

**PROPOSED MODIFICATIONS
REGARDING
SOCIAL ASSISTANCE POLICIES**

BY

NEW BRUNSWICK COMMON FRONT FOR SOCIAL JUSTICE  **FRONT COMMUN POUR LA JUSTICE SOCIAL DU NOUVEAU-BRUNSWICK**

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Table of Contents

1. POLICY MANUAL	4
A. <i>Problems</i>	
B. <i>Proposals</i>	
C. <i>Arguments</i>	
2. DEDUCTION OF EMPLOYMENT INCOME (AFTER DEDUCTIONS)	4
A. <i>Current policy</i>	
B. <i>Problems</i>	
i. <i>Undesirable effect</i>	
ii. <i>Demotivational factor</i>	
iii. <i>Irregular employment</i>	
C. <i>Proposals</i>	
D. <i>Arguments</i>	
3. FORCED DEDUCTION OF CPP INCOME AT AGE 60	6
A. <i>Current policy</i>	
B. <i>Problems</i>	
i. <i>Reduced pension</i>	
ii. <i>Injustice to seniors</i>	
C. <i>Proposals</i>	
D. <i>Arguments</i>	
4. CERTIFIED DISABILITY	7
A. <i>Current Policy</i>	
i. <i>Problems</i>	
ii. <i>Denial of right to appeal</i>	
iii. <i>Irregularities</i>	
iv. <i>Overly restrictive criteria</i>	
B. <i>Proposals</i>	
i. <i>System overhaul</i>	
ii. <i>Standards</i>	
iii. <i>Fair procedures</i>	
C. <i>Arguments</i>	
5. ADULT CHILDREN LIVING WITH THEIR PARENTS	8
A. <i>Current Policy</i>	
B. <i>Problems</i>	
i. <i>Equivalency factor</i>	
ii. <i>Impoverishing effect</i>	
iii. <i>Right to elect domicile</i>	
C. <i>Proposals</i>	
D. <i>Arguments</i>	
6. SPECIAL BENEFITS	10
A. <i>Current Policy</i>	
B. <i>Problems</i>	

- C. *Proposals*
- D. *Arguments*

7. TERMINATION OF ASSISTANCE **10**

- A. *Current Policy*
- B. *Problems*
 - i. *Failure to observe the policy*
 - ii. *Negative repercussions*
- C. *Proposals*
- D. *Arguments*

8. APPEAL SYSTEM **12**

- A. *Current Policy*
- B. *Problems*
 - i. *Cumbersome system*
 - ii. *Natural justice*
 - iii. *Minister's right of veto*
 - iv. *Power to investigate*
- C. *Proposals*
- D. *Arguments*

9. ECONOMIC UNIT POLICY **14**

- A. *Current policy*
- B. *Proposals*
- C. *Arguments*

10. PERIOD OF LIMITATION **15**

- A. *Current policy*
- B. *Problems*
- C. *Proposals*

1. POLICY MANUAL

A. Problems

i. The social assistance policy manual has for a long time remained in a poor state. There was no numbering system, no logical classification, no index, and no table of contents, which made the search difficult.

ii. The Department of Social Development had promised to improve the manual, but we had to wait for about ten years before this happened. Each policy has now its own number, making the policies more accessible.

Not all problems are solved because policies are complex and difficult for people to understand. Another problem is the fact that they are uniform throughout the province and do not provide for exceptional cases.

B. Proposals

a. To rewrite policies in simple language and popularize them to make them accessible to the general public.

b. To follow the current trend and regular framework in the development of a policy, i.e. show the title, number, effective date, its basis, by whom it was authorized and the date it was authorized.

c. Each policy should start with the rationale justifying it. In other words, its reason for existence and the legislation on which it is based. The policy statement should include the following: the people targeted, eligibility criteria, benefits and services concerned, designated agents and appeal mechanisms, and in certain cases, the conditions, restrictions or requirements to access benefits. The procedure accompanying the policy should explain how the policy is implemented (who? when? where?).

