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PURPOSE

1. To facilitate the processing of an applicant's appeal request, and to clarify responsibility for tasks in the appeal process.

PRINCIPLE

2. All applicants have the right of an appeal by an independent authority should they not be satisfied with the decisions made with respect to their application for assistance.

3. An applicant should be able to have a response to his/her appeal request without undue delay.

4. The formal appeal process should not negate the role of the supervisor to ensure staff are making decisions consistent with the regulations, policy and good judgment.

POLICY

5. The Act, at s.5.1(1), allows for a formal appeal hearing before the Board of disputed decisions:

A person who is dissatisfied with a decision respecting the provision of Social Assistance under this Act may appeal the decision by notice to the chairperson of the Board not later than 30 days from the date the decision was made known to the person.

Regulation 45(1) sets out the possible grounds for an appeal:

Pursuant to subsection 5.1(1) of the Act, an applicant may appeal a decision of the Department respecting the provision of Social Assistance under the Act or these regulations on the following grounds:

- (a) the Social Assistance office refused to accept an application for Social Assistance;
- (b) the application for Social Assistance was denied;
- (c) the amount of Social Assistance granted was not in accordance with these regulations or the written policies; or
- (d) the applicant's Social Assistance was reduced, suspended, cancelled or withheld.

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6. Regulation 47 requires that:

(1) Where an appeal is made against a decision to reduce, suspend or cancel financial assistance,

(a) for an appellant who was receiving assistance under Part I, the amount of financial assistance authorized by the Social Assistance office as emergency assistance shall be paid to the appellant; and

(b) for an appellant who was receiving assistance under Part II, the amount of Social Assistance previously granted shall continue to be paid, until the Board renders its decision.

(2) Where an appeal is made against a refusal by the Department to grant assistance, no Social Assistance shall be paid to the appellant unless the Board grants the appeal.

PROCEDURE

7. Appeals

(a) The applicant or other persons acting on his/her behalf (the “appellant”) shall request an appeal of his/her case by writing to the Social Assistance Appeal Board, P. O. Box 2000, 11 Kent Street, Jones Building, Charlottetown, P.E.I., C1A 7N8.

(b) The Appeals Administrative Assistant reviews and documents the information contained in the appellant’s letter to ensure that the particular case is consistent with the provisions of the Social Assistance Act, Regulations and Policy.

(c) The Appeals Administrative Assistant will forward a Notice of Appeal and the original letter of appeal on all appeals to the Chairperson of the Appeal Board.

(d) The Appeals Administrative Assistant will forward to the appropriate office, an Appeal Information Summary form, and attach a copy of the letter of appeal from the appellant.

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8. Social Assistance Appeal Board Hearing:
The Appeal Board will ensure:

- (a) Upon receipt of a notice of appeal, the Chairperson of the Board shall cause a hearing to be held as soon as possible, and not later than fifteen calendar days after the receipt of the notice by the Appeals Administrative Assistant.
- (b) A Notice to Appear letter is sent, by registered mail, to the appellant by the Chairperson of the Social Assistance Appeal Board to the address on the Notice of Appeal form notifying the appellant of the date, time and place the appeal hearing is to be held.
- (c) The Chairperson will notify the appropriate designated staff member for each Social Assistance office, the other Board Members that will be attending the hearing and the Appeals Administrative Assistant, of the date, time and place the appeal hearing is to be heard.
- (d) Prior to the hearing date, the Appeals Administrative Assistant will:
 - (i) notify the Appellant by telephone that a *Notice to Appear* letter has been sent by registered mail and verbally confirm with the appellant the date, time and place of the appeal hearing and his/her attendance;
 - (ii) notify the Chairperson, Area Office and/or others of any changes or cancellations.
- (e) The Board will only hear evidence and information that pertain to the appeal at hand from both the appellant and the respondent.
- (f) The Chairperson shall determine the conduct of the hearings in accordance with the Protocol for Recorded Social Assistance Appeal Board hearings which shall, when possible, include recording the proceeding on CD in its' entirety. (See Appendix A)
- (g) When proceedings recorded on CD, the Chair will ensure record protection by:
 - (i) including the CD as part of an official appeal hearing process;
 - (ii) sealing the CD in an envelope with the appellants name, file number and date of the hearing, and forward, along with other appeal documents, to the Appeals Administrative Assistant.
- (h) All information or evidence to be presented on appeal shall be heard prior to the conclusion of the hearing. The Board shall not hear further or additional evidence after the conclusion of the hearing except with the consent of all parties involved.

