

## **Chapter 12: Reviews and Appeals**

<b>Intent:</b>	To provide clarification on the Appeal Process when a client does not agree with a decision that has been made concerning his/her Income and Employment Support Benefits. These decisions are usually made by a Client Services Officer, Social Worker or Client Services Manager.
<b>Act:</b> (if applicable)	<p><b>Internal review</b></p> <p>41. (1) The minister shall, in accordance with the regulations, appoint an officer or officers to perform an internal review of the matters referred to in subsection (2).</p> <p>(2) An applicant or recipient may request an internal review of</p> <ul style="list-style-type: none"><li>(a) a decision with respect to income support made under the authority of this Act or the regulations;</li><li>(b) a decision respecting eligibility for, suspension or cancellation of, employment support made under the authority of this Act and the regulations; or</li><li>(c) an underpayment or overpayment.</li></ul> <p>(3) A request under subsection (2) shall be made in writing by the recipient no later than 60 days after being notified of the matters referred to in paragraph (2)(a), (b) or (c).</p> <p>(4) An officer or officers appointed under subsection (1) shall perform an internal review in the manner prescribed by the regulations.</p> <p>(5) An internal review shall be performed within 15 days of the receipt of the written request for it, and the results of an internal review shall be provided to the applicant or recipient who requested the review, in writing, within 5 business days of being decided, and the applicant or recipient is considered to have received the outcome of the internal review 7 business days after it has been decided.</p> <p>(6) A decision of an officer or officers performing an internal review under this section shall not, under the authority of subsection 14 (4), include an order to provide employment support.</p> <p><b>Appeal board</b></p> <p>42. (1) The Lieutenant-Governor in Council shall appoint not more than 3 persons to act as an independent external appeal board</p>

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(a) one of whom shall be a current or a past recipient of income or employment support; and

(b) none of whom shall be officers of the department or employees of the government of the province or of a board, commission, corporation or other body that is an agency of the Crown.

(2) Members appointed under subsection (1) or alternates appointed under subsection (4) shall be appointed for 3 years, shall be eligible for reappointment and shall hold office until re-appointed or until a successor is appointed.

(3) The Lieutenant-Governor in Council may designate one of the members of the board to be chairperson and another to be vice-chairperson who shall act as chairperson in the absence of the chairperson.

(4) The Lieutenant-Governor in Council may appoint no more than 3 persons who are not employees of the government of the province or of a board, commission, corporation or other body that is an agency of the Crown, as alternate members of the appeal board to act as members of the appeal board as a result of the absence, resignation, illness or death of a regular member appointed under subsection (1) at a hearing to be held under this section.

(5) One of the persons appointed as an alternate under subsection (4) shall be a current or past recipient of income or employment support and that person shall act as the alternate member for the member appointed under paragraph (1)(a).

(6) An alternate member appointed under subsection (4) is considered for the purpose of this section to be a member of the appeal board.

(7) The minister shall appoint an officer to be the secretary of the appeal board.

(8) The secretary appointed under subsection (7)

(a) shall not have voting privileges; and

(b) shall keep full records of the proceedings of the appeal board.

(9) A majority of the members of the board constitutes a quorum, one of whom shall be a member who is a current or past recipient of income or employment support.

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(10) Appeals heard by the board may be conducted in person or by teleconference or video conference or other means as approved by the minister provided that, in a meeting, all participants may participate simultaneously and instantaneously.

(11) A board member participating in a meeting by teleconference, videoconference or other method approved by the minister shall be counted as a member present at the meeting for the purpose of establishing a quorum under subsection (9).

(12) Where there is a tie vote on a motion or resolution of the board, that motion or resolution shall be considered to be defeated.

### **Appeal**

**43.** (1) An appellant may appeal, either personally or through another person acting on his or her behalf with his or her written consent, the outcome of an internal review under this Act or under section 4.2 of the *Health and Community Services Act*, or under section 40 of the *Pharmaceutical Services Act* to the appeal board.

(2) An appeal under this section shall be made in writing no more than 60 days from the receipt of the outcome of an internal review under this Act or section 4.2 of the *Health and Community Services Act*, or under section 40 of the *Pharmaceutical Services Act*.

(3) The appeal board shall

(a) acknowledge the appeal;

(b) arrange a date for hearing the appeal;

(c) give at least 7 days notice of the date, time and place fixed for hearing the appeal to the appellant and to the officers of the department who are concerned or, where an appeal is made from an internal review under section 4.2 of the *Health and Community Services Act*, to officials of the department administering that Act under the *Executive Council Act*;

(d) notify an appellant of his or her right to appear and to be represented under subsection (4); and

(e) within 30 days of receiving the appeal, hear the appeal.

