Family Income Security Appeal Board 2023-24 Annual Report

Family Income Security Appeal Board
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551 King Street
Fredericton, NB
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506-453-5942

January 27, 2025

Honorable Cindy Miles
Minister of Social Development
Province of New Brunswick

Dear Minister:

On behalf of the Family Income Security Appeals Board, we have the honour of submitting the Annual Report for the fiscal year of April 1, 2023, to March 31, 2024.

Sincerely,

Gail Bremner
Chairperson

Jason Godin
Vice-Chairperson

c.c. Members of the Board

Message from Chair

I am pleased to present the annual report of the Family Income Security Appeal Board for the fiscal year ending March 31, 2024. Throughout this period, our Board remained steadfast in its commitment to fulfilling its mandate by providing fair and impartial hearings in response to appellants' requests.

Our dedicated members grapple with complex decisions, and I extend my sincere appreciation to each of them for their unwavering dedication and commitment to this vital process. Upholding the principles of fairness and objectivity, our Board meticulously assesses evidence presented during hearings, guided by the provisions outlined in the Family Income Security Act and the New Brunswick Regulation 95-61.

At the heart of our proceedings lies a commitment to treating every individual with dignity and respect. We ensure that all participants in the hearings feel valued and heard, fostering an environment conducive to fair and transparent deliberations.

In this annual report, we offer an overview of our activities during the 2023-24 fiscal year, along with a brief summary of the Board's history.

Gail Bremner
Chairperson

Background of the Board

Provincial Appeal Boards were established as a result of a Canada wide review of Social Policy culminating in the enactment of a federal legislation, known as the Canada Assistance Plan Act (CAP). Under this legislation, Provinces and Territories were responsible for establishing and delivering Social Assistance Programs to individuals and families in need. Provinces and Territories determined eligibility requirements as well as the amount of assistance to be paid. In New Brunswick (NB), the Social Welfare Appeals Board which was established in 1970 under the *Social Welfare Act* and Regulations to permit applicants and clients to seek an independent review of a departmental decision that had been made in relation to eligibility and benefits paid. The Social Welfare Appeals Board was established as a quasi-judicial, independent tribunal, based on administrative law and adhering to the principles of procedural fairness and natural justice.

Subsequently, the *Social Welfare Act* was repealed and replaced by the *Family Income Security Act*. Consequently, pursuant to subsections 30(1) and 30(2) of *NB Regulation 95-61* under the *Family Income Security Act*, effective April 1, 1996, "The Social Welfare Appeals Board is terminated and "…responsibilities and liabilities of the Social Welfare Appeals Board are, transferred to and vested in …. the Regional Family Income Security Appeal Boards created under the General Regulation – *Family Income Security Act*…".

Effective April 1, 2002, the Regional Family Income Security Appeal Boards were terminated pursuant to section 14(2) of *NB Regulation 95-61*. A new board was established under subsection 24(1) of NB *Regulation 95-61*, which is now called the Family Income Security Appeal Board.

The Family Income Security Appeal Board is composed of a Chairperson, one or two Vice-Chairpersons, and at least 14 members who are appointed by the Lieutenant-Governor in Council.

Each member of the Board, including the Chairperson and Vice-Chairpersons, are appointed for a term of not more than three years and may be reappointed for subsequent terms of not more than three years. The present Board is comprised of the following:

Board membership

Gail Bremner, Chairperson	Saint John
Jason Godin, Vice-Chairperson	Caraquet
Melanie Burns, Member	Saint John
James Proudfoot, Member	Moncton
Jami Moore, Member	Fredericton
Margaret Gregg, Member	Fredericton
Amy Shanks, Member	Saint John
Wallace Floyd, Member	Hampton
Terry Ogilvie, Member	Salisbury
Sherry MacEachern, Member	Moncton
Dean Johnston, Member	Riverview
Roger Sénéchal, Member	Beresford
Guylaine Savoie, Member	Alcida
Yanik Hachey, Member	Campbellton
Mathieu Lemieux, Member	Saint-Jacques

Jurisdiction

A hearing before the Family Income Security Appeal Board ('the Board') is the final step in a three-tiered appeal process. The first two steps are internal administrative reviews that are conducted by the Department of Social Development. Any individual not satisfied with a decision made under the first two steps may file an appeal to the Family Income Security Appeal Board, which has remained at arm's length and independent from government. The Board is required, by its quasi-judicial nature, to conduct hearings in a court-like manner, although less formally, while still applying the rules of natural justice and ensuring procedural fairness. The Board must provide a fair and unbiased assessment of the facts presented during a hearing as a basis for its decision.