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- (i) The Appeals Administrative Assistant shall maintain accurate files and a log of all Social Assistance Appeal Board hearings to ensure prompt and consistent processing by departmental staff. He/she will also be prepared to gather accurate statistics on these activities, the causes, and the steps that have been taken to reduce or eliminate them in the future.

The Area Office will ensure that:

- (a) The applicant has been properly informed of the rationale for the office's decision. This includes citing the section(s) of policy or regulations, and, if necessary, a copy of the policy cited, and clear written details as to the rationale that has been used in coming to this decision.
- (b) They prepare to present their case at the Appeal Hearing.
- (c) The Appeal Information Summary form is fully completed by a Social Assistance worker, reviewed, signed and dated by the Supervisor, and presented to the Board and the appellant not less than 15 minutes prior to the start of the hearing.
- (d) They prepare and compile any additional documents/evidence that they wish to present at the hearing. This includes, making copies of all documents to be presented and giving these documents to both the Board and the Appellant not less than 15 minutes prior to the start of the hearing.
- (e) They notify the Appeals Administrative Assistant of any changes or cancellations that may have been reported to the region.
- (f) They make available secretarial services for the Board, which includes forwarding a signed copy of the Decision to the Appellant, the Appeals Administrative Assistant (including all other appeal documents and the original CD, and to the Area Files.
- (g) Suitable accommodations are provided to the Board at the time of the appeal.

APPENDIX 'A'

Protocol for the Conduct of Recorded (Social) Assistance Appeal Board Hearings

As with most administrative tribunals, there is no formal requirement for recording Social Assistance Appeal Board proceedings. From a practical standpoint, however, it can prove extremely beneficial for purposes of:

- clarifying information presented at the hearing;
- eliminating any possible errors in memory or disputes as to what was said; and
- providing an official record for further appeal or review.

There may be a perception that the proceedings become somewhat more formal with the introduction of recording mechanisms and this is not the intention, nor is it the desired result. Appeals are intimidating enough for an Appellant without making them more so. Therefore, it is beneficial to establish a protocol for the opening and general conduct of a hearing which will serve several purposes including the maintenance of consistency from one hearing to the next, clarification of the process for the client, and ensuring that the basic procedural requirements have been met in the event the appeal should be taken further.

The development of a standard protocol may also serve to eliminate some common misconceptions about the Social Assistance Appeal Board and the process generally. Perhaps the most common of these is the notion, on the part of some Appellants, that the Board members have decided the case before the Appeal is even heard. For this reason, it is crucial that several points get made at the commencement of the hearing including the fact that the Appeal Board is an independent body and separate from the Department. Some explanation should also be given to the Appellant with respect to the fact that the Appeal documents have been reviewed but that the hearing is the forum for the Appellant to present his/her case.

Another common misconception is the expectation on the part of the Appellant that he/she should have the opportunity to re-tell his/her whole case, rather than just deal with the specific issue(s) under appeal. Part of this is perhaps due to the notion that the Appeal Board has sweeping and unlimited authority to grant the Appellant whatever he/she is seeking rather than be limited by the parameters of the governing Act, Regulations and Policy. It is, therefore, useful to make it clear to the Appellant that it is only the issue under appeal that will be decided upon and, further, impress

upon the Appellant that the Board must act within the confines of the legislation.

Procedurally, there are advantages to following a standard protocol. If the process is clearly set out at the beginning of the hearing, an “all cards on the table” approach, the hearings may be expedited in that there will be less time spent on non-relevant issues. The Appellant will be aware of his/her rights with respect to the appeal. And it could also eliminate any perception of bias on the part of the Appellant if he/she is aware that the Board is a separate entity from the Department. Finally, but equally important, a standard protocol can serve to protect the interests of the Board in the event the appeal is taken further, such as to judicial review. If the record of the hearing establishes that principles of procedural fairness were followed and also that the Appellant was not misled by anything said, there is less chance of the issues being clouded by procedural attacks.

