventions and has, until recently, been a regular mediator for Youth Justice Committees and for Mediation Services. He has facilitated victim/offender cases diverted from the courts, as well as community disputes.

**Alan M. McLauchlan**

Appointed February 1, 2014

Alan McLauchlan has a background in Justice from his career with the Royal Canadian Mounted Police followed by a second career as a college instructor. His expertise includes conflict resolution and restorative justice. He presently is self-employed and provides training to organizations on a variety of topics including justice issues, crime prevention and restorative justice. Alan also works on expanding on his families Non Timber Forest Product company, one of the largest in Manitoba.

**Edna Nabess**

Appointed December 15, 2021

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

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

Appointed May 9, 2018

John Peters served as an educator in the Hanover School Division for 35 years. He started his teaching career in 1972 and later became a Vice-principal, Principal, Assistant Superintendent and Superintendent/CEO. Following his retirement as Superintendent in 2006, he was asked to serve as the Executive Director of the Bethesda Foundation. This Foundation's mission is to enhance health service in the region through innovation, partnership and funding. During his 10 years with the Foundation he was able to assist the Board and be part of a team instrumental in bringing several important projects to fruition, including a Crisis Stabilization Unit, a Primary Care Centre, housing for marginalized persons, and most recently, an increased number of personal care beds for the community. John and his wife Connie, a retired registered nurse, live in Steinbach, close to their two married children and three grandchildren.

**Gerard Simard**

Appointed August 7, 2019

Gerard Simard is a partner with Smith Neufeld Jodoin LLP. Gerard has experience in most areas of law, including civil matters; however, his areas of expertise are real estate and condominium law, commercial and agricultural transactions, wills and estate planning as well as corporate transactions. Gerard obtained his Bachelor of Arts degree (with a major in French Literature) from the University of Manitoba in 1992. Gerard is fluently bilingual in French and English and studied one year at the Université of Perpignan in southwestern France before obtaining his law degree. Gerard was called to the Manitoba Bar in 1995 and is now a partner with the firm. Gerard has served as a legal advisor to several not-for-profit and charitable organizations in Southeast Manitoba and is an active member of the Knights of Columbus Council of La Broquerie as well as one of the directors of La Broquerie Catholic Church.

**Monica Wood**

Appointed August 7, 2019

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

## Board Administrative Staff

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

### Administrative Staff

During 2021-22 the Board's staff consisted of the following individuals:

Erin Wills	Administrator
Rolan Tan	Office Manager
Dana Malabuyoc	Administrative Assistant

## Appeals and Hearings

### Appeals

Appeals coming before the Board vary in nature. Overall, the appeals heard by the Board during 2021-22 related to decisions regarding payment of benefits with respect to insured medical services and/or travel subsidies, refused registration as an insured person, assessed authorized charges (daily rates) for residents of personal care homes and other long-term facilities, and Home Care services.

### Hearings

Section 9(10) of The Health Services Insurance Act provides that the Board may establish its own rules of practice and procedure including rules respecting meetings and hearings, not inconsistent with this or any other act of the Legislature or any regulation regarding the Board. Accordingly, the Board has adopted standard Rules of Procedure for the hearing of appeals. All parties appearing before the Board are provided with a copy of the Board's Rules of Procedure at the time an appeal is filed, and a copy of the Rules is also available on the Board's website.

The Act also directs that appeals shall be conducted on an informal basis and the Board is not bound by the rules of law respecting evidence applicable to judicial proceedings.

During this fiscal it became clear that the board needed to expand how hearings were being conducted due to challenges that were being presented by the COVID-19 pandemic. The appeal hearings began giving Appellant's an option to participate through a Microsoft Teams platform by either teleconference (audio only) or video conference.

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 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 their case and make a submission first, followed by questions by the Board and the respondent. The respondent is then provided with an opportunity to present their case and submission, followed by questions by the Board and the appellant. All questions and answers must be directed through the panel Chair. The appellant is then given a final opportunity to make any last comments before the hearing concludes.

## **Recording of Hearings**

It is the practice of the Board to digitally record all hearings so that a record of proceedings can be made available if required. The recordings also assist the Board in the preparation of its written reasons for decision.

Pursuant to Board policy, the recordings are maintained secure and are retained by the Administrator for a minimum period of three years. Thereafter, they are destroyed, unless there is a judicial review underway, in which case the recordings are maintained until judicial proceedings are concluded.

