

MANITOBA OMBUDSMAN



**REPORT ON MANITOBA'S
EMPLOYMENT AND INCOME ASSISTANCE
PROGRAM: Updated with Departmental
Responses to Recommendations**

December 2010

PREPARED BY:

IRENE A. HAMILTON, MANITOBA OMBUDSMAN

MEL HOLLEY, MANAGER
SYSTEMIC INVESTIGATIONS

SHELLEY PENZIWOL, LEAD INVESTIGATOR
COMMUNICATIONS COORDINATOR

INVESTIGATORS

BOB BAKER
CHRIS CAMPBELL
RIETTA FLOOM
MAUREEN SCHIRMER

TABLE OF CONTENTS

Executive Summary and Recommendations	4
Introduction	13
Employment and Income Assistance Program	16
Application for Employment and Income Assistance	22
Inadequate Disclosure of EIA Entitlements, Benefits, Rights and Responsibilities	22
The Right to Apply and Receive EIA Benefits	30
Application for Disability Category	40
Categorical Eligibility	47
Participants with Work Expectations	47
Participants with Multiple Persistent Barriers	56
Disability Category Participants	60
A Non-Categorical System	66
Rate Setting	68
Program Policy	73
Common-Law Relationships	86
Code of Conduct and Complaints	97
EIA Appeal Process	103
Staffing and Workload	116
Discretionary Decision Making	133
Departmental Response (May 21, 2010)	142

EXECUTIVE SUMMARY AND RECOMMENDATIONS

This report sets out the findings and conclusions of an investigation into Manitoba's Employment and Income Assistance (EIA) Program. The report contains 68 recommendations for administrative improvement.

The investigation was undertaken in response to a complaint from twelve community organizations, many of whom have clients who are also participants in the EIA Program. The complainants requested a comprehensive review of the program, and also raised specific concerns about the adequacy of the services and benefits provided by the program and questioned whether participants in the program are being treated fairly.

The Employment and Income Assistance Program operates under Manitoba Family Services and Consumer Affairs and provides service in every area of the province. EIA provides financial and other support to thousands of Manitobans every year, most of whom are unable to meet the cost of their basic needs because of some form of disability.

Our review of the EIA program was conducted in a collaborative manner, with the full support and cooperation of the program and the department.

We examined the operation of the EIA program as a part of the government's overall poverty reduction strategy, and also in light of specific stated goals for the department and the program. As stated in the Department of Family Services and Housing's 2008/09 annual report, the department is committed to:

“improving the quality of life for Manitobans through furthering the social, economic and labour market inclusion of all citizens. We strive to ensure that diversity is respected, that people feel accepted and valued, and live with dignity and security. We work with the community to support Manitoba children, families and individuals to achieve their fullest potential.”

The department has also established several goals for its programs and services, including:

- *to reduce the depth, incidence and effects of low income;*
- *to increase participation in the labour market and community;*

To receive assistance from the EIA program, people must demonstrate that they meet both financial and categorical eligibility requirements established by law. We have examined the utility and effectiveness of the categorical eligibility system and found that the program could be improved by adopting a non-categorical system that analyzes the needs of individuals and families and provides benefits in accordance with those needs rather than attempting to fit individuals into one of a number of predetermined categories.

We examined the program's treatment of people in different existing eligibility categories: the disability category for people who are not subjected to employment expectations, and the general assistance category for those who are expected to seek employment. There are many EIA participants in the disability category who can and do work. There are participants in the general

assistance category who are not considered "disabled" but who cannot work and will not be able to work until various circumstances and conditions impeding their employability have been resolved.

We believe that the program could be improved if the categorical eligibility system was replaced with a system that incorporates an assessment of applicants' needs and a matching of those needs with the services and resources necessary to address them.

As part of the review of categorical eligibility we have also noted that the deferral of work expectations for single parents with children under the age of six years may in fact act as a detriment to their future prospects for employment.

Part of the complaint relates to the ability of Manitobans in need to access the program in a timely manner. We have concluded that there is room for improvement at the intake and application stage and that there are better ways of communicating information about the program to both the public and to participants.

We have examined the treatment of women alleged to be in undeclared common-law relationships and found that there is considerable variation in how they are treated, based on different understandings and interpretations of the applicable law and program policy. We have made recommendations that investigations of allegations of undeclared common-law relationships be conducted in an appropriate and consistent manner, and that women are treated fairly throughout this process.

Like many social benefit programs, the Employment and Income Assistance Program is characterized by extensive use of discretion. We have examined the use of discretion not only in light of its fairness to participants, but also in terms of its administrative effectiveness and the impact it has on staff workload. We have concluded that there is room for improvement and recommended that the department consider moving to a system that recognizes that there will be recurring predictable needs that can and should be met as a matter of basic entitlement, with discretionary decision making limited to circumstances that are unusual or extraordinary. We believe this will improve consistency and fairness for participants and be more efficient administratively.

We have examined an extensive body of program policy and reviewed program practice with both program staff and management. We have concluded that there has been a significant evolution in the understanding of services the program must provide if it is to be an effective part of a poverty reduction strategy. We have concluded however that this change in philosophy has not yet been fully reflected in written program policy nor effectively communicated to program staff or participants.

We have concluded that in certain instances program policy does not foster the goal of poverty reduction, and in other instances there is a gap between what is required of program participants, and the benefits and services available to them to enable them to meet those program requirements.

We have examined staff workload and concluded that while many staff have a heavy caseload and work diligently, they are hindered by the lack of consistency between program philosophy and program policy and also by extensive and often cumbersome administrative requirements that consume significant amounts of time. We concluded that it will be necessary to address these administrative and policy concerns before it is possible to determine an appropriate workload and assignment of work among EIA program staff.

We have examined whether or not people are treated fairly by the program and concluded that because of regional differences, different interpretations of policy and different management styles, there exists the possibility that people in similar circumstances will be treated differently. We have recommended a number of measures to enhance both consistency and fairness, including the implementation of service standards and a complaint resolution process.

Finally, we have concluded that the program is moving in the right direction by acknowledging that people with disabilities should not be presumed incapable of employment and by its providing specific programs such as marketAbilities to assist people with disabilities achieve their maximum employment potential. As well, the program has begun an initiative that may serve as the basis for the necessary intensive case management system to address the needs of people who are slotted into a category with employment expectations but who in reality face significant hurdles that prevent them from any sustainable labour market attachment.

The EIA program can and should be an integral part of the provincial poverty reduction strategy. We have made recommendations designed to improve fairness and administrative efficiency, but also to align the administration of this important program with the province's overall goal of poverty reduction.