C. Arguments

a. Historically (around 1995), policies were numbered, justified by bases and enabling clauses, signed by the Deputy Minister, dated, assigned an effective date or a revision date, accompanied by a table of contents and brought together into a physical policy manual, accessible to anyone who asked for it. A return to a similar system is needed.

b. A policy is a general guideline that employees have to follow in order to make sure that similar decisions are made in similar situations. This implies that as soon as a situation is special the policy in question cannot be applied blindly and special treatment is required.

c. A public policy has to be based on legislation and cannot contradict it or limit conditions of eligibility for benefits beyond what is in the legislation

2. DEDUCTION OF EMPLOYMENT INCOME (AFTER EXEMPTION)

A. Current Policy

All income is deducted from social assistance, except for part of employment income.

B. Problems

i. Undesirable effect

- a. Since assistance rates are low, this only keeps recipients in their state of poverty. Total income (basic social assistance, plus benefits and credits and employment income, minus the exemption) is still well below the poverty line.
- b. Monthly income is calculated from the 21st of the previous month to the 22nd of the current month. This makes accounting complicated for recipients and causes errors in calculation.
- c. When the minimum wage increases, exemptions should also increase. Otherwise, recipients lose money again.

ii. Demotivational factor

- a. Recipients feel that they're not getting ahead by going to work, because once they have earned an amount equivalent to the basic exemption, any additional earnings are deducted from their monthly assistance.
- b. Even if a 30 % exemption is allowed on other earnings in addition to the basic exemption, recipients feel they have a lot to lose if they accept casual employment; because if they were to lose their social assistance and medical card, they would have to start the whole process (entrance interview, needs assessment, presentation of evidence, etc.) over again.

iii. Irregular employment

- a. The exemption policy for employment income does not apply very well when income isn't calculated in the same way as for regular workers, that is, from the 1st of the month to the last day of the month. Often income is earned in one month but applied to another because it is paid after the cut-off date. This is another factor of frustration and makes people lose part of their income.

C. Proposals

- a. That the exemption for income is made more flexible and extended to other forms of income besides employment income.
- b. That the revenue is calculated in the same way as regular employees, from the first to the last of the month.
- c. That the basic exemption for employment income is set at \$500, and that 30% of succeeding income is exempted.
- d. That the policy states that income assistance is not touched when the employment income comes from work on a project or at the minimum wage.
- e. That the current policy is modified to take into account the actual amount in the case of those who have to travel long distances to work, in other words, to subtract their travel expenses from net earnings

D. Arguments

- a. The government's perspective of encouraging a return to work should be maintained.
- b. Businesses sometimes temporarily need more workers, and employable recipients could fill this need, but the current policy doesn't encourage this.

- c. The expenses for the public treasury of increasing exemptions would be largely compensated by a reduction in healthcare costs. A study by the Canadian Centre for Policy Alternatives in Nova Scotia clearly shows that low income leads to much higher healthcare spending.
- d. Increasing exemptions is a good way to improve the quality of life of recipients and their need for socialization.
- e. The Department sometimes tells recipients that it exempts the first \$150 earned in a month to pay their expenses for going back to work. But if they earn \$150 and have to pay the same amount to earn it, they're no farther ahead. Nobody would agree to work just to pay his employment expenses.

