

MANITOBA HEALTH APPEAL BOARD

HEARING GUIDE

*Manitoba Health Appeal Board
102 – 500 Portage Avenue
WINNIPEG MB R3C 3X1*

May 2018



This communication is available in multiple formats upon request to the Board office.

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HEARING GUIDE

The hearing process for the various types of appeals held by the Board can differ. This hearing guide has been developed by the Board and is specifically designed for appeals related to insured benefit matters. However, much of the information contained in the guide will also be helpful to individuals who have filed other types of appeals.

The Board recognizes that the hearing process can be complicated for individuals who are not represented by a lawyer. If you have any questions about the information in the hearing guide and/or the hearing process that relates to your appeal, please feel free to contact the Board's Administrator at 945-5910.

The Administrator is not able to give legal advice to any person or offer an opinion on the chances of success of an appeal.

GENERAL INFORMATION

Manitoba Health Appeal Board

The Manitoba Health Appeal Board (the Board) is established by Section 9(1) of *The Health Services Insurance Act*. The Board's main duty is to hear and determine appeals under the *Act* and its regulations [for example, *Manitoba Health Appeal Board Regulation 175/2008* (Home Care appeals)] and other acts and regulations of the Legislature [for example, *The Emergency Medical Response and Stretcher Transportation Act* and the *Charges Payable by Long Term Patients Regulation 155/97* under *The Mental Health Act*].

Board office location

102–500 Portage Avenue

WINNIPEG MB R3C 3X1

(business tower of Colony Square on south side of Portage Avenue across the street from the University of Winnipeg)

Business Hours: 8:30 a.m. to 4:30 p.m.

Telephone: (204) 945-5408

Toll Free: 1 (866) 744-3257

Fax: (204) 948-2024

Website: www.manitoba.ca/health/appealboard

Powers of Board

Section 10(5) of *The Health Services Insurance Act (the Act)* sets out the type of decisions that can be made by the Board on an appeal. The Board may:

- (a) confirm, set aside or vary the decision in accordance with the provisions of the *Act* and the regulations; or
- (b) refer the matter back to the person authorized to make the decision for further consideration in accordance with the Board's instructions.

Location of appeal hearings

Appeal hearings are generally held at the Board's office location in Winnipeg. However, the Board will consider reasonable requests from a party to hold an appeal hearing in another location within Manitoba.

Appeal hearing rights

The Board conducts its hearings in accordance with the rules of natural justice and the appellant and respondent (or through their representative) have a right to:

- attend an appeal hearing;
- be represented by legal counsel or another person designated in writing or by another legal authority (committee/substitute decision maker) to be a representative;
- file evidence and a written submission;
- receive a copy of the other party's evidence and written submission;
- make an oral presentation at the hearing;
- call witnesses; and
- ask questions of the other party/witnesses.

French language rights

At the request of an appellant, the Board will make arrangements to provide services and/or conduct the appeal hearing in the French language. However, this request must be made in writing and sent to the Board office in advance of a date being scheduled for the hearing of an appeal.

Teleconference/videoconference hearings

Requests for individuals to participate at an appeal hearing by way of teleconference or, where available, videoconference, can be made to the Board. However, this request must be made in writing and sent to the Board office in advance of a date being scheduled for the hearing of an appeal.

Interpreters

When required and at the request of an appellant, arrangements will be made for an interpreter to be present to assist the appellant at a hearing (this includes both language and ASL interpreters). However, such a request must be made in writing in advance of a date being scheduled for the hearing of an appeal. The cost for the services of an interpreter is borne by the Board.

Appeal hearings

The general public and media are not allowed to attend the Board's hearings. However, the Board may permit the attendance of an individual as a support person for a party.

Disability accommodations

Requests from parties to a hearing who, because of a disability, require the attendance of additional persons such as a note-taker and/or attendant or support person will be reasonably accommodated by the Board. The Board is not responsible for any costs associated with the attendance of a person who provides these types of disability-related needs for a party.

Rules of Procedure

Section 10(4) of the *Act* indicates that an appeal shall be conducted on an informal basis and the Board is not bound by the same rules of law as judicial proceedings.

However, pursuant to Section 9(10) of the *Act*, the Board has adopted a set of rules for how its hearings are to be conducted. The Rules of Procedure are provided to the parties to an appeal and are also available on the Board's website.

Recording of proceedings

The Board records all appeal hearing proceedings. No other type of recording will be permitted. Cameras or other recording devices are not allowed in hearings.