Parties to a hearing may request a copy of the recording. However, the Board's records are governed by the disclosure provisions set out in The Freedom of Information and Protection of Privacy Act and The Personal Health Information Act. Therefore, depending on the nature of the request, a transcript of proceedings may be required so that the information can be reviewed and a determination made as to whether severing of the record is required in accordance with the legislation. The cost of the preparation of a transcript is borne by the requesting party.

## Decisions of the Board

After the conclusion of an appeal hearing, the Board meets in-camera to discuss the evidence and submissions and to make a decision.

After considering the merits of the written and oral evidence and submissions by the parties, in making a decision<sup>8</sup> 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.<sup>9</sup>

The Board's decision with reasons is prepared in written format and issued to all parties generally within four to six 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 2021-2022 year.

### Canadian Legal Information Institute (CanLII)

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

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<sup>8</sup>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."

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

# FINANCIAL INFORMATION 2021-22

In 2021-22, the annual operating budget for the Manitoba Health Appeal Board was \$127,000, and the annual salaries budget was \$187,000.

Similar to the previous year there was no travel, mileage or food expenses as the Board members sat as panel members on hearings remotely. Additionally, the board remuneration hadn't been processed correctly, so board member fees that should have been recognized in the 2020-21 operating budget, were carried over to the 2021-22 operation budget when this reporting error being fixed.

## Operating Budget

The annual operating budget expenditures were \$114,231.94 for an under expenditure of the overall operating budget of \$12,768.06.

<b>Operating Budget: 2021-22 Manitoba Health Appeal Board</b>		
Budget		\$127,000
Less Actuals		
Board Remuneration (per diems)	\$70,809.75	
Other Expenditures	\$43,422.19	
Total Actuals		<u>\$114,231.94</u>
Variance (under budget)		<u>(\$ 12,768.06)</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 \$192,653.17 for an under expenditure of \$18,346.83.

<b>Salaries Budget: 2021-22 Manitoba Health Appeal Board</b>				
<b>Description</b>	<b>FTE<sup>[1]</sup></b>	<b>Estimate</b>	<b>Actual</b>	<b>Variance Over (Under)</b>
Staff Salaries	3 FTE	\$185,000	\$127,848.60	(\$57,151.40)
Employee Benefits	3 FTE	\$26,000	\$25,202.32	(\$798)
Other Expenditures <sup>[2]</sup>			\$39,602.25	\$39,602.25

*Figure 2 – Salaries Budget*

<sup>[1]</sup> Full time equivalents

<sup>[2]</sup> Temporary Staffing Contracts, Retro-Active Collective Bargaining Adjustments

# Board Activities 2021-22

## Appeal Sitings and Meetings

### Appeal Sitings

During 2021-22, 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 this year were done using MS Teams either by teleconference or videoconference. The staff participated at the Board’s office located at 102 – 500 Portage Avenue, Winnipeg, Manitoba.

During 2021-22 the Board held sixty-one sittings for the purpose of hearing appeals and considering complex motions:

# Sitings Held	Type of Appeal
25	Authorized Charges
28	Insured Benefit
6	Home Care
2	Personal Care Home
0	Others

Figure 3 – Sitings Held in 2021-22

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. At times, if there is more than one rate year being appealed by the same Appellant, the Board will hear both at the same time, which is also a reason why sittings held could be lower than the number of appeals received.

It is also noteworthy that there were four (4) 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) a regional health authority amended its decision to the satisfaction of the appellant, 4) appellants withdrew their appeals and, 5) hearings were rescheduled at the request of the parties for various reasons.

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

Additionally, there were no formal training sessions offered in this fiscal year, but the new members did participate in an orientation with the Board Chairperson and office staff.

## **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 2021-22, there were no requests made by parties to an appeal to conduct hearings in the French language.

## **Composition of Board Quorums/Panels**

Taking into consideration the nature of each type of appeal, the Board sits in three member quorums/panels.<sup>10</sup>

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**

The Board held an annual general meeting during 2021-22 fiscal year, it was broken into two meetings with the first one happening in this fiscal.

Typically these meetings happen once a fiscal year to discuss a number of issues relevant to the work of the Board which included review of Board Guidelines & Policies, Conduct of a Hearing, review of the draft fiscal year Report statistics, and issues for discussion with meeting with the Minister.

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<sup>10</sup>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."