To ensure that the Board has the power and authority necessary to accomplish its mandate, the Government of New Brunswick has provided the Board "…all the powers conferred on a Commissioner or Commissioners appointed under the *Inquiries Act* and all provisions of that Act, when applicable to and not inconsistent with the provisions of this Regulation, shall apply to an appeal." [Section 28(5) of *NB Regulation 95-61*]. This means that the Board has broad authority when hearing matters that come before it, which includes the ability to ask questions, obtain and review documents, receive testimony from witnesses, and conduct any review and assessment of any evidence that has been submitted.

As per section 29(1) of *NB Regulation 95-61*, all decisions of the Board are final and binding on the parties before it. However, parties to the hearing who believe that the Board has erred in applying the law in a decision

may appeal to the Court of King's Bench ('the Court') for a judicial review of the decision. The Court may uphold or set aside a decision rendered by the Board.

The Board's jurisdiction only relates to matters under the *Family Income Security Act* as set out under *NB Regulation 95-61*.

Appellants are advised at the beginning of a hearing that the Board does not make regulations and cannot change them. However, the Board can submit recommendations to the Minister of Social Development ('the Minister'). The Board will provide an open and unbiased review of the circumstance surrounding the decision made by the department. The Board is not a legislative entity.

The Board may also investigate and report back to the Minister on any matter under the *Family Income Security Act* or its regulations that may be referred to them by the Minister.

Relationship with Government

When the Government of Canada first established tribunals and boards on a large scale at the beginning of this century, it did not establish or detail their procedures. It fell to the Courts to determine whether these bodies were to conform to normal judicial methods. As a result, the processes of administrative tribunals like the Board, developed gradually over time, based on the principles of administrative law.

In 1970, the Social Welfare Appeal Board was established as a quasi-judicial tribunal, subject to the "Rules of Natural Justice". The two principles most commonly called the "Rules of Natural Justice" were outlined by Lord Haldane:

- They must deal with question referred to them without bias; and
- They must give to each of the parties the opportunity to adequately present their case.

To ensure the freedom from bias that is required by these "Rules of Natural Justice", the Board maintains an arms-length relationship with the government. Appointments to the Board are made by the Lieutenant-Governor in Council.

Section 24(3) of *NB Regulation 95-61* further supports the objective of independence by prohibiting any person from serving on the Board who was employed in the Civil Service of the province within the last six months prior to their appointment.

The Legislature also wishes to guard against departmental interference in the actions of the Board. Thus, section 29(1) of *NB Regulation 95-61* states: "The decision of the majority of the members of the Board who hear an appeal shall be the decision of the Board and shall be final and conclusive." (and section 28(9) of *NB Regulation 95-61* states: "…an appeal shall be decided on its own merits and in accordance with the Act and this Regulation. This means that decisions of the Board are not influenced or subject to departmental influence or direction, and each case is determined on their own merits, subject to the provisions of the *Family Income Security Act* and its regulations.

Added Responsibilities

The *Family Income Security Act* and its regulations require the Chairperson to convene a hearing within 20 days of receipt of a Notice of Appeal. The appellant, respondent, and any other party to the appeal are notified in writing of the date, time, and place of the hearing at least 5 days prior to the hearing.

Hearings are held in the language of the appellant's choice in a neutral location. Appeal locations are chosen specifically with the appellant in mind. Appellants may proceed in either Official Language of their choice. Appellants speaking a third language, and who may have difficulty in proceeding in either English or French, may bring their own interpreter.