3. FORCED DEDUCTION OF CPP INCOME AT AGE 60

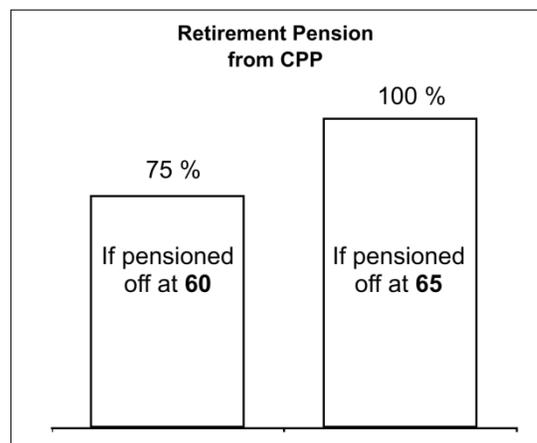
A. Current Policy

At age 60, the Minister forces recipients to draw their Canada Pension Plan retirement pension early if they are entitled to one. They aren't allowed to wait till they reach 65. The full amount they receive is deducted from their assistance.

B. Problems

i. Reduced pension

- a. The amount paid to seniors would be higher if they waited till age 65 to file for their CPP retirement pension.
- b. In fact, the amount they would normally be entitled to at 65 is reduced by 5% for each year before age 65. This readjustment is permanent.



ii. Injustice to seniors

- a. It is an injustice to make them apply for an early pension. Reducing their assistance by the same amount deprives them of additional income that they could use to obtain basic necessities.
- b. This sort of measure increases the number of seniors living in poverty.

C. Proposals

- a. A recipient should be allowed to wait till age 65 before receiving his CPP retirement pension, as is the case for other citizens.
- b. A certain amount of the CPP retirement or disability pension could be considered as savings and added to banked assets, and thus exempted when income is calculated (the current exemption for assets is \$1,000 to \$10,000, depending on circumstances). Banked assets represent security for a citizen who is no longer receiving income assistance.
- c. Those who receive token amounts of pension income (a few tens of dollars to \$100 per month) should have an exemption, especially when they have many healthcare expenses

D. Arguments

- a. Historically, social assistance recipients have always had to use all their available resources, like pensions and unemployment assistance, but they didn't have to take their pension early because that bears a penalty.
- b. This policy, which only applies to social assistance recipients and not to all citizens and which was added in the 1990s, constitutes discrimination based on social condition and in consequence is a violation of people's social rights.

4. CERTIFIED DISABILITY

A.	Current	Policy
	Applications to recognize a disability are sent to a Medical Advisory Board made up of three physicians and a secretary. Its decision is final and cannot be appealed. The Board is the only body able to recognize a disability. Its decision is based on only two reports: a medical report and a social report. A recipient may submit a new application in six months if his or her physical condition changes.	

B. Problems

i. Denial of right to appeal

- a. Regulation 95-61 allows a recipient to appeal if he or she is dissatisfied with a decision related to a disability, but this right to appeal was eliminated by the Minister through a policy. This unduly restricts the right to appeal. The right to appeal a decision related to a disability is therefore limited by policy and not by legislation. This is abnormal.

ii. Irregularities

- a. The decision-making process takes place without hearing the applicant.
- b. The social report doesn't cover all the social aspects and is prepared not by a social worker but by a manager. Consequently, the assessment of the person's competence is incomplete.
- c. The decision-making mechanism related to applications for a disability pension is far from being at the same level as the systems commonly used to award benefits.

iii. Overly restrictive criteria

The refusal rate for disability pensions in 2009-2010 was 59% (574 refusals for 975 applications for disability pensions), despite the fact that in most cases physicians had indicated that the applicant was unable to work.