## Appeal Sitings and General Meetings Statistics

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

<b>Appeals Received</b>					
Type	2021-22	2020-21	2019-20	2018-19	2017-18
Authorized Charges	37	50	52	60	60
Request for Waiver of Authorized Charge	0	0	1	0	1
Insured Benefit	33	39	36	35	51
Hepatitis C Compassionate Assistance Program	0	0	0	0	3
Home Care Program	12	5	8	12	18
Personal Care Home	3	2	2	3	8
Other Appeals	0	0	1	4	0
<b>Total</b>	<b>85</b>	<b>96</b>	<b>100</b>	<b>113</b>	<b>140</b>

*Figure 4 – Review of Appeals Received*

As can be seen by the chart in Figure 4 above, the number of appeals received by the Board decreased from 96 in 2020-21 to 85 in 2021-22.

The reason for the decrease of appeals for 2021-22 in comparison to the 2020-21 fiscal year was, related to a slight decrease in Authorized Charges and Insured Benefits appeals. Authorized Charge Appeals dropped by 26% from the previous year mainly due to the rate freeze completed. The figures provided in table 4 show that appeals filed with the Board fluctuate from year to year and consequently are unpredictable.

As of 2017-2018, the Board is no longer accepting Request for Waiver of Authorized Charge appeals. There were no request for waiver of authorized charges received in 2021-22.

<b>Appeals Heard</b>					
Type	2021-22	2020-21	2019-20	2018-19	2017-18
Authorized Charges	25	28	22	29	21
Request for Waiver of Authorized Charges	0	0	0	0	0
Insured Benefit	28	16	26	15	26
Hepatitis C Compassionate Assistance Program	0	0	0	0	1
Home Care Program	6	1	4	7	8
Personal Care Home	2	0	0	0	1
Other Appeals	0	0	1	1	2
<b>Total<sup>11</sup></b>	<b>61</b>	<b>45</b>	<b>53</b>	<b>52</b>	<b>59</b>

*Figure 5 – Comparison of Appeals Heard*

As can be seen by the chart in Figure 5, the number of appeals heard by the Board during 2021-22 are sixteen (16) more than the number of appeals heard in the previous fiscal year.

<sup>11</sup>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.

The number of appeals heard in 2021-22 may be slightly higher than the total number of appeals heard in 2020-21 for the following reasons:

- Due to COVID-19 pandemic, some of the scheduled hearings in 2020-21 were adjourned and carried over to the next fiscal year.
- The Insured Benefit appeal hearings increased by almost doubling the amount of hearings in 2020-21.
- Appellants were unable to proceed for a number of reasons and the appeal was carried forward to the next fiscal year – e.g., health-related reasons, the appeal process hasn't been completed in full, appellants are away on vacation, or they require additional time to gather their evidence, and unique to this time was one appeal waiting to return to an in-person hearing when that would be possible.
- Appellants submitted new information to the respondent and the respondent was in the process of reviewing the new information.

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

<b>Sittings and General Meetings</b>			
<b>Fiscal Year</b>	<b># of Appeal Sittings</b>	<b># of General Meetings</b>	<b>Total Appeal Sittings/ General Meetings</b>
2021-22	61	1	62
2020-21	43	0	43
2019-20	53	1	54
2018-19	32	0	32
2017-18	51	1	52

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

## **APPEALS**

The following is a statistical summary of appeals received and heard for 2021-22.

### ***Authorized Charge Appeals***

#### *Appeals Received*

The Board received thirty seven Authorized Charge appeals, which is thirteen appeals less than the number of appeals received in the previous fiscal year<sup>12</sup>.

<sup>12</sup> In addition, there were 8 appeals brought forward from the previous fiscal year.

Breakdown of Authorized Charge Appeals Received by Regional Health Authority

The following figure shows the breakdown by regional health authority (RHA) of the thirty seven (37) Authorized Charges appeals received in 2021-22:

RHA	Appeals
Interlake-Eastern	7
Northern	2
Prairie Mountain	7
Southern Health-Santé Sud	2
<b>RHA Subtotal</b>	<b>18</b>
Winnipeg	19
<b>Total</b>	<b>37</b>

Figure 7 – Breakdown by RHA of Appeals Received

Appeals Heard

During 2021-22, the Board held twenty-five hearings for Authorized Charge appeals, which is three less than from the previous year's total of twenty-eight. There were two (2) hearings that addressed two or 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.

Disposition of Authorized Charge Appeals Heard

The disposition of the twenty-seven decisions by the Board in 2021-22 is as follows:

Disposition	Number	%
Appeals dismissed	20	74%
Appeals allowed to minimum charge	0	0%
Appeals allowed to other rate	7	26%
<b>Total</b>	<b>27</b>	<b>100%</b>

Figure 8 – Disposition of Authorized Charge Appeals

Note that there was one situation where a hearing covered three different rate years for an Appellant, which is why the number of dispositions is higher than the number of hearings.