As a result of the investigation we have made the following recommendations pursuant to section 36 of *The Ombudsman Act*:

- 1. It is recommended that a Pre-Intake Orientation (PIO) in digital format be developed and made available in all offices and on the internet. Staff who are knowledgeable in the application process should be available to answer any questions if an individual attends an office to access the PIO. The department should consider having alternative delivery methods available for applicants with literacy or cognitive barriers.**
- 2. It is recommended that an online version of the application be available on the department's website so applicants can see the information that is required for application.**
- 3. It is recommended that the practice of delivering the PIO at in-person group meetings be phased out.**
- 4. It is recommended that a participant who is re-applying for EIA within 6 months of previous enrollment be exempted from the PIO. It is recommended that individuals who reapply should be allowed to schedule an intake appointment directly.**
- 5. It is recommended that a general guide to the EIA program be developed that contains information applicable to the majority of participants.**
- 6. It is recommended that brochures or booklets be developed that clearly identify the applicants for which the information would be useful, for example single parents.**
- 7. It is recommended that all brochures and guides be written in plain language, with sufficient detail so participants know the range of benefits available to them. It is recommended that brochures and guides be printable from any computer.**

8. It is recommended that the online EIA Administrative Manual available to the public be updated immediately as program changes occur to ensure currency of information.
9. It is recommended that the Pre-Intake Orientation materials and publications include the statement “You have the right to apply for EIA”, and that staff communicate this message to applicants during the in-person application process.
10. It is recommended that no Manitoba resident be denied the opportunity to apply for EIA benefits due to the lack of an address.
11. It is recommended that anyone be able to apply for EIA without the need for prerequisite activities such as job searches and that program policy on this subject be clarified for field staff.
12. It is recommended that applicants be allowed to fill in an EIA application form before they are referred to a job bank, which could form part of a participant’s action plan.
13. It is recommended that the department develop and communicate a policy regarding the role of the program’s Job Centre.
14. It is recommended that the term “unreasonable” in reference to job termination, be clearly defined in policy for EIA staff, and clearly explained to EIA participants.
15. It is recommended that the use of the term “irresponsible” in relation to job termination be discontinued in any program communication or policy.
16. It is recommended that first-time applicants be exempted from unreasonable job termination expectations as they would not have been familiar with EIA policy prior to application.
17. It is recommended that the department clarify written policy to explicitly require staff to complete and document the detailed analysis required to support a finding that a termination or refusal of employment is “unreasonable” pursuant to the existing definition and guidelines.
18. It is recommended that the EIA application form be amended to include an area where an applicant may declare a disability, impairment or medical condition.
19. It is recommended that applicants receive the Disability Assessment Report forms without the need for a doctor’s note.
20. It is recommended that program staff encourage applicants to complete the Self-Report form.
21. It is recommended that a policy be written addressing in what circumstances an applicant can be temporarily enrolled in a disability category pending a disability panel recommendation on eligibility for the disability category.

22. It is recommended that policy be amended to require Directors to make decisions regarding disability eligibility except in circumstances where medical information in support of an application is unclear or contradictory, in which case a Director should consult with a Disability Assessment Panel.
23. It is recommended that the process for developing client action plans ensures the full participation of participants, and reflects all issues identified in each participant's employability assessment.
24. It is recommended that all participants receive a copy of their signed client action plan, regardless of the participant's personal circumstances.
25. It is recommended that the department develop a plan to provide intensive case management for people with multiple persistent barriers, to assess all barriers to employment and what supports are necessary to overcome those barriers. It is recommended that barriers should include social barriers, in addition to temporary disabilities or illness.
26. It is recommended that a comprehensive assessment tool be developed and used to assess each applicant to ensure that invisible barriers to employment are disclosed. It is recommended that staff receive training in the comprehensive assessment tool.
27. It is recommended that program policy around work expectations be revised to reflect the need to assist participants in identifying and overcoming barriers to employment.
28. It is recommended that the program consider how to foster employment readiness for disability participants and sole support parents who are currently exempted from employment expectations, and address any barriers arising from disability or family responsibility, such as deficiencies in education or the lack of child care.
29. It is recommended that the definition of disability be clarified in program policy to distinguish between people whose disability will permanently prevent them from obtaining self-sustaining employment, and those who are temporarily precluded from meeting the cost of their basic necessities because of a temporary disability or illness.
30. It is recommended that for people who are permanently disabled and exempted from employment expectations, such as those in the Supported Living Program and those eligible for CPP disability benefits, long term disability benefits be paid in amounts sufficient to meet the cost of their basic necessities, which would include predictable recurring needs arising from their disabilities.
31. It is recommended that instead of the current categorical eligibility system, the department consider adopting a system that focuses on a comprehensive assessment at intake, identifying all needs and barriers to full societal and labour market integration, and the provision of intensive case management for those participants who require it.
32. It is recommended that the department institute a formal, documented process for reviewing and making recommendations for periodically updating basic and shelter rates, income and asset exemptions, and other income assistance allowances in a logical

and equitable manner. It is recommended that in that process, program staff be consulted.

33. It is recommended that the rate-setting process be documented and made available to the public.

34. It is recommended that the department determine whether participants are required to use benefits allocated for basic necessities to supplement benefits allocated for rent, and if so, how frequently and to what extent this occurs.

35. It is recommended that the department review all EIA policies to ensure they are supportive of both the department's stated commitment to poverty reduction and to specific program goals. The review should include a mechanism for consulting with program delivery staff in all regions of the province.

36. It is recommended that program policy be streamlined, and that outdated or duplicate policy be deleted. The department should review policy and consider separately identifying financial administration procedures. The department should undertake a review to ensure that SAMIN facilitates the implementation of program policy, and not restrict or dictate it.

37. It is recommended that the department review the definition of basic necessities to ensure that support is provided for the communication and transportation needs of participants consistent with program goals and the requirements imposed upon participants.

38. It is recommended that the department consider including in any policy that sets out requirements or expectations on participants, a mechanism for determining their capacity to meet those expectations, what additional supports would be necessary to meet those expectations, and a plan to provide those supports.

39. It is recommended that the requirements of program policy for staff take into consideration limitations that result from staff workload, and be consistent with staff qualifications and training.

40. It is recommended that program policy include a clear statement of program philosophy, and all policies should be consistent with that philosophy.

41. It is recommended that program philosophy determine discretionary decision making, and that program philosophy and policy be highlighted and included in staff training.

42. It is recommended that policy on common-law unions be clarified to include a minimum time frame to address the permanence of a relationship and to ensure the consideration of all three factors (financial interdependence, familial interdependence and residency) when assessing the existence of a common-law relationship.