Requests for recordings/transcripts of appeal hearings

Decisions made to release the Board's records, including the recordings and transcripts of appeal hearings must be made in compliance with *The Freedom of Information and Protection of Privacy Act (FIPPA)* and *The Personal Health Information Act (PHIA)*. All requests for a recording or a transcript of an appeal hearing must be made to the Board Administrator. Requests for copies of transcripts of appeal hearings must be in writing and need to include an explanation as to the purpose of the request.

Where a request for a transcript is made or where it is necessary to order a transcript in order to respond to a request for a recording, **the cost of the transcript is borne by the party making the request.**

DEFINITIONS

Notice of appeal

This is the document or correspondence that is filed by an individual with the Board office to start the appeal process. The notice of appeal can be mailed, faxed or delivered in person to the Board office. However, if a copy is faxed, the original notice of appeal must be subsequently mailed or delivered to the Board office.

Board panel

This refers to the members of the Manitoba Health Appeal Board who will be hearing and deciding an appeal. The *Act* requires that a Board panel must consist of at least three members.

The Board generally sits in panels of:

- three members for Authorized Charge and Home Care appeals; and
- five members for Insured Benefit and other types of appeals.

Each Board panel consists of the Chairperson of the Board or a member who has been appointed as the Acting Chairperson on that panel to lead the proceedings on behalf of the Board.

Administrator

This is the Board's senior staff person who is responsible for providing the Board's administrative processes and who attends the appeal hearings and releases the Board's written decisions and reasons.

Appellant

This is the person who the appeal is about and is seeking to reverse the decision that was made by the respondent.

Respondent

This is the authority that made the decision that is being appealed. Depending on the nature of the matter, the respondent on appeals to the Board will either be Manitoba Health or a Regional Health Authority.

Representative

This is the person who will be representing the appellant or respondent on the appeal. This person can be a lawyer or another individual (such as a family member or friend) who the appellant has designated in writing to be a representative.

Parties to a hearing

This is the appellant and the respondent and their representatives.

Support person

This person could be a family member or a friend whose only purpose in attending a hearing is to give moral support and/or to take notes. The Board is not responsible for any costs associated with the attendance of a support person.

Disability-related support person

This person could be a family member, friend or an attendant whose only purpose in attending a hearing is to provide care support and other assistance such as taking notes. The Board is not responsible for any costs associated with the attendance of a person who provides these disability-related needs for a party.

Witness

This is a person who attends a hearing on behalf of a party to give evidence that he/she has personal knowledge of and is relevant to the issues under appeal. At the time of the appeal hearing, the Board will decide whether the witness may remain in the room for the whole hearing or only when he/she will be giving evidence. The Board is not responsible for any costs associated with the attendance of a witness.

Evidence

This is any information in the form of a document, medical report, research article, photograph, etc. that relates to the issues under appeal that can be filed with the Board office prior to the appeal hearing date.

Brief

This is the written argument that relates to the issues under appeal that can be filed with the Board office prior to the appeal hearing date.

Rebuttal brief of the appellant

This is an additional written argument and/or evidence that the appellant may file before the hearing in response to the respondent's written brief.

Filing date

The date determined by the Administrator and provided to the parties as being the last day that the Board office will accept written briefs and evidence before the appeal hearing date.

Motion

This is a brief hearing that is held by the Board to consider a matter other than the specific issues under appeal. For example, an appellant's request for the Board to permit the late filing of an appeal or a party's request to file additional evidence at the hearing that was not available before the filing date or a request for an adjournment. A motion can be heard by the Board before an appeal hearing date or at the commencement of or during an appeal hearing.

Recess

If, during an appeal hearing, a party needs to take a brief break for any reason, that party may ask the Board for a recess. The Board may also call a recess on its own. When a recess occurs, the hearing will stop and all parties will be asked to leave the hearing room. The Board members cannot talk to any of the parties during a recess.

Adjournment

If, for some reason, the appeal hearing is not able to be completed on the date of the hearing or if a party requests an adjournment, the appeal hearing will stop at that time and a continuation date will be scheduled with the parties and/or their representatives by the Administrator at a later date.

Board decision

A decision of the majority of the panel who hears an appeal is a decision of the Board. The Board's decision with reasons is issued in writing to the parties after the appeal hearing has been concluded.

FILING A NOTICE OF APPEAL

General information

Section 10(2) of the *Act* requires that a notice of appeal be filed with the Board office **not more than 30 days after the date the person received notice of the decision that is being appealed, or within such further time as the Board permits.**

Notice of appeal forms

A notice of appeal can be in the form of a written letter or on a notice of appeal form.

To assist the public, the Board has developed the following different Notice of Appeal forms:

- Notice of Appeal for Home Care Appeals
- Notice of Appeal for Authorized/Residential Charge appeals
- Notice of Appeal for Insured Benefit appeals
- General Notice of Appeal for all other types of appeals

A copy of all notice of appeal forms is available through the Board office or on its website.