C. Proposals

i. System overhaul

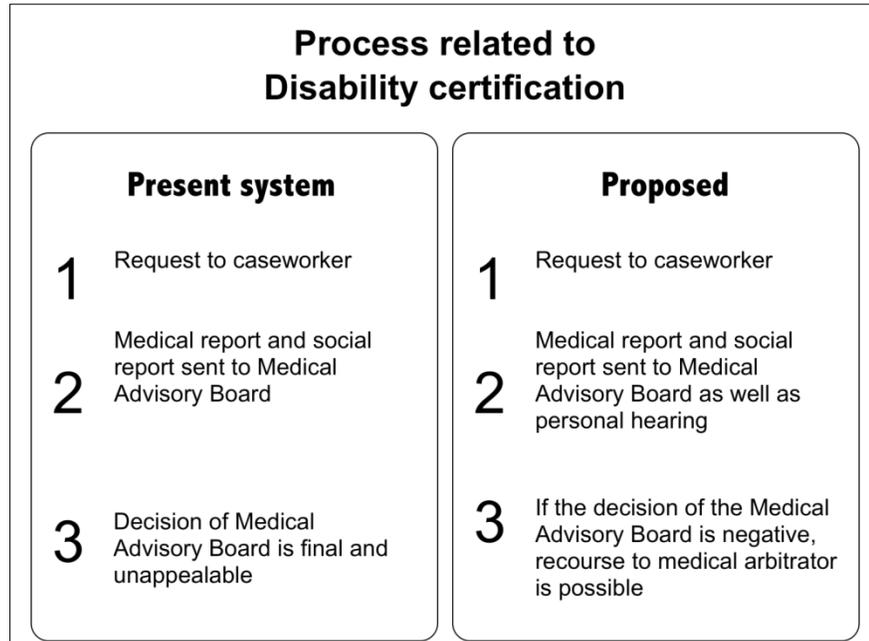
- a. The present Board should be dissolved and replaced by two travelling Boards composed of three persons: a psychiatrist, a general practitioner and another specialist.
- b. The right to appeal should be respected. In case of refusal, applicants should be able to appeal to an independent physician-arbitrator.

ii. Standards

- a. To be acceptable, the standards of the current Medical Advisory Board should meet the following conditions.
- b. The Board should be able to hear cases in both official languages.
- c. Applicants for disability pension certification should be able to have a hearing **in person** and be accompanied by a representative if they so wish.
- d. The person’s condition should be thoroughly examined. To facilitate this, the “Social File” form should be reframed **to better reflect functional difficulties** caused by problems related to communication, self-protection, organization, adaptation and emotional balance.

iii. Fair procedures

- a. The Department should automatically send the applicant a copy of the social report, once completed, without him or her having to request it.
- b. Social reports should always be prepared by social workers.



D. Arguments

- i. Decision-making mechanisms based solely on a document review does not do people justice because without visual observation, some details are always left out. The applicant should be able to be heard in person. The Board may err in making a decision and cause major harm to the applicant. For a single person, a favourable reply represents additional income of \$2,244 per year.
- ii. This is why cases need to be examined by a higher authority. If an application is again refused, a hearing should be held with a physician-arbitrator, with the possibility of having a personal representative.

5. ADULT CHILDREN LIVING WITH THEIR PARENTS

A. Current Policy

An unemployable adult who lives with his or her parents, whether they receive assistance or not, has his or her assistance reduced by 25% because he benefits from free housing. The Department makes an exception if he or she has a recognized disability or if he or she is recognized by the Medical Advisory Board as having special needs.

B. Problems

i. Equivalency factor

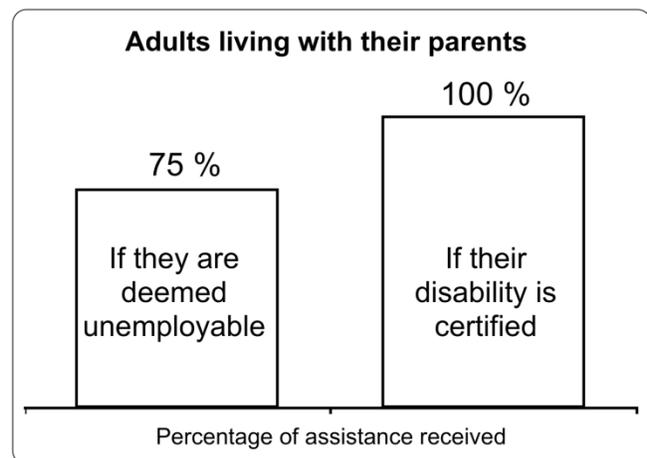
- a. There really isn't much difference between an unemployable person and a person with a recognized disability, or a person with special needs, since all three are unable to enter the labour market. However, those who are unemployable for different reasons are subject to a 25% reduction in benefits, which shouldn't be.