Although hearings are conducted in an informal manner, the Board's procedures must afford procedural fairness and comply with the Rules of Natural Justice and administrative law principles.

Appellants are entitled to be accompanied by one person of their choice and to call witnesses. They may choose to be represented by legal counsel or they may delegate to another individual to act on their behalf. The Department of Social Development is represented at the hearing by the designated officer who will present evidence and call any witnesses as may be necessary.

An appeal is always heard by the Chairperson (or a Vice-Chairperson who acts as a Chairperson), and two Board members.

The Board hearing a case review and considers all of the evidence that is submitted before it and makes its decision immediately following the hearing. The hearing decision is then written by the Chairperson (or a Vice-Chairperson) and signed by all three members. The formal written decision is then forwarded to the Family Income Security Appeal Board office. All decisions are processed and reviewed prior to signature by the Chairperson or a Vice-Chairperson. Each decision must be rendered within 15 days of the scheduled hearing.

Hearing Locations

Hearings are held on neutral ground in the community where an appellant receives services from the Department of Social Development. The Board rents an accessible meeting space which may include spaces on college/university campuses, within municipal buildings, community centres, or in hotels.

Hearings are held in the following communities:

Northern Zone:	Edmundston / Grand-Falls / Campbellton / Kedgwick / Bathurst / Caraquet / Shippagan / Tracadie-Sheila
Central Zone:	Fredericton / Woodstock / Perth-Andover / Miramichi / Neguac
Southeast Zone:	Richibucto / Sackville / Shediac / Moncton
Southwest Zone:	Saint John / Sussex / St. Stephen

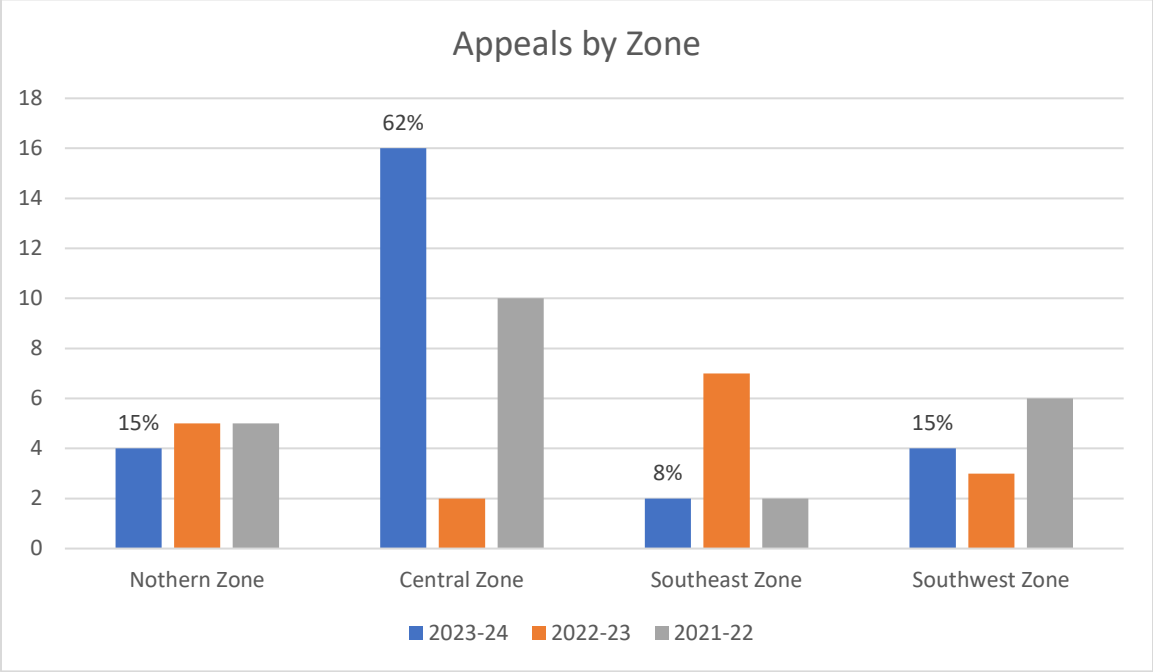
Statistical Review of Decisions in 2023-24