43. It is recommended that policy be clarified by articulating the role of case counsellors in the common-law determination process and clarifying when matters would be referred to the area investigator.

44. It is recommended that policy be amended to eliminate the practice of home visits by investigators.

45. It is recommended that an investigative policy be developed, considering other programs such as those in British Columbia and Ontario, including a package of investigative tools to assist staff in reaching the appropriate conclusions when investigating alleged common-law unions. Tools should include:

- Clear and concise policy regarding the investigative process
- Investigative checklists or standards to achieve consistent investigations and appropriate outcomes
- Questionnaires to assist staff and participants determine common-law relationships
- Standardized forms when conducting interviews that would document which parties were present, the duration of the interview, questions and responses, and the nature of the discussion

46. It is recommended that a position be assigned responsibilities for the duties formerly performed by the Manager of Investigations, to ensure quality assurance audits are conducted, training plans are established for investigative staff and investigative tools are developed to achieve a consistent approach to investigations.

47. It is recommended that information about common-law unions be published in a plain language document available to all participants that defines “common law relationship” and explains how to talk to a case counsellor about changes in relationships, similar to an Ontario document titled, “Do you live with someone who might be seen as your spouse?”

48. It is recommended that policies around investigations include the principles of natural justice and that investigative staff receive training in the area of the requirements of natural justice as it relates to investigations conducted by the program.

49. It is recommended that the department write a policy setting out both service standards and a complaint resolution process.

50. It is recommended that the department communicate this policy to staff and the public on the department’s website and incorporate the policy into program materials.

51. It is recommended that all complaints received and the actions taken to try and resolve them be recorded in a database.

52. It is recommended that information about complaints, both the subject matter and the number by region, be reviewed and analyzed for quality assurance and training purposes.

53. It is recommended to the Social Services Appeal Board, that an expense policy that addresses the costs associated with participating in the appeal process be adopted, and included in its *Policy and Procedure Manual*.

54. It is recommended that the department consider funding attendance costs associated with an appeal to the Social Services Appeal Board through the EIA program, pursuant to an expense policy adopted by the Social Services Appeal Board.

55. It is recommended to the Social Services Appeal Board, that it issue decisions on requests for an extension of time in the form of an Order of the Board that may be appealed to the Manitoba Court of Appeal.

56. It is recommended that the department consider entering into an agreement with Legal Aid Manitoba to provide advocacy services for program participants requiring legal information and advice in dealing with the program or in appealing program decisions to the Appeal Board.

57. It is recommended that the department review whether there is a benefit to the clear segregation of duties between a case counsellor and a financial worker to try and relieve workload pressures, with case counsellors responsible for on-going case management, and financial workers responsible for all financial administration matters.

58. It is recommended that the department clearly communicate its philosophy, such as the current shift toward services designed to enhance self-sufficiency and independence from the program, to both staff and participants.

59. It is recommended that the department consider the incorporation of its pilot Job Connections Initiative with participants who have barriers to employment, throughout the system as part of the poverty reduction strategy articulated by government.

60. It is recommended that the practice of file reviews by supervisors for quality assurance and consistency be continued, with the department setting a target percentage of all files and ensuring supervisors have the time necessary to complete those reviews.

61. It is recommended that the department consider adjusting case loads to account for factors that affect the time needed to provide service, such as providing services in a language other than English, or travelling significant distances.

62. It is recommended that the department adopt a clear policy that outlines the frequency of significant contact between a participant and the program, and sets out the circumstances where a home visit might be appropriate. Prior to a home visit, staff should set out the purpose of the visit for the participant and schedule the visit in advance.

63. It is recommended that the department begin planning to replace SAMIN with an updated, user-friendly information system.

64. It is recommended that the department assess whether administrative savings could be achieved from moving from a system with ad hoc consideration of discretionary expenditures for items that are basic needs to a system with fixed benefit levels that reflect the cost of those predictable non-continuous needs, in particular in the long-term disability and employment-ready categories.

65. It is recommended that any expenditure reductions achieved through streamlined administration and the refinement of eligibility categories be re-invested in the system.

66. It is recommended that the department review the spending authority levels of Regional Directors and Area Directors to determine if they should have “minister’s designate” level, currently restricted to staff of Service Delivery Support.

67. It is recommended that the department adopt a Code Manual to provide guidance to staff on the purpose and appropriate use of needs codes for discretionary decisions.

68. It is recommended that all staff receive a written policy on discretionary decision making, setting out the process staff are expected to follow and incorporating the program’s expectations around fairness.

INTRODUCTION

In August 2008, twelve non-governmental organizations wrote to the Manitoba Ombudsman to request a review of Manitoba's Employment and Income Assistance (EIA) program. Their letter of complaint stated, in part:

On behalf of the social service agencies listed below, we would like to file a systemic complaint regarding the way in which the mandate, administrative policies and regulations and procedures are implemented by the staff of the Manitoba Employment and Income Assistance Program (EIA). As a group we feel it was important to register our concerns and seek your intervention, as we have discovered that many of us have experienced the same difficulties. The result of this common experience is that many EIA recipients we assist have been negatively impacted and we feel a review of how this program functions is necessary.

The complainant organizations provide direct service or advocacy, or both, to many clients who are also participants in the EIA program. The complainant organizations are:

Canadian Mental Health Association, Winnipeg Region
Canadian Mental Health Association, Manitoba Division
Centre for Aboriginal Human Resource Development
Community Financial Counseling Services
The Elizabeth Fry Society of Manitoba Inc.
Manitoba League of Persons with Disabilities
Resource Assistance for Youth
Social Planning Council of Winnipeg
West Central Women's Resource Centre
Winnipeg Harvest
Wolseley Family Place
Women's Health Clinic

In addition to requesting a review of the EIA program, the complainants' letter set out numerous specific areas of concern, with examples of what they felt was maladministration, and their recommendations for improvement to the EIA program.

Their concerns related to people's ability to gain access to the program through the current intake and application process; perceived discrepancies in the interpretation and application of policy; the treatment of women alleged to be in common-law relationships; the adequacy of the rate setting process and the definition of basic needs; the definition of disability and the treatment of people with disabilities; the impact of staff workload on the program's ability to provide service to participants; and how participants are treated. As well, the complainants raised a number of issues with regard to the Social Services Appeal Board (the appeal board), which is the appeal body for certain decisions of the EIA program.

In addition to the complaint received by the twelve organizations noted above, the Ombudsman's office receives complaints from individuals about a variety of government programs and services. In 2008, for example, the office received 63 inquiries and complaints about the EIA program. In 2009, 84 EIA inquiries and complaints were received. In many of these cases, Ombudsman complaints analysts provided information about steps to take in resolving issues with the EIA program to the

individual complainants, and in some cases, matters were referred to Ombudsman staff for further investigation.