ii. Impoverishing effect

- a. The current policy contributes to impoverishing unemployable adults who live with their parents.
- b. This has the negative effect of depriving these persons of part of their income, although they often help to look after their parents and are doing them a service by living with them. If they weren't there, these elderly or sick parents would need home care services.
- c. Most of the time, these adult children live with their parents because they aren't self-sufficient.

iii. Right to elect domicile

The liberty of recipients to live where they want while receiving the same income should be respected.



C. Proposals

- a. That the current policy is modified to eliminate the lack of income imposed on those who live with their parents.
- b. **That the same formula applied to disabled persons be applied to unemployable adults living with their parents**, that is, if the parents earn less than \$30,000 per year no deduction is made. The deduction is 5% if they earn between \$30,000 and \$35,000, 15% if they earn between \$35,000 and \$40,000 and 25% if they earn \$40,000 or more per year.

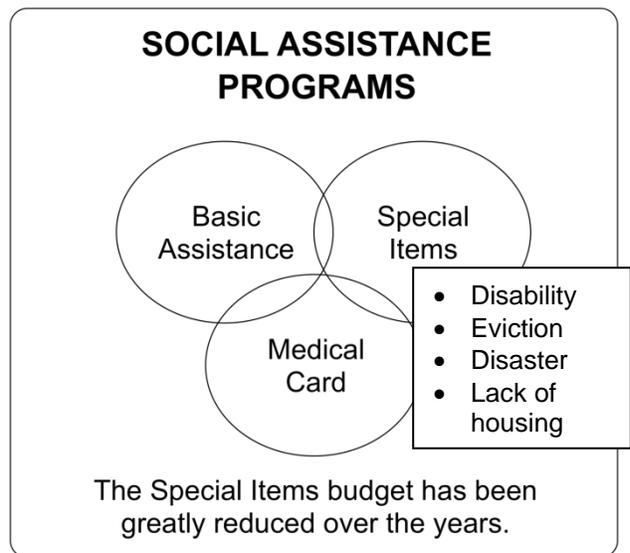
D. Arguments

- a. Under the principle of equal treatment, unemployable persons should be able to benefit from the same conditions as persons who are recognized as disabled because their needs are similar
- b. Under Section 16 of Regulations, the Department is empowered to forgo the 25% reduction for housing when parents' earnings total less than \$50,000 annually.

6. SPECIAL BENEFITS

A. Current Policy

The Canada Assistance Plan, which was at the origin of social assistance and determined the cost sharing provisions in terms of social services, allowed for special benefits to provide help as was required. Over the years, however, the provincial government limited access to these benefits to groups referred to as “priority groups”, that is, cases of disability, eviction, disaster and lack of housing. Now only four categories of persons are entitled to special benefits. Over the last few years, the emergency criterion has been added by the Department and therefore, only urgent special benefits are granted, and when requests are refused, the decision cannot be appealed.



B. Problems

- Policies on basic assistance cannot foresee the many exceptions that require special treatment.
- Exceptional cases need to be dealt with individually.

C. Proposals

- Broaden the special benefits program to adequately meet exceptional or emergency situations.
- Remove the definition of “priority group” and the urgency criterion so that all individuals and families will have access, when needed, to special benefits, especially in cases where children’s living conditions are at stake and they are at risk, when a family is continuously monitored by the Department, when there are extraordinary circumstances and where it is a case of basic necessities.