(4) For the purpose of presenting his or her case and producing evidence, an appellant may appear before the appeal board on his or her own behalf or be represented by counsel or an agent of his or her choice and may accompany and appear with his or her counsel or agent before the appeal board, and this provision

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shall also apply where appeals are heard by teleconference, video conference or other method approved by the minister.

(5) An appellant may request, in writing, with reasons, a postponement of the hearing of an appeal for a reasonable period as determined by the board and the board may, in its discretion, grant the postponement.

(6) Where

(a) an appellant has not been granted a postponement under subsection (5); or

(b) the appellant, either in person or by his or her counsel or agent, does not attend the hearing of the appeal after being notified under this section,

the appeal board may proceed in his or her absence to examine into the matter of the appeal and to hear the witnesses and adjudicate on the matter.

(7) The board may, where the appropriate documents for consideration of the appeal have not been received, postpone the hearing until the earliest possible date after those documents have been received.

(8) For the purpose of this Act, the appeal board has the powers that are or may be conferred on a commissioner under the *Public Inquiries Act*.

**Powers of board**

**44.** (1) On the conclusion of the hearing, the board may confirm, vary or set aside the finding or decision appealed from with power to give directions, consistent with this Act and the regulations made under it, or where appropriate, the *Health and Community Services Act* or the *Pharmaceutical Services Act* and the regulations made under it,

(a) respecting the granting, refusal, suspension, discontinuance, reduction, resumption of income support or an amount of income support that the appeal board considers appropriate;

(b) respecting an appellant's eligibility for employment support or the suspension or cancellation of that support, but shall not make an order to provide employment support under the authority of subsection 14 (4);

(c) respecting an underpayment or overpayment;

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(d) respecting a matter referred to in section 4.1 of the *Health and Community Services Act* ; and

(e) respecting a matter referred to in section 40 of the *Pharmaceutical Services Act*.

(2) Notwithstanding subsection (1), the board shall not make an order inconsistent with the rate structure for income support established in the regulations.

(2.1) Notwithstanding subsection (1), the board shall not make an order inconsistent with the benefits lists established by the minister under the *Pharmaceutical Services Act*.

(3) A decision of the board shall, in writing, within 5 days of its being decided, be communicated to the appellant and

(a) to the officers of the department who are concerned; or

(b) where the appeal is from an internal review under section 4.2 of the *Health and Community Services Act* , or the *Pharmaceutical Services Act* , to officials of the department administering that Act under the *Executive Council Act*.

### **Further appeal**

**45.** (1) The outcome of an internal review

(a) respecting the granting, refusal, suspension, discontinuance, reduction, resumption of services or of the amount of income support; or

(b) respecting a person's eligibility for or the suspension or cancellation of employment support,

shall only be appealed to the appeal board and is not subject to appeal to or review by a court of law.

(2) An appeal lies from the decision of the appeal board to a judge of the Trial Division upon a point of law, or of mixed law and fact, and the judge of the Trial Division may award costs in that appeal under this section for or against the Crown and may fix the amount of the costs.

### **Special case**

**46.** The appeal board may, before deciding the matter of the appeal, refer a question of law or of mixed law and fact raised at the hearing of the appeal for the opinion of a judge of the Trial Division, and the *Rules of the Supreme Court, 1986* relating to a special case

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apply to a reference made under this subsection as if that reference were made by the parties to the appeal.

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**Regulations: Request for internal review**

**55.** (1) An applicant or recipient may request that a decision of an officer be reviewed by an officer or officers appointed by the minister to perform an internal review.

(2) A request under subsection (1) shall be in writing.

**Internal review**

**56.** (1) An internal review shall be performed in the time period referred to in subsection 41(5) of the Act and the outcome of an internal review shall be communicated to the applicant or recipient in the time period referred to in that subsection.

(2) A communication referred to in subsection (1) shall include

(a) the reasons for the finding or decision;

(b) a notice specifying the right of appeal to the appeal board;

(c) the time within which the right of appeal may be exercised;

(d) the appeal procedure;

(e) the manner in which an appeal may be conducted; and

(f) that the applicant or recipient may access his or her appeal file in anticipation of the appeal, including any record of the appeal.