The Employment and Income Assistance program was last reviewed externally in 1982/83 by the Manitoba Task Force on Social Assistance, chaired by Dr. Joseph C. Ryant. The report of the task force (the Ryant report) was issued publicly on August 11, 1983. The most significant change in the ensuing 25 years has been the abolition of the “two-tier” system, whereby people with disabilities and single parents were served by the province and people who were deemed employable were the responsibility of municipalities. This change occurred in 1999 in Winnipeg and elsewhere in the province in 2004. The program is now administered solely by the province.

After reviewing the complaint and meeting with the complainant groups to obtain clarification of their concerns, the Ombudsman wrote to the Deputy Minister of Family Services and Housing, the department responsible for the EIA program, advising that

I believe that this complaint can be most effectively investigated by using a collaborative approach between my office and the department. I propose that the department respond to the issues raised in the complaint, and provide the appropriate supporting documentation. We will then review that response and engage in discussions with departmental staff until we are in a position to provide a full answer to complainants who have asked us to investigate.

The Deputy Minister agreed with the proposed collaborative approach and indicated that the Ombudsman would receive the full support and cooperation of the department. We received that support and cooperation throughout the investigation.

Concerns about the appeal board were directed to that body, which responded independently of the EIA program. The Chair of the appeal board and board staff were equally supportive and helpful.

The investigation of this complaint was conducted by a team of six Manitoba Ombudsman staff over a period of thirteen months. The investigation included a review of relevant legislation and regulations, annual reports, publications prepared for program participants, departmental policies available to the public, and operational directives provided to program staff.

In addition to interviews with representatives of the complainant organizations, staff of both governmental and non-governmental collateral organizations were interviewed to obtain their views on the administration of the EIA program.

EIA program staff were advised of the investigation in a joint memo from the department and the Ombudsman, prior to Ombudsman staff visiting EIA offices. EIA staff were randomly selected for interviews and all staff were advised that anyone who was not selected but who wanted to be interviewed could contact our office to arrange an interview. Throughout the course of the investigation, over 125 program staff representative of all levels in every EIA office in Manitoba were interviewed.

Although this systemic investigation was undertaken in response to a specific complaint, it provided an opportunity for a collaborative examination with the department of whether the EIA program was meeting its goals, and doing so in a fair and reasonable manner.

Staff at all levels of the EIA program were forthcoming in their analysis of what they felt was good about the program, but also about its shortcomings. Both complainants and program staff had numerous suggestions about how the program should operate and about specific changes they felt necessary. While all of their comments and suggestions were considered, responsibility for the conclusions and recommendations set out in this report rests solely with the Office of the Ombudsman.

EMPLOYMENT AND INCOME ASSISTANCE PROGRAM

The EIA program was formerly known as the Social Allowances Program, or provincial welfare. It is the means by which government has traditionally provided financial assistance to those of us who, for various reasons, lack sufficient resources to meet the cost of basic necessities such as food, clothing, and shelter.

EIA helps to support thousands of Manitobans every year, many of whom are unable to meet their basic needs because of long-term or permanent disability or impairment that results in the need for financial and program support. There were approximately 31,000 EIA cases in 2008/09, providing assistance to over 56,000 people. Of those 31,000 cases, over 18,000 cases provided support for almost 23,000 people under a Persons with Disabilities category. Many of these people also receive health and social services from other government departments and agencies, as well as necessary support and services from non-governmental organizations.

In addition to people in the Persons with Disabilities category, EIA provided temporary financial support and services to Manitoba families in approximately 8,000 sole support parent cases assisting over 24,000 people. As well, the program provided support for over 8,600 people, including two parent families, in 4,900 General Assistance (GA) cases. Both sole support and GA participants are subject to work expectations, the obligation to seek and accept gainful employment, although those expectations are generally waived for sole support parents with children under the age of six.

The eligibility categories described above are created pursuant to *The Employment and Income Assistance Act* (The Act). Clause 5(1)(a) of the Act creates the disability assistance category, while clauses 5(1)(b) and (c) authorize assistance for single parents. Section 5.1 authorizes assistance for people not covered under the disability or sole support parent categories, including general assistance participants.

The Act also contains many of the definitions that give rise to the complainants' concerns, such as the definitions of basic needs, disability, and common-law relationship. As well, the Act confers significant discretion on program directors and the exercise of that discretion has become a source of concern for the complainants.

The Employment and Income Assistance Act

Definitions

"basic necessities" means the things and services to which reference is made in section 2;

Provision of things and services

2 Subject to this Act and the regulations, the Government of Manitoba may take measures to provide to residents of Manitoba those things and services that are essential to health and well-being, including a basic living allowance, an allowance for shelter, essential health services and a funeral upon death.

Income assistance

5(1) The director shall provide income assistance, in accordance with this Act and the regulations, to or in respect of a person who, in the opinion of the director is a person

(a) who, by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days

- (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any; or
- (ii) is unable to care for himself and requires to be cared for by another person or in an institution or home for the aged or the infirm; or
- (b) who is a widowed spouse with a dependant child or dependant children; or
- (c) who is a parent with a dependant child or children and
 - (i) is deserted by, or is living separate and apart from, his or her spouse, or
 - (ii) is the spouse of a person who is sentenced to and is serving a prison term, or
 - (iii) is not married, or
 - (iv) is divorced; or...

Common-law relationships

5(5) Where two persons who are not legally married to each other are living together under circumstances that indicate to the director that they are cohabiting in a conjugal relationship, they shall, for the purposes of this Act and the regulations, be treated in the same manner as two persons who are legally married, and any application by either or both of them for income assistance or general assistance shall be dealt with in every respect in that manner.

General assistance

5.1 Where a person

- (a) repealed, S.M. 2004, c. 2, s. 6;
 - (b) is not a person described in section 5; and
 - (c) applies to the director for general assistance;
- the director shall provide general assistance to or in respect of that person in accordance with this Act and the regulations.