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

Manitoba Health amended its review decision	11
Withdrawn by Appellant for other reasons	4
Appellant deceased prior to hearing <sup>13</sup>	1
Appeal filed prematurely <sup>14</sup>	<u>2</u>
Total	<u>18</u>

<sup>13</sup> 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.

<sup>14</sup> 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.

The withdrawal of eleven Authorized Charge appeals occurred because Manitoba Health amended review decisions based on additional financial information that was provided during the appeal process. Much of the financial information clarified income, thereby allowing Manitoba Health to reconsider the daily rate charge.

There was one (1) appeal pending at the end of the fiscal year and carried forward to 2022-23.<sup>15</sup>

### ***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.

#### *Appeals Received*

The Board received thirty-three Insured Benefit appeals in 2021-22, which is a decrease from the previous fiscal year’s total of thirty-nine<sup>16</sup>.

#### *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 2021-22, the Board held twenty-eight hearings for Insured Benefit appeals, which is an increase from the previous year’s total of sixteen.

<b>Insured Benefit Appeals Heard</b>				
2021-22	2020-21	2019-20	2018-19	2017-18
28	17	26	15	26

*Figure 9 – Comparison of Appeals Heard*

#### *Disposition of Insured Benefit Appeals Heard*

The disposition of the twenty-eight Insured Benefits appeals scheduled for a hearing by the Board is as follows:

<b>Disposition</b>	<b>Number</b>	<b>%</b>
Appeals allowed	2	7%
Appeals dismissed	26	93%
Allowed in part	0	0%
Appeal hearing commenced but did not proceed <sup>17</sup>	0	0%
<b>Total</b>	<b>28</b>	<b>100%</b>

*Figure 10 – Disposition of Insured Benefit Appeals*

<sup>15</sup> Appeals were carried forward for the following reasons: the appellants or their representative were not available to attend a hearing prior to the end of the fiscal year; the respondent was in the process of reviewing new documents that were submitted by the appellant.

<sup>16</sup> In addition, there were 26 appeals brought forward from the previous fiscal year.

<sup>17</sup> At the commencement of the hearing, the appellant clarified that the procedure for which benefits were denied, and which gave rise to the appeal, was no longer being contemplated. The Board determined that there was no longer a basis for the appeal hearing to take place.

The report shows that ninety-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:

- 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.

In addition to the above-noted appeals that were heard, eighteen (18) Insured Benefit appeals were closed prior to a hearing being held for the following reasons:

Withdrawn as Manitoba Health approved payment	3
Withdrawn as Manitoba Health approved registration /coverage	7
Withdrawn by Appellant for other reasons	5
Appeal filed prematurely	2
Issue resolved by the parties	0
Struck-off (failure to actively pursue)	<u>1</u>
<b>Total</b>	<b>18</b>

There were twelve (12) appeals pending at the end of the fiscal year and carried forward to 2022-23. Appeals were carried over to the next fiscal year because:

- Appeals were opened at the MHAB toward the end of the fiscal year which results in the appeal processing period running into the next fiscal year, 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.



## Home Care Program Appeals

### Appeals Received

The Board received twelve (12) appeals from decisions related to the provision of home care services in the province in 2021-22, which is an increase from the previous fiscal year's total of seven<sup>18</sup>.

### Appeals Heard

During 2021-22, the Board held six (6) hearings for Home Care appeals, which is an increase of five from the previous fiscal year.

### Disposition of Home Care Program Appeals Heard

The appeal hearing held in 2021-22 were disposed of as follows:

Disposition	Number	%
Appeals allowed	0	0%
Appeals allowed in part/varied	0	0%
Appeals dismissed	4	67%
Appeals dismissed no jurisdiction	2	33%
<b>Total</b>	<b>6</b>	<b>100%</b>

Figure 12 – Disposition of Home Care Appeals

Four appeals were pending at the end of the fiscal year and carried forward to 2022-23.

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

Disposition	Disposition of Home Care Appeals				
	2021-22	2020-21	2019-20	2018-19	2017-18
Allowed/ Allowed In Part	0	0	2	2	3
Dismissed	6	1	2	5	3
Withdrawn (resolved by RHA)	0	0	3	0	0
Withdrawn (other)	1	1	1	0	0
Heard & Adjourned	0	0	0	0	1
Premature	5	0	1	0	0
Resolved during the hearing	0	0	0	0	1
<b>Total</b>	<b>12</b>	<b>2</b>	<b>9</b>	<b>7</b>	<b>8</b>

Figure 13 – Disposition of Home Care Appeals by Year

<sup>18</sup> In addition, there were four appeals that were brought forward from the previous fiscal year.