**Appeal to the appeal board**

**57.** An applicant or a recipient aggrieved by the outcome of an internal review may, in writing, appeal that outcome to the appeal board under section 43 of the Act in the time period referred to in that section.

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### **Board practice and procedure**

**58.** The board may set its policy and procedure but it shall, at all times,

- (a) receive sworn evidence in relation to an appeal; and
- (b) give clear reasons, in writing, for its decisions.

**Overview:** N/A  
(if applicable)

#### **Policy: (i) General**

- A person who applies for or receives Income and Employment Support benefits has the right to have any decision made by a worker or manager reviewed, if dissatisfied with the decision. This applies to a denial of an application for Income and Employment Supports or request for a particular service. Any decision made by a worker with respect to the granting, refusal, suspension, discontinuation, reduction, resumption, or amount of Income and Employment Support benefits can be appealed. The person may request an internal review and appeal personally or give written consent for a duly authorized representative to review/appeal on his/her behalf.
- There are currently three levels of Review/Appeal which include:
  - Manager Review
  - Internal Review Committee
  - Appeal Board Hearing

**Procedure:**

- The worker must ensure that the dissatisfied client is given a full explanation of the decision. They should advise the client, in writing, of the decision made when Income and Employment Support benefits are denied, reduced or suspended or when a request for special needs or additional benefits is denied.

#### **(ii) First Level: Client Service Manager Review**

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- Upon request from the client for a review of a decision, the Client Services Manager (CSM) will review the details of the particular decision and has the authority to uphold or change a decision in accordance with the Income and Employment Support Act, Regulations and policy.
- Upon the completion of the review by the CSM, the decision to support or overturn the decision of the worker must be communicated to the client. Where the original decision is upheld, the reason for this decision is to be provided to the client, as well as information on the next level of appeal – the Internal Review. The client should be advised that a written request for an Internal Review is required within 60 days of receiving the decision.

**(iii) Second Level: The Internal Review**

- The Internal Review Committee is the first formal level of appeal. The client must make a written request for an Internal Review. This request must be made within 60 days of being notified of a decision. Applications received after 60 days shall not be accepted.
- The Internal Review will consist of an examination of written documentation and may include direct contact with the client. The Review will be completed by the Regional Enquiries Coordinator in consultation with a Regional Manager. These employees would not have been involved in the original decision.
- The Internal Review shall be performed no longer than 15 days after the receipt of the appeal. The Review may result in the change or confirmation of the decision based on the Income and Employment Support Act, Regulations and related policy.
- The results of an internal review will be communicated in writing, clearly outlining the reason(s) for the decision, to the client within five business days of being decided. The client is considered to have received the written outcome within seven business days. The client must be advised of their right to make a written appeal to the Appeal Board within 60 days from the date of notification. A copy of the decision will be

forwarded to the appropriate Regional Manager and the Executive Secretary of the Appeal Board.

- The compilation of the reports as a result of the Review, is completed by a Regional Enquiries Coordinator.

**(iv) Third level: The Appeal Board**

- As the second formal level of appeal, the Appeal Board is an independent body of three people who are not employed by the Provincial Government, but are appointed by the Lieutenant-Governor in Council.
- The Appeal Board will accept a written request for an appeal from dissatisfied clients or their representatives, up to sixty days from the date of receipt of the outcome of an internal review. The Executive Secretary of the board will have received all documentation pertaining to the internal review from the applicable regional office. Further information may be requested from the local office if necessary.
- The Executive Secretary will prepare the case and arrange for a hearing within 30 days. Arrangements are made for the client to participate via telephone from their home in most cases. Where clients request an 'in person' hearing, this can be arranged and the Department will provide funding for transportation to the hearing.
- A notification of hearing is communicated to all relevant parties seven days prior to hearing.
- During the hearing the client/representative, Regional Enquiries Coordinator/departmental representative and the Appeal Board members will participate.
- The Appeal Board will not render its decision at the end of the hearing. Instead, the Executive Secretary will issue a written "notice of decision" stating clear reasons, in writing, for this decision to the client within one week. Copies will be sent to the Appeal Board members, the Director of Income or Employment Support, the Regional Director, Regional Program Manager and other relevant parties.

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- If the client does not agree with the Board's decision, then the matter can be taken to the Supreme Court of Newfoundland – General Division. The client should be advised to seek the assistance of a lawyer if this option is to be pursued.

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**Authority Level:** Client Services Officer

Client Services Manager – Internal reviews

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