What follows is a general guide for the opening and conclusion of an appeal hearing. Clearly, there will be an element of discretion involved. Depending upon the circumstances of each case, it may be necessary to elaborate on some points. In any event, there are basic steps which may be followed to ensure fair and efficient conduct of Appeal Board hearings.

At the beginning of the Appeal Board hearing:

10. The Chairperson should welcome the Appellant and his/her representative, if one is present, as well as the representative(s) for the Department.
11. The Chairperson should introduce him/herself as well as the other Board members present. Any observers present should also be introduced and any witnesses present should be noted for the record.
12. The hearing should then be opened with a statement to the effect that the Board has convened to hear submissions with respect to a decision of the Department and give particulars and the date of that decision. The specific issue under appeal should be identified, clarified and stated for the record. The Appellant should be asked to confirm that this is her/her understanding of the issue as well.
13. An explanation should be given to the Appellant that the Appeal documents have been reviewed by the Board members prior to the hearing, but it should also be emphasized that the purpose is solely to be familiar with the circumstances of the case. Caution should be exercised so as not to give the erroneous impression that the Board members have pre-judged the case. The Appellant should be aware that the hearing is his/her opportunity to state his/her case and review any exhibits tendered.
14. The Chairperson should then outline the process that will take place during the hearing. This should include reference to the sequence of speakers, the fact that the proceedings are recorded, and the anticipated conduct of persons involved. It should be made clear to the Appellant that the Board members may take notes, ask questions and/or seek clarification on a point during the hearing, but it should be equally clear that the purpose of this is not to express opposition. Indicate to the Appellant that there will be an opportunity for him/her to add anything further at the end of the hearing.
15. The Chairperson may wish to indicate that the Social Assistance Appeal Board is an independent body and that the Board is not bound by the previous decision-makers' findings. The Appellant should be assured that the Board will assess the evidence and submissions in accordance with the legislation and applicable regulations and policies, to arrive at its' own conclusions on the matter. At a minimum, the Appellant should be aware that decisions of the Board cannot exceed the authority of the governing legislation.

During the Appeal hearing:

- (a) The Appellant should be made to feel at ease with assurances that the process is an informal one, and even something as basic as the offer of a glass of water.
- (b) Ensure that the Appellant has the opportunity to speak.
- (c) Make certain that the Appellant and staff can hear and understand the Board members at all times.
- (d) The Board should be respectful to the Appellant and staff at all times.
- (e) Refrain from the use of words that could lead the Appellant to perceive that his/her case has already been decided.
- (f) The use of discriminatory words such as references to age, gender, race, etc., should be avoided.

At the conclusion of the Appeal hearing:

- (a) The Appellant should be given the opportunity to make any additional points or add anything that has not already been covered. If someone else has acted as a representative for the Appellant throughout the hearing, this offer should be extended specifically to the Appellant so that there is no risk of the Appellant feeling that his/her case was not fully presented.
- (b) When the evidence is complete, the Chairperson should confirm the Appellant's mailing address and advise the Appellant as to when he/she can expect a decision.
- (c) The recording equipment can then be shut off. The CD should be removed with the Appellant and the Area representative present, the Appellant's name, the date of the hearing, and the file number should be written on the face of the CD.
- (d) Further evidence should never be heard after the close of a hearing, except with the Appellant and the Departmental designated authority representative present and consenting to the resumption of the hearing. If additional evidence is required, a new CD should be used and appropriate recitals made at the beginning of it to identify the CD as being the second CD for that particular hearing.
- (e) It is possible that the fact of the proceedings being recorded will give rise to requests for transcripts of the hearings. The Social Assistance Appeal Board is not, nor should it be, in the business of providing a transcription service. Therefore, requests for a transcript should be addressed by providing the Appellant, or the Respondent as the case may be, with a copy of the CD. Given that there is no legislative requirement for recording proceedings, there is similarly no requirement to provide transcripts. Providing a copy of the CD, however, is a cost effective means of balancing interests.