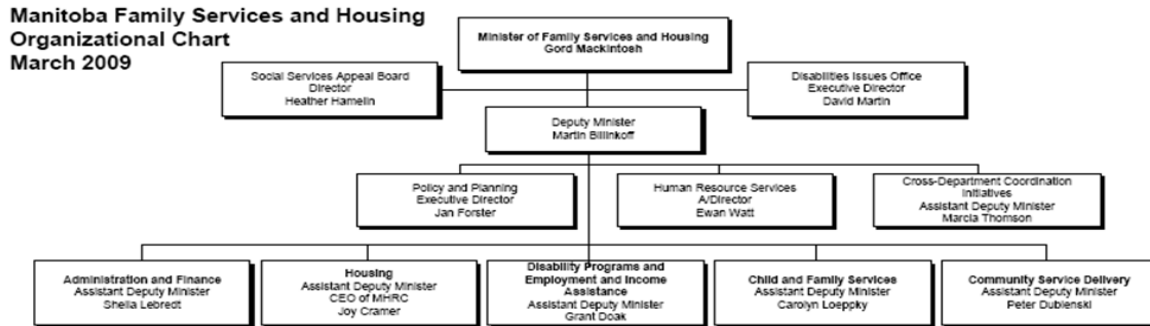
To be eligible for EIA, an applicant must meet both categorical and financial eligibility criteria established by the program. To determine financial eligibility, the program compares the level of financial resources a person has, to the corresponding level of assistance that may be payable in their category.

Regulations under the Act set out assistance rates to be paid to program participants in various eligibility categories, for various items included in the definition of basic necessities.

Basic monthly budgets granted to individuals in the general assistance and disability categories are illustrated below. Not included in the calculations are any special or health needs. The budgets below are for illustrative purposes only. Actual budgets would reflect the individual circumstances of participants. For example, participants with children receive benefits from EIA and other Family Services programs, and also receive benefits such as the Canada Child Tax Benefit.

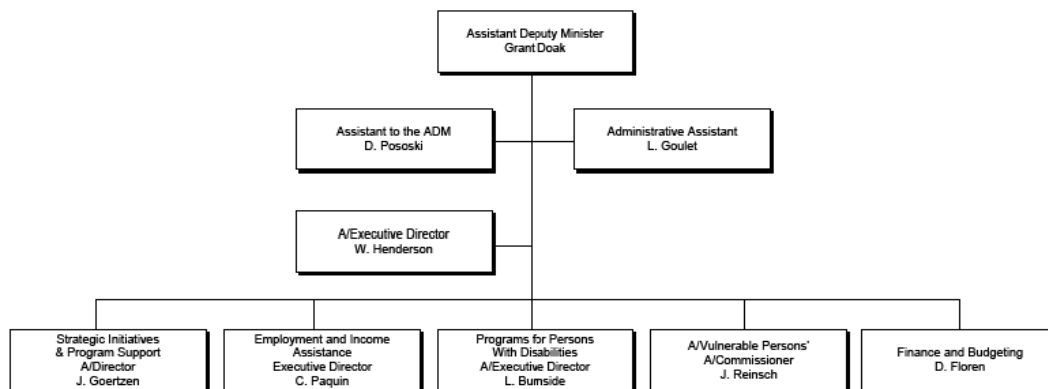
Single, childless, General Assistance (seeking work):	
Rent (private rental, including fuel and utilities)	\$285
Basic necessities	\$195
Job Seekers Allowance	\$25
Manitoba Shelter Benefit	\$50
Total	\$555
Single, childless, Disability (not employed)	
Rent (private rental, including fuel and utilities)	\$285
Basic necessities	\$331.40
Income Assistance for Persons with Disabilities benefit	\$105
Manitoba Shelter Benefit	\$50
Total	\$771.40
(also commonly included may be a health telephone and health bus pass)	

At the time of our investigation, Manitoba Family Services and Housing was divided into five divisions, as illustrated in the organizational chart below. At the time of report writing, the department was restructured and divided into two departments: Family Services and Consumer Affairs, and Housing and Community Development.



The Employment and Income Assistance Program is a branch within the Disability Programs and Employment and Income Assistance Division, as illustrated in the organizational chart below:

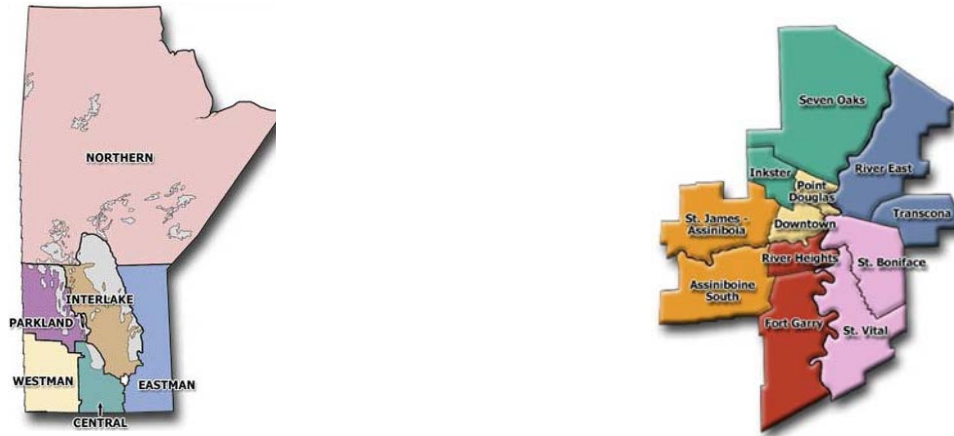
**Manitoba Family Services and Housing
Disability Programs and Employment and Income Assistance
Assistant Deputy Minister's Office
November 2008**



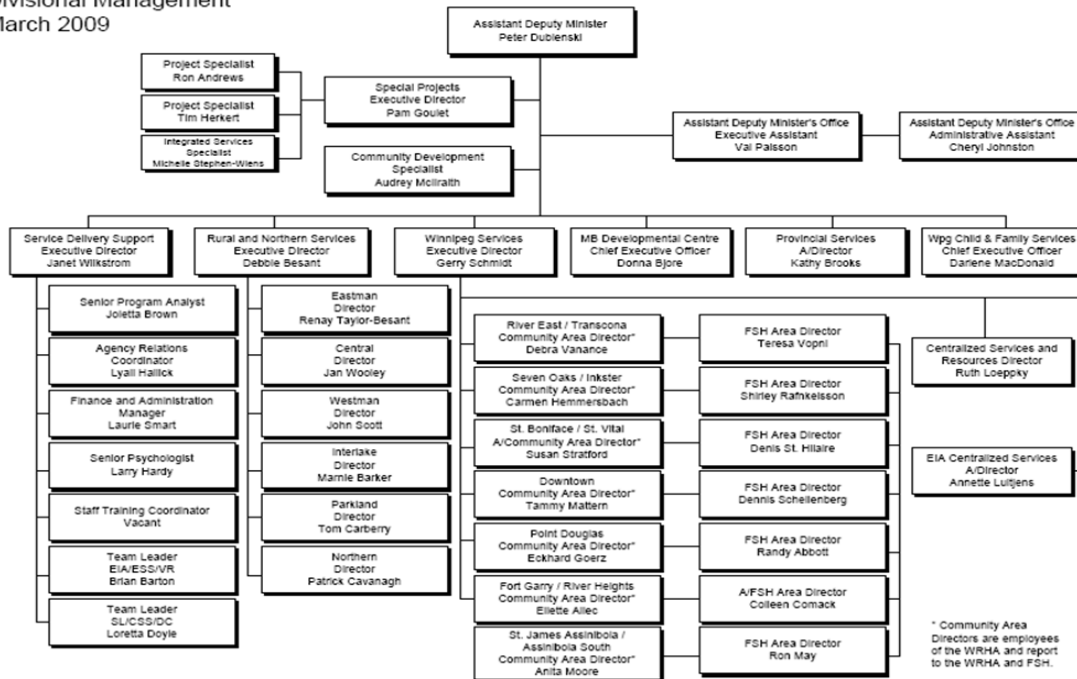
The EIA Program is responsible for the development, maintenance, and interpretation of legislation for income assistance programs; policy and program development; and the development of new initiatives and public communications.