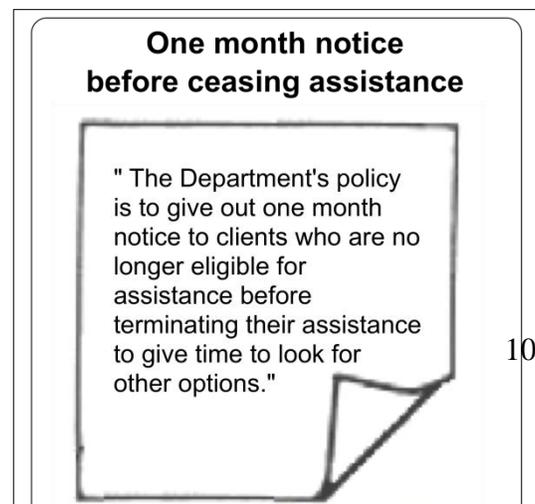
D. Arguments

- Basic assistance is uniform, generalized assistance that is not appropriate when a situation is out of the ordinary.
- Special benefits are the only way to individualize benefits, and therefore to guarantee equality when conditions are not equal.
- The absence of public transport in rural regions and hard-to-heat dwellings are good examples of exceptional situations that justify granting special benefits.

7. TERMINATION OF ASSISTANCE

A. Current Policy

A few years ago the Department ruled that a month’s notice would be given to recipients before assistance



is terminated (confirmed in 1996 by the Regional Director for the Acadian Peninsula, Yvon Arseneau,). This policy has never been applied throughout the province.

B. Problems

i. Failure to observe the policy

- a. The current policy is not observed.
- b. In many cases, such as in the case of overpayments, for example, the Department advises the recipient that his assistance is terminated immediately and that he has to surrender his medical card.

ii. Negative repercussions

- a. Closing a file abruptly causes people a lot of anguish. In the meantime, they no longer have any means of survival, but they still have to pay their rent, buy food and obtain other necessities.
- b. Often, people find out that they are no longer entitled to income assistance when they go for their mail at the beginning of the month and don't find their social assistance cheque.
- c. Closing a file suddenly disorganizes the family budget and puts individuals in a very precarious situation.

C. Proposals

- a. That no files be closed unless managers make sure that people are not at risk. In other words, that the Department use more discernment.
- b. In questionable cases, that managers make prior contact with social workers to find out the foreseeable consequences and weigh the appropriateness of their decision.

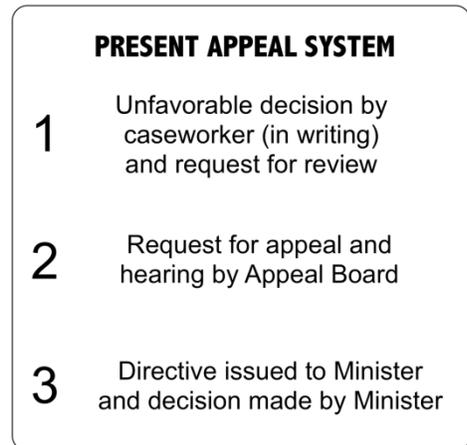
D. Arguments

- a. Under the principle of avoiding putting people in danger, it is necessary to make sure that an individual or family does not run any risk of eviction, having the electricity cut off, being deprived of food or losing their medical card by abruptly closing their file.
- b. Persons whose files are closed abruptly often, by that very fact, become needy. The *Family Income Security Act* gives the Minister the power to provide assistance to persons who are needy or at risk of becoming needy. A person in need is usually defined as someone who is unable to find a job or to look after his needs because of the loss of livelihood, illness, disability, age or other circumstances.
- c. It is reasonable to grant a certain grace period before eliminating assistance. This is a common business practice.
- d. Giving ineligible persons a month's notice before terminating their assistance also gives them time to reorganize. This also complies with the Department's legislative mandate to provide assistance to persons in need (Act, s.3).