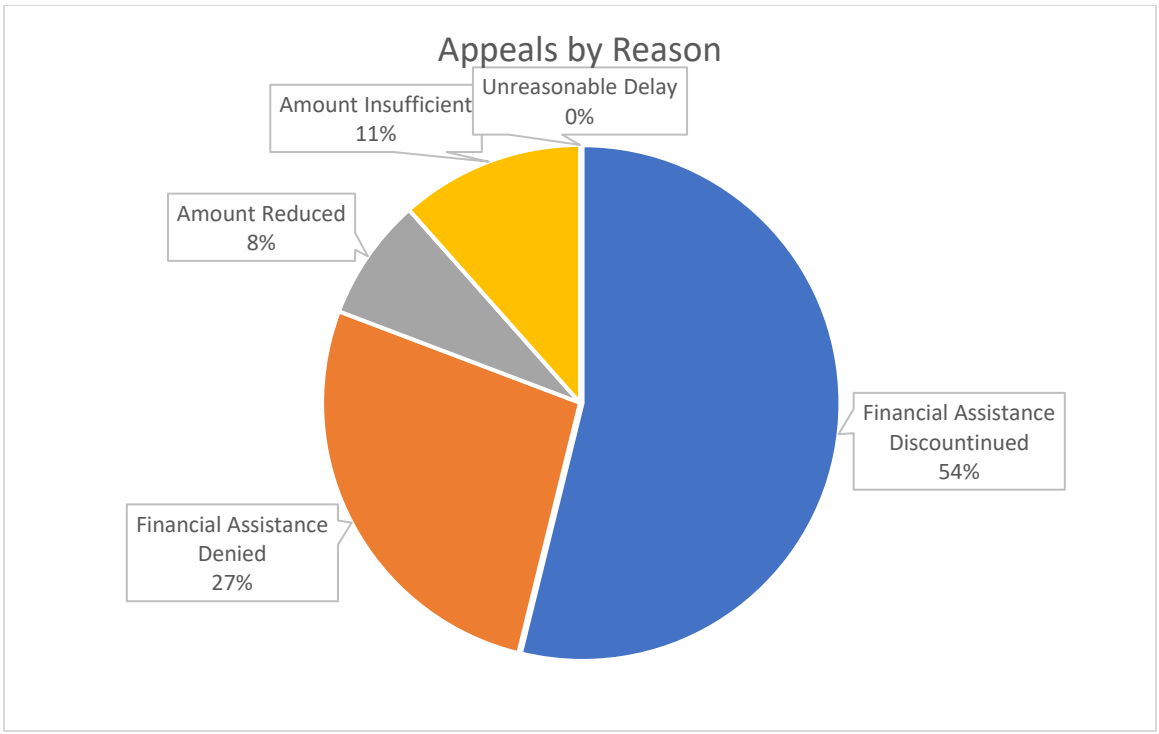
There were 26 notices of appeal received in 2023-24. During the past nine years the annual number of appeals were as follows:

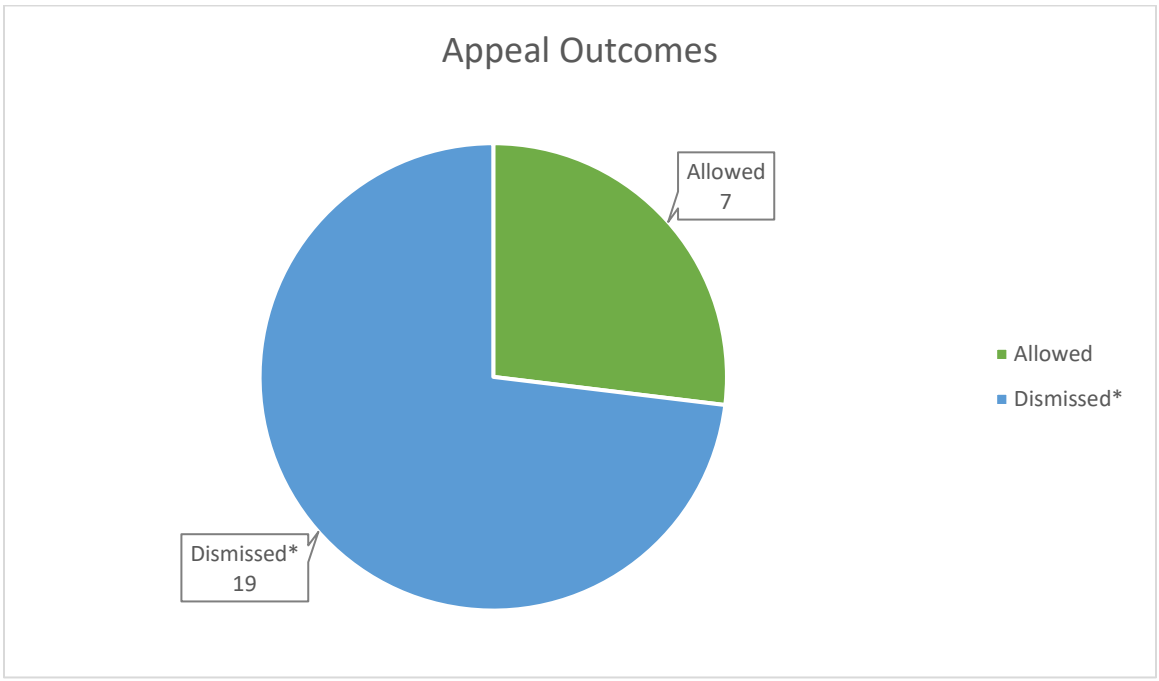
2023-24 – 26	2020-21 – 26	2017-18 – 91
2022-23 – 17	2019-20 – 80	2016-17 – 134
2021-22 – 23	2018-19 – 74	2015-16 – 138

Out of the 26 notices of appeal received in 2023-24, the Board allowed 7 and dismissed 19 (includes 4 appeals received late and 7 instances where the appellant did not appear at the scheduled hearing). Appeals were received based on the following reasons: financial assistance discontinued (14), financial assistance denied (7), financial assistance reduced (2) and in the appellant's opinion that the amount of assistance granted was insufficient for their needs (3). The gender composition of applicants was fairly even; 10 appeals were from males (38%) and 12 appeals were from females (46%). Of the 26 notices of appeal received, 12 appellants were single, 1 was married, 1 was divorced and 1 was currently separated. The martial status of 11 of our appellants and gender of 4 of our appellants is unknown either due to the appellant not appearing at the hearing or the appeal being received late (beyond the time permitted under the legislation) and therefore not heard. The majority (62%) of appeals were in the Central zone. Of the 26 appeal hearings 22 (85%) were conducted in English and 4 (15%) were in French.

Statistical Tables







*Of the 19 dismissed outcomes 7 were due to no shows and 4 were late applications

Appeal Board Budget and Expenditures

Family Income Security Board Budget and Expenditures
April 1, 2023, to March 31, 2024

Budget and Expenditures		
Category	**Budget**	**Expenditures**
Salaries	$75,000.00	$97,324.62
Hearing Location Rentals	$3,000.00	$3,615.46
Travel/Accommodations	$20,092.00	$8,744.66
Postage/Supplies	-	$1,283.25
Total	**$98,092.00**	**110,967.99**

The Ombud's Office

All decisions of the Board are final and conclusive. While a party may seek a judicial review of a decision rendered by the Board, persons dissatisfied with the decision of the Board may also make a complaint to the Ombud. Unlike the Courts, the Ombud cannot change a decision of the Board. However, the Ombud can review the circumstances to determine whether the complaint against the Board can be substantiated. The Ombud may also make recommendations to the Board, directly to the Minister of Social Development, or deal with the situation in their Annual Report.