The Community Services Delivery Division is the program delivery arm of the department. It delivers most of the department's social services and income assistance programs to eligible Manitobans. For the purposes of program delivery across the province, the department has divided the City of Winnipeg into community areas plus some centralized services, and the province into six regions, as illustrated on the following page. There is also a Service Delivery Support branch within the division that acts as a bridge between the "field" where service delivery occurs, and the program,

where policy development occurs. The organizational chart for the Community Service Delivery Division is provided below.



Manitoba Family Services and Housing
Community Service Delivery
Divisional Management
March 2009



The department's broader public policy goal as well as some program specific goals and responsibilities have been set out in successive annual reports. As stated in the Department of Family Services and Housing's 2008/09 annual report, the department is committed to:

“improving the quality of life for Manitobans through furthering the social, economic and labour market inclusion of all citizens. We strive to ensure that diversity is respected, that people feel accepted and valued, and live with dignity and security. We work with the community to support Manitoba children, families and individuals to achieve their fullest potential.”

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- *to reduce the depth, incidence and effects of low income;*
- *to increase participation in the labour market and community;*

The Employment and Income Assistance Programs branch has identified several specific objectives, including:

- *To develop initiatives that help Employment and Income Assistance (EIA) participants regain their financial independence from income assistance by making the transition to work.*
- *To develop initiatives that assist EIA participants in pursuing training and employment opportunities.*

Poverty Reduction

The department describes the EIA program as “*a program of last resort for people who need help to meet basic personal and family needs.*” Basic and family needs include food, clothing, personal needs and household supplies. Participants also receive funds for shelter. The complainant groups feel that government is not meeting the basic needs of EIA participants, and is instead perpetuating the conditions of poverty.

While funding basic needs is a component of the EIA program, it is only one aspect of a program with broader public policy goals. This is reflected in both the statutory definition of social services, and in the goals identified by the department, Manitoba Family Services and Housing, for the program.

The Employment and Income Assistance Act

Definitions

"social services" means services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on income assistance, and, without limiting the generality of the foregoing, includes

- (a) rehabilitation services,
- (b) case work, counselling, assessment and referral services,
- (c) adoption services,
- (d) homemaker, day care and similar services,
- (e) community development services,
- (f) consulting, research and evaluation services with respect to social programs, and
- (g) administrative, secretarial and clerical services, including staff training, relating to the provision of any of the foregoing services or provision of income assistance or indigent relief.

Recent changes to the EIA program have focused on measures designed to enhance benefits and opportunities for people seeking independence from the program through employment, and on additional support for people with disabilities.

In April 2007, Manitoba introduced Rewarding Work, a four-year strategy to help people get jobs by encouraging the transition from welfare to work, including:

- Get Ready! – enhances training opportunities
- Get Started! – covers some job-related costs

- Work Incentives & Related Allowances – encourages transitions by increasing income
- Job Seekers Allowance – for single non-disabled adults who are employed or looking for work
- JobConnections – specialized services to help people receiving assistance find work
- Manitoba Works – a subsidy for employers who hire people receiving assistance
- Parent Wellness Initiative – helps single parents overcome barriers to employment
- Rewarding Work Health Plan – extends drug, dental and optical coverage for single parents and persons with disabilities who leave welfare for work
- Rewarding Work Rent Allowance – helps non-disabled adults without children to pay rent after they leave welfare for work
- Stages of Change – assists people with disabilities get ready for work
- Disability Awareness Campaign – encourages employers to hire persons with disabilities
- Volunteer Allowance – helps persons with disabilities on assistance who volunteer
- High School Completion – supports youth on assistance complete high school
- Gilbert Park Going Places – promotes positive, healthy lifestyles for youth
- Recreation Opportunities for Children – helps children with recreation activities
- Communications Technology – provides devices for up to 1,100 adults with impaired speech
- marketAbilities - helps persons with disabilities find work

In May 2009, the province launched Rebound, an \$11.2 million, two-year retraining and support strategy that will help low income workers return to work faster. Rebound is intended to help up to 1,000 workers, including people who might not be eligible for employment insurance and those on income assistance who want to find a job. Rebound is supported with funding for two years from the new Canada Skills and Transition Strategy and the Canada-Manitoba Labour Market Agreement. The strategy combines the resources of the departments of Family Services and Housing, and Competitiveness, Training and Trade (now called Entrepreneurship, Training and Trade).

Manitoba's poverty reduction strategy is multi-faceted. Since May 2009 that strategy has been called ALL Aboard. The four stated pillars of the poverty reduction strategy are:

- safe, affordable housing in supportive communities
- education, jobs and income support
- strong, healthy families
- accessible, coordinated services

The tie between many of the poverty reduction initiatives and the EIA program indicates an acknowledgement that EIA should be an integral part of the poverty reduction strategy. This philosophy shift is a positive step in the evolution of the program.

The EIA program's philosophy, however, should be reflected in its program policies and procedures. While EIA program philosophy has shifted, it is not clear that policies and procedures, particularly long-standing policies and procedures designed to monitor and control, have followed suit.

APPLICATION FOR EMPLOYMENT AND INCOME ASSISTANCE

In their letter of complaint, the complainant groups raised several issues regarding the EIA program, three of which focus on applying for EIA benefits. Their first concern relates to the availability of adequate information about the program to ensure applicants and participants understand the program and how it works, and are aware of the expectations the program places on them. Secondly, the complainants explained that in their experience, not everyone in need of assistance is allowed to apply for assistance; a right established in legislation and program policy. Lastly, the complainants expressed concerns with the process by which applicants are enrolled in the persons with disabilities category.