8. APPEAL SYSTEM

A. Current Policy

The appeal system has three levels: 1) a regional review by the area reviewer; 2) a hearing before the Appeals Board, which currently only has the power to make recommendations; and 3) the Minister, who has the final decision-making power and who can decide not to implement the Board's directives. The Board's mandate is limited to ruling on the subject of the dispute before it, and its decision has to be based solely on the Act and Regulations. Two reasons for appeal are excluded in the Regulations (separate files and emergency benefits), while the Minister has added two others, disability and special benefits. It also usually considers that all special benefits are emergency situations and therefore excludes them from the appeal process.



B. Problems

i. Cumbersome system

- a. It is obviously a makeshift system when compared to the standards set in other systems such as Employment Insurance or WorkSafe NB.
- b. The regional review mechanism is not independent of the Department. At the review level, the reviewer is an impartial staff member. At the appeals level, board members are named by the Executive Council but are closely supervised by the Department. Moreover, the coordinator is not an Appeals Board employee, but a Department employee who is not impartial.
- c. In many cases, decisions are made based on Department policies, and this is against the law since Commission decisions must adhere exclusively to the Act and Regulations.
- d. It is not reasonable that special benefits cannot be appealed when there is no emergency, as in the case of medical transportation, for instance.
- e. Travel costs to the hearings are only paid at the discretion of the Appeals Board Chairman.
- f. The "Request for Appeal" form is not included with the refusal letter, except in the Acadian Peninsula.
- g. No interim assistance is paid, which has a deterrent effect on anyone wishing to appeal.
- h. Communication of evidence is available only 3 days prior to the hearing, and the client must obtain it at the local office.
- i. Information on the appellant is written on a single page and distributed to Appeal Board members at the start of the hearing. Letters and declarations made by the appellant to the Department are not included in the documents handed over to the Board.
- j. Usually the only documents tabled as evidence at the hearing are provided by the Department, because there are no advocates to help appellants prepare their case.
- k. At the hearing, the Commission invites the Department representative to speak first, which skews the hearing to the Department's advantage.

ii. Natural justice

- a. Recipients' right to an independent, impartial and external-based appeal system is not recognized.
- b. Appellants have little defence: **they do not have the right to a paid defender or a representative as is the case, for example, of those injured in the workplace.** This deprives them of a proper defence.
- c. The appellant and the members of the Appeals Board have little opportunity to prepare before the hearing.

iii. Minister's right of veto

- a. Appellants have no assurance of a mandatory decision because the Board Chairman only submits "directives" to the Minister and these are only valid for the next 3 months.
- b. Government has weakened the Appeal Board's mandate by giving the Minister the power to refuse to follow the Board's directives and to render, should he so wish, a new decision.

iv. Power to investigate

- a. Historically, the Board had the mandate to investigate various matters and report to the Minister, but the government eliminated this Board power by overhauling legislation.

Restriction of the right to appeal

Legislation:

All decisions made concerning social assistance may be appealed, except for economic units and emergency items.



Policy:

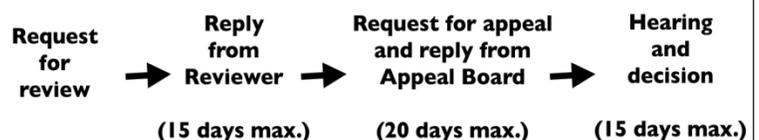
... except also in case of overpayments, heating assistance and disability certification.

Through its policies, the Department is limiting guaranteed rights, depriving thus the citizens of their right to appeal.

C. Proposals

- a. That the area review is eliminated and replaced by a primary review (between the manager and his supervisor or designate), preventing unnecessary delay in reaching the Appeals Board.
- b. That the Appeals Board have three members:
- c. A Chair nominated by government
- d. One representative from business
- e. One representative from the N.B. Federation of Labour; this representative must be a person currently living on social assistance.
- f. That a full time, remunerated, bilingual and independent person be available in each area to act as an advocate for appellants when presenting themselves before the Appeals Board, to ensure a better balance between parties.
- g. That the system better respect people's rights by broadening the range of reasons for appeal to include special benefits (such as transportation and heating supplements), giving appellants a copy of all documents that the Department intends to present at the hearing, and providing them with advocacy services from representatives to help them prepare to appear at the hearing and to introduce documents as evidence.
- h. That the Appeal Board's decisions be mandatory.