### Breakdown by Regional Health Authority of Home Care Appeals

The following is the breakdown by regional health authority of the twelve (12) Home Care appeals received in 2021-22 in comparison to the appeals received in the four prior fiscal years:

RHA	Appeals 2021-22	Appeals 2020-21	Appeals 2019-20	Appeals 2018-19	Appeals 2017-18
Interlake-Eastern	0	1	0	0	2
Northern	0	0	0	0	1
Southern Health	1	0	1	1	0
Prairie Mountain Health	1	0	0	4	2
<b>RHA Subtotal</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>5</b>	<b>5</b>
Winnipeg	10	4	7	7	13
<b>Total</b>	<b>12</b>	<b>5</b>	<b>8</b>	<b>12</b>	<b>18</b>

Figure 14 – Breakdown by RHA of Appeals Received

Home Care Program appeals received from regional health authorities in 2021-22 other than Winnipeg is 17 percent of appeals, while appeals from Winnipeg numbered received is 83 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
2021-22	17%	83%
2020-21	20%	80%
2019-20	12.5%	87.5%
2018-19	42%	58%
2017-18	28%	72%

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

### **Personal Care Home Decisions**

#### Appeals Received

The Board received three (3) appeals in relation to a panel decision.<sup>19</sup>

#### Appeals Heard

The Board held two (2) hearings for an assessment panel decision appeal.

<sup>19</sup> In addition, there was 1 appeal that was brought forward from the previous fiscal year.

### Disposition of Personal Care Home Appeals Heard

The appeal hearing held in 2021-22 were disposed of as follows:

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

There were two (2) Personal Care Home appeals that were returned back to the applicants for lack of legal standing to file the appeal to the Board.

<b>Personal Care Home Placement Appeals Received</b>					
<b>Fiscal Year</b>	2021-22	2020-21	2019-20	2018-19	2017-18
<b>Appeals Received</b>	3	2	2	3	3

*Figure 16 – Comparison of Appeals Received*

There was no Personal Care Homes appeal that was carried over to the next fiscal year 2022-23.

### **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 2021-22, 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 2021-22 there were no appeals received under this *Act* regarding the temporary suspension of a licence.

There were no appeals received under the *Act* regarding the Northern Patient Transportation Program.

One “Other” appeal was heard by the Board (which had been received in 2017-18) regarding a person who appealed a decision from the Medical Assistance in Dying Program with the Winnipeg Regional Health Authority. The Board denied the appeal.

The following figure details the number and type of “Other” appeals received over the past five fiscal years:

<b>Fiscal Year</b>	<b>Number of Appeals</b>	<b>“Other” Appeals</b>
2021 - 2022	0	
2020 - 2021	0	
2019 – 2020	1	<i>The Emergency Medical Response and Transportation Act</i> - Northern Patient Transportation Program
2018 – 2019	1	<i>The Emergency Medical Response and Transportation Act</i> - Northern Patient Transportation Program
	2	Provincial Drug Program – Exceptional Drug Status <sup>20</sup>
2017-2018	1	<i>The Emergency Medical Response and Transportation Act</i>
	1	Medical Assistance in Dying (MAiD)
	1	Provincial Drug & Ancillary Program
	1	<i>Mental Health Act</i> – 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

*Figure 17 – “Other” Appeals Received*

There were no appeals received regarding decisions made by the Provincial Drug Program (Exceptional Drug Status); however, the Board does not have jurisdiction to hear these appeals.

<sup>20</sup> The Board did not have jurisdiction to hear these appeals.

## Public Communication

### **Communication Activities**

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

### **Hearing Guide**

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

### **Brochures**

The Manitoba Health Appeal Board brochure is normally posted on the Board's website. Brochures are distributed to appellants and, upon request, to members of the public.

### **Guidelines and Policies**

Board guidelines and policies are posted on the MHAB website. This is done for transparency and for public access to information that may be relevant to the preparation of an appeal.

### **Website**

The Manitoba Health Appeal Board website contains detailed information about the Board, the types of appeals heard, the appeal process, and provides access to forms required to initiate an appeal. The website is located at:

<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/](http://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.