INADEQUATE DISCLOSURE OF EIA ENTITLEMENTS, BENEFITS, RIGHTS AND RESPONSIBILITIES

The complainant groups' first area of concern was the adequacy of the program's communication with applicants and participants.

The ongoing practice of not providing potential participants or even eligible participants with a comprehensive hard copy of the various benefits they may be entitled to drastically diminishes the possibility of participants successfully meeting their basic needs as well as having any unique needs met are minimal at best.

Neither *The Employment and Income Assistance Act* (the Act) nor Regulations prescribe information sharing requirements for the program, although applicants and participants are required by law to provide information requested by the program.

In discussions with complainant groups we heard that concerns about information sharing go beyond the absence of a comprehensive program guide, and relate generally to information provided by the program, starting with the information available to prospective and new applicants attempting to enter the program. The complainants also explained that it was sometimes difficult for them to obtain current, accurate and detailed information about the program, and that such information is critical in their attempts to assist clients in navigating and understanding the EIA program.

Many staff interviewed commented on the complexity of the EIA program and how it was difficult for them to keep up with the changes in the program. They felt that if this were the case for them, it would be even more difficult for participants in the program. It was suggested that some participants lack a clear understanding of the program even after completing the application process. It was also suggested that the program provided certain information only in response to direct questions.

Many staff also acknowledged that some special needs benefits available to participants are only provided upon request. Others indicated that it could be well after the application and enrollment process when needs were identified or benefits fully explained. For example, if staff did a home visit and noticed that someone was sleeping on the sofa or a mattress on the floor, they would then bring up the fact that the program can provide new beds every seven years and bedding every three years.

It appears that there are primarily two ways in which people obtain information from EIA prior to enrollment in the program. They can obtain published information either on the department's website or from brochures available at EIA offices, or they can attend a Pre-Intake Orientation

(PIO) session in some EIA offices. In many offices, but not all, a PIO session is a prerequisite before an intake appointment can be scheduled.

PRE-INTAKE ORIENTATION

For many new applicants who may not be aware of the brochures or the Administrative Manual online, the PIO may be their first opportunity to receive information about the program. Pre-Intake Orientation sessions are held for potential applicants in the general assistance and sole support parent categories. In some offices, group PIO sessions are held separately for different categories. Persons in the disability category do not have to attend a PIO. Applicants who have previously received EIA benefits must also attend a PIO session before being allowed to reapply for EIA.

Group PIOs are not held in all offices. They are held in most Winnipeg offices and in some of the larger centres in other parts of the province. In many regions, intake meetings are held with participants one-on-one and information about the program is provided at that time. In some smaller communities, where many people know each other, staff have made the decision not to conduct group PIOs because of privacy concerns. In Winnipeg offices, group PIOs provide an economy of scale by allowing information about the program to be distributed to several potential applicants at once. In some offices, PIOs are held once a week, in others, daily. In some offices, the sessions are delivered by intake workers or by case counsellors (often on a rotating schedule), and in other offices, by financial workers.

The EIA Administrative Manual describes the purpose of the PIO and the information provided to potential participants.

6.2.1 PURPOSE OF THE PRE-INTAKE ORIENTATION

Group sessions provide an opportunity for participants to learn about the program, to ask questions and to gain information from others in the group. Where group sessions are not available, or participants are unable to attend due to extenuating circumstances (such as a conflict with work schedules), orientation packages are provided to participants as an alternative.

The pre-intake orientation provides the participant with the opportunity to:

- a. decide whether applying to the program is appropriate;
- b. approach other resources that may be appropriate;
- c. review and clarify participant obligations;
- d. review application documents; and
- e. prepare for the intake interview.

6.2.3 INFORMATION PROVIDED AT THE PRE-INTAKE ORIENTATION SESSION

Pre-intake orientations are customized to meet the information needs of different groupings of potential applicants. Potential single-parent and general assistance (GA) applicants with children attend different pre-intake orientations than childless GA applicants.

Topics covered at the pre-intake orientation session include:

- Overview of Employment and Income Assistance:
 - explanation of the last resort nature of the program
 - explanation of other potential resources
 - explanation of eligibility criteria
 - review of program expectations such as reporting income, seeking maintenance and/or child support, and accessing all other financial resources.

- Explanation of employment expectations:
 - requirement to seek self-sufficiency
 - assistance available from staff
 - required reporting
 - sanctions
 - job-searching in the context of the local labour market.
- Discussion of other possible resources or sources of financial support:
 - income support (e.g. EI, CPP, SAFER/SAFFR, CRISP, 55 PLUS, NCB)
 - employment search (Human Resources Centres, employment readiness courses and programs).
 - resources to assist in pursuing maintenance (such as the Child Support Office, maintenance enforcement, legal aid).
- Explanation of application process:
 - requirement to complete the "Employment History and Personal Job Plan" form
 - documents and information to bring to the intake appointment (documents, information)
 - questions the worker will ask.
- Discussion:
 - worker's card, or name and phone number, given to each potential applicant
 - how to make an intake appointment.

Printed information on most of these topics is available in the orientation package, which is given to applicants at the PIO.

Missing from the PIO presentation material, and left up to the individual presenter, is information about the benefits that participants may be entitled to and can expect to receive under the program.

Complainant groups were critical of the PIO process. EIA staff were asked about the purpose and effectiveness of the PIO, based on their experience.

Some staff comments confirmed that one of the purposes of the PIO was screening, providing information that would allow potential applicants to “self-select out” upon being made aware of program requirements. Another identified goal for the PIO process was to inform applicants of what they needed to bring to their subsequent intake appointments.

Many staff expressed concern about how the PIO is delivered, and about its effectiveness. Concerns related to technology, privacy, content and delivery.

Although the provision of a consistent message is important, some staff comments suggest that achieving consistency remains a problem. There were reports of significantly different delivery lengths, from ten minutes to an hour, and about variations in the content actually covered during the sessions.

Many staff raised a concern that the PIO might not be effective in meeting its goals. Some staff felt the volume of information presented could be overwhelming. It was suggested that although one of the purposes of the PIO was to tell people what to bring to their application interview, many people subsequently came to those interviews without the necessary information.

Analysis

Although, as one person stated, “*the PIO tries to ensure that we tell people the same thing,*” it appears that information presented in PIOs can vary from location to location, and depend on who is delivering the PIO, despite the fact that the same PowerPoint presentation is used (either with a lap top computer or overhead projector). The sessions can range from 10 minutes to one hour, and even longer if done in French. With such variation in delivery, it is unlikely that there is consistency in the information that is presented.