Time frames imposed for the appeal system



- i. That the Appeal Board's decisions be subject to appeal before the ombudsman..
- j. That the Appeal Board's decisions be based exclusively on the Act and Regulations.
- k. That the Act be amended to provide the appellant's right to bring in witnesses, and to receive a transcript of the discussion, and that the appellant's transportation expenses be paid in every case.
- l. That assistance be paid to appellant while the Board's decision is pending and if the decision is unfavorable, that he should not have to reimburse the amount received.
- m. That the Board be empowered to increase the period provided to lodge an appeal, as is the case for Worksafe NB's Tribunal.
- n. That the Board's decisions establish principles that will impact on the Department's policies and guide its subsequent decisions.
- o. That the Order of Presentation established under Court of Queen's Bench Rules, regulation 54.07, be respected. This rule specifies that the appellant presents his evidence first, followed by the respondent.

D. Arguments

- a. The Appeals Board should have the power to question unjust administrative decisions and to report on them publicly.
- b. The Department's representative at the hearing should present not only financial data, but also address the impact of the Department's decision on the appellant and his/her family.
- c. The Board should not only study complaints, but also systematic problems such as the definition of income, for example (for instance, real income vs net income, retroactive amounts for non- assisted periods, etc.).
- d. The appeal system is a democratic process: it must give the appellant a chance to have the manager's decision revised by an independent mechanism. It's also an opportunity to give explanations or submit other information or evidence to enhance understanding of his situation.
- e. An appeal system is a normal, democratic tool to protect individuals from incorrect decisions or abuse that may occur in any administrative system.

9. ECONOMIC UNIT POLICY

A. Current Policy

The Economic Unit policy ~~is~~ has been changed to be applied only to social assistance recipients who are in spousal relationships. Those who requested social assistance after January 1st 2010 are being denied this advantage.

B. Proposals

- a. That the policy be applied to all social assistance recipients who are not in spousal relationships.
- b. That this reform be applied to all qualifying social assistance recipients, regardless of the time they chose to dwell with another social assistance recipient.

C. Argument

a. The government has a Poverty Reduction Plan. It should thereby exempt all recipients in the household Income- Policy will only help them financially and this policy would not be discriminatory as it is now.

b. The denial of the household income policy reform to those social assistance recipients who acquired this status after January 1st 2010 constitutes discrimination and should be abolished.

10. PERIOD OF LIMITATION

A. Current Policy

The Act provides a period of limitation of only 30 days to a recipient who wishes to appeal a decision by his/her manager. The decision is communicated by the manager through a letter that reads: "Your request for social assistance has been refused. This decision was made for the following reasons If you have any questions or if you wish to have the decision reviewed, contact me within 30 days of the date of this letter, at this telephone number:...."

B. Problems

- a. The period of limitation (30 days) is too short. In Quebec this period is set at 90 days. In Ontario and Manitoba, it is set at 30 days but provision is made for an extension. In the Yukon, there is no period of limitation.
- b. It is unjust to refuse the right to appeal to a recipient if he/she was psychologically unable to lodge an appeal within the set period of limitation
- c. Reviewing a decision is a legal act; the Act does not provide for this review to be done by telephone, which offers no protection to the recipient.
- d. When a case manager provides a limit of 30 days to the recipient to request a review, she is in fact extending the period of limitation, which goes against the Act. If the client waits until the 30th day to call her and then says he wants to appeal, he should then have 30 more days to lodge the appeal.

C. Proposals

- a. That the Act be amended to give 90 days to the recipient to appeal.
- b. The Minister should be allowed to grant an extension of 30 days, if warranted by the circumstances.

-30-