Contents of a notice of appeal

The notice of appeal **must** include the following information:

- what decision you are appealing;
- who made the decision (for example, Manitoba Health or a regional health authority);
- the date you were notified of the decision (either verbally or in writing); and
- the grounds or reasons why you are appealing the decision (also known as the “issues under appeal”).

If you were notified of the decision in writing, if available, an unmarked copy of the letter that sets out the decision should also be provided.

Appellant should sign the notice of appeal

Generally, the notice of appeal should be signed by the appellant or, in the case of a minor child, by the parents or legal guardians.

What if the appellant cannot sign the notice of appeal?

If the notice of appeal can not be signed by the appellant, the person signing on behalf of the appellant must provide a copy of their authority to do so. For example, an order of committee ship or substitute decision maker, an appointment of executor/executrix of the

estate of a deceased appellant or a power-of-attorney that sets out sufficient authority for the person to act on the appeal. Alternatively, the appellant may provide his/her written designation for a specifically-named individual to represent him/her on the appeal or complete a representative authorization form that is available at the Board office or on its website.

What happens if the notice of appeal is filed late?

If a notice of appeal is not filed with the Board office within 30 days of the appellant being informed of the decision, the notice of an appeal must also include a detailed explanation as to why the appeal is filed late.

Should evidence be sent to the Board with the notice of appeal?

No. All parties will be provided with an opportunity to submit evidence to the Board once a hearing date has been set and the filing dates are determined. As the Board staff is not able to assist the parties in preparing for the appeal, evidence sent in with the notice of appeal will be returned to an appellant.

What happens when the Board receives a notice of appeal?

The Board staff will write to the appellant to confirm receipt of the notice of appeal and provide information regarding the Board and its hearing process. A hearing date for the appeal will be scheduled at a later date. Individuals who are awaiting medical treatment are given priority when the Board staff schedule appeal hearing dates.

How is the respondent notified of an appeal?

The Board office staff will forward a copy of the notice of appeal and any accompanying documents to the respondent in the matter.

Can the appeal be withdrawn?

An appellant or his/her designated representative can withdraw an appeal for any reason at any time prior to the appeal hearing date. When a decision is made to withdraw an appeal, the appellant or his/her representative should immediately contact the Administrator.

LATE-FILED APPEAL PROCEDURES

General information

If an appeal is filed with the Board late (after 30 days of the appellant being notified of the decision by the authority who made the decision), the Board must make a decision as to whether it will permit the filing of the appeal. If an explanation for the late filing of the appeal is not set out in the notice of appeal, the Administrator will contact the appellant or representative to request that information be sent to the Board in writing. This is known as a “written submission”.

When the appellant’s written submission is provided, the Board office will then forward the notice of appeal and explanation for late filing to the respondent. The respondent is given an opportunity to provide its written submission setting out a position as to whether it consents (agrees) or objects to the Board accepting the appeal. The respondent will provide the appellant with a copy of its written submission to the Board.

Once the written submissions of both parties have been received, the Administrator will forward the matter to a Board panel for a motion hearing to consider and decide whether it will permit the appeal to be filed late.

If the Board is unable to make a decision on the basis of the information that is available at that time, it may request that the parties provide additional written submissions and/or appear in person before the Board panel to provide oral submissions. In this situation, the Administrator will contact the parties to advise of the Board’s direction and schedule a date for the parties to appear before the Board.

When the Board makes a decision, the Administrator will notify the parties of that decision.

If the Board permits the appeal to be filed, the appeal will proceed in the same manner as all other appeals.

If the Board does not permit the appeal to be filed, the matter is concluded.

HEARING PROCESS AND PROCEDURES

Scheduling of a hearing date

The Board staff will be in contact with the appellant and respondent to arrange a suitable hearing date for the appeal and the appeal hearing date will also be confirmed in writing. At that time, additional information regarding the hearing process will be provided including the filing dates for both parties.

Submitting written briefs and evidence by filing dates

If you are submitting a written brief and evidence, it must be received by the Board office on or before the established filing dates for each party. The appellant or representative will be advised by the Board office as to how many copies of the written brief/evidence will be required. Upon receipt of the appellant's copies of the brief/evidence, one copy will be sent to the respondent by the Board office. The respondent is then given an opportunity to file copies of its written brief/evidence by a certain date and will provide a copy directly to the appellant or his/her representative.

Pre-hearing procedures

In order to prepare for the appeal hearing, the Board panel will be provided with the following material in advance of the appeal hearing date so that the members will be familiar with the background of the case and issues under appeal when the hearing starts:

- appellant's notice of appeal and the decision letter from the respondent;
- appellant's written brief and evidence;
- respondent's written brief and evidence; and
- appellant's rebuttal brief (if one was filed).

Can further information be submitted as evidence after the filing date?

If more information becomes available after the filing date and a party wants that information submitted as evidence at an appeal hearing, that party should contact the Board's Administrator. The Administrator has the authority to grant a brief (1 or 2 days) extension of the filing dates. However, for longer extensions, the Board's approval will be required.

A motion by a party to submit late-filed information as evidence will be considered by the Board at the start of the appeal hearing.

Appellant has new information after filing date but before hearing date

If there is sufficient time before the appeal hearing date, the appellant should provide the Administrator with a copy of the new information along with an explanation as to why that information was not submitted as evidence by his/her filing date. The Administrator will

then forward the new information and the written explanation to the respondent prior to the hearing date. This will allow the respondent to be prepared to advise the Board of its position regarding the submitting of the new information as evidence.

Respondent has new information after filing date but before hearing date

If there is sufficient time before the appeal hearing date, the respondent should provide the appellant with a copy of the new information along with an explanation as to why the information was not submitted as evidence by its filing date. This will allow the appellant to be prepared to advise the Board of its position regarding the submitting of the new information as evidence.

Additional copies of new information required for the Board

In addition to providing a copy of the new information to the other party prior to the hearing date, the party who has new information must also bring additional copies of the material to the hearing. If the Board decides to allow the new information to be filed as evidence, these copies will be required for the Board panel members and file.

However, in the event that a party provides consent to the filing of new information by the other party prior to the hearing date, **if time permits**, the Administrator may ask the party with the new information to immediately file copies¹ of the material with the Board office. The Administrator will then provide the material to the Board panel so that they can review it prior to the commencement of the hearing.

New information available on day of hearing

If it is not possible to provide notice to the Administrator prior to the appeal hearing date that there is new information that a party wishes to be submitted as evidence at the hearing, that party must bring the required number of copies¹ of this information to the hearing.

When the party attends the Board office, he/she must give (1) copy of the information to the Board's Administrator or office staff. This copy will be given to the other party prior to the commencement of the appeal hearing for review. This will allow that party to be prepared to advise the Board of its position during the motion.

Motion to file new information as evidence

At the commencement of the hearing, the party who wants to file the information as evidence must tell the Board why the information was not available by the filing date and why the information is relevant to the issues under appeal. The other party will then have

¹ At the time of scheduling a hearing date, all parties will be advised by the Administrator as to how many copies will be required.

an opportunity to tell the Board whether they agree to the new information being filed late. If they do not agree, the party must tell the Board the reasons why they do not agree.

After hearing both parties' position on the new information, the Board will call a brief recess and decide whether or not it will permit the new information to be filed as evidence at the appeal hearing. Once the decision is made, the hearing will then continue.

However, if the Board decides to accept the new information as evidence, it may call a further recess so that the panel members may review the material before the appeal hearing proceeds.

Oral presentations/calling of witnesses/questions at the hearing

The appellant and/or the appellant's representative will be allowed to present his/her case first. During the presentation, the appellant may refer to the written brief and evidence that has been filed or to any other matters that are relevant to the issues under appeal and may call his/her witness(es).

When the appellant's presentation is finished, the Board panel members may have questions for the appellant, followed by any questions from the respondent's counsel or representative.

The respondent's counsel or representative will then be allowed to present its case and call its witness(es), followed by questions from the Board panel members and the appellant and/or representative.

Unless otherwise directed, all questions by the appellant or respondent must be directed through the Chairperson or Acting Chairperson on the Board panel.

Before the hearing ends, the appellant is provided with a final opportunity to address any issues in response to the respondent's presentation or to raise any new issues that were not addressed in his/her oral presentation.

The hearing will then come to an end and all parties will be asked to leave.

Board deliberations

After the parties leave the hearing room, the Board panel will consider the evidence and presentations made by both parties and the legislation that is relevant to the issues under appeal.

Board decision

After the hearing, the Board will make a decision and provide it in writing with reasons to all parties. The Board's written decision will generally be available within four to six weeks

after the hearing. However, circumstances may arise where it will take longer for the Board to issue its written decision.

JUDICIAL REVIEW

General information

A party has a right to apply for a judicial review of a Board decision. Information regarding this process must be obtained from a lawyer or through the Court of Queen's Bench located in your nearest judicial centre.

DISCLAIMER

The purpose of this guide is to assist parties by providing information regarding procedural matters related to appeals heard by the Manitoba Health Appeal Board. This guide does not purport to change any applicable legislation. If there is an inconsistency in this guide, the legislation will prevail.



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