It is understandable that offices, particularly larger ones which deal with many people, would expect applicants to attend a PIO to receive basic program information. It is not clear, however, why those offices would expect applicants who are re-applying for EIA to attend another PIO session before re-application. There does not appear to be any benefit, particularly if the time period between applications has been brief, and in fact it appears to unnecessarily complicate or delay the application process for the applicant.

In offices where group PIOs are not conducted because the demand is not there, or there are privacy concerns, there is no evidence to suggest that program participants are disadvantaged by the lack of a group PIO.

Although the PIO provides an opportunity for participants to hear about the program verbally, the program is extremely complex and some staff noted that participants can experience information overload.

There are more effective ways to provide information to applicants and to achieve the goals of the PIO. British Columbia's Ministry of Housing and Social Development has developed an online orientation for potential applicants, to “*...explain the steps and documents you need to apply for income assistance... help you to understand your rights and responsibilities, and provide you with resources you need for your job search.*”

The B.C. Web Orientation is available in 12 languages. Once an applicant has pre-registered to view the presentation, they have 60 days to do so. The ability to track who has viewed the orientation session is built into the system. The orientation session can be viewed on any computer, including computers in ministry waiting rooms.

According to Ministry policy “Ways of Providing Orientation: December 1, 2008”, if an applicant has “*literacy or cognitive barriers, or where an immediate need for food, shelter, or urgent medical attention has been identified, staff may need to communicate the content of the information provided in the orientation directly to the applicant.*”

EIA program staff explained that an online budget calculator is currently being explored to allow potential applicants the opportunity to do preliminary budget calculations on their own. This could be a useful tool for potential applicants.

Recommendations

- 1. It is recommended that a Pre-Intake Orientation (PIO) in digital format be developed and made available in all offices and on the internet. Staff who are**

knowledgeable in the application process should be available to answer any questions if an individual attends an office to access the PIO. The department should consider having alternative delivery methods available for applicants with literacy or cognitive barriers.

2. It is recommended that an online version of the application be available on the department's website so applicants can see the information that is required for application.

3. It is recommended that the practice of delivering the PIO at in-person group meetings be phased out.

4. It is recommended that a participant who is re-applying for EIA within 6 months of previous enrollment be exempted from the PIO. It is recommended that individuals who reapply should be allowed to schedule an intake appointment directly.

Departmental Response:

The department has agreed to implement recommendations 1, 2 and 4 as part of a 2010/11 Action Plan.

The department indicated that it did not agree with recommendation 3. It advised that it intends to provide the public with options for how to access the PIO, including group sessions, and it is of the opinion that some participants prefer having access to an in-person option.

Our Comment:

Making both the PIO and application form available on the department's website should reduce the need for group sessions. Retaining group PIO sessions as one of a number of voluntary options, for those who prefer them, is acceptable.

BROCHURES

The program has a series of over 30 information brochures or bulletins available in print and on the internet at http://www.gov.mb.ca/fs/misc/pubs/financial_assistance.html.

We canvassed staff who direct participants to specific brochures, and who are often required to explain their content. Some staff felt the brochures were appropriate, particularly those dealing with recent initiatives, while others had concerns about their clarity and whether they were written at level participants could understand. Other staff felt that a comprehensive guide would be more useful, noting that one had previously been in use in the program and describing it as a good document.

Analysis

One of the disadvantages of having numerous brochures available to participants on a variety of topics is the difficulty in determining which brochures may be relevant. A single mother, for example, might not know which of the 30 information brochures is relevant to her situation. Several staff commented that brochures or booklets by category would be advantageous, and would provide something that they could share with participants.

Some staff who have been with the program for many years still retain copies of older, more comprehensive booklets that were produced over a decade ago. These booklets contain more information in one place. We reviewed one booklet called “Social Allowances Program” that had been issued in 1992. Although the booklet does not provide more information on benefits than the newer fact sheets, it does provide some information about the EIA program that is missing from the newer fact sheets, including things like basic information about the program itself, eligibility criteria, responsibilities of participants, and program processes, including home visits and annual reviews. This kind of general information about the program can give participants a sense of what to expect when enrolled in the EIA program.

In recognition that the current collection of brochures does not provide enough information to participants, some areas have produced their own in-house brochures. One of the brochures produced by one community area in Winnipeg provides details about the new Rewarding Volunteer Benefit, available to persons in the disability category. The Volunteer Benefit, introduced in 2009 as part of the Rewarding Work series of initiatives, has not yet (at the time of writing this report) been included in the EIA Administrative Manual. Without the in-house brochure, participants would not know about this benefit unless it was mentioned to them by their worker. Information about the benefit was provided to EIA staff in Circular 2009-02. As the brochure is available in only one community area, EIA participants in other community areas or regions would not have access to this information.

We also reviewed copies of other brochures produced by external organizations. Winnipeg Harvest, for example, produced a brochure called “A guide to therapeutic diet allowances,” that summarizes information available in the EIA Administrative Manual, and includes monetary amounts for each different diet. When asked about the Winnipeg Harvest brochure, many EIA staff commented that the brochure lists the different types of diets and the allowances for each, and that participants come in asking for these benefits. They felt the brochure raised participants’ expectations.

In comparison, the EIA brochure on special diets is extremely brief. It states:

EIA Brochure: Support for Dietary Needs

Employment and Income Assistance (EIA) will pay you extra money if you have a special medical diet. To get the special diet money:

1. Give your worker a letter from your doctor or nutritionist that says what your medical diet needs are.
2. EIA will add extra money for medical diet needs to your regular benefits.
3. EIA will review this extra money on a regular basis.
4. You may have to give your worker updated letters from your doctor or nutritionist.

When asked about the EIA brochure, a supervisor confirmed that a doctor may write a note indicating that a participant may need a high protein diet, but the supervisor explained that this would not be sufficient as the doctor did not provide a diagnosis to support the diet need. The supervisor said that the participant would have to go back to the doctor for more information. It appears a doctor's note stating the need is not sufficient. The EIA brochure does not contain enough information to provide an understanding of the policy.

Although the EIA brochure explains that a doctor's or nutritionist's note is required, it does not disclose any detail on the different kinds of special diets that are available. Participants may not realize that they may qualify for extra funds for a high protein, controlled fat, low sodium, or other kind of diets.

It appears that a brochure detailing the various special diets that are available, along with an explanation that justification for the diet must be provided by a doctor or nutritionist – would be preferable.

Several staff did acknowledge that the new "Rewarding Work" series of brochures is improved. However, at the time of report writing, the Rewarding Work brochures were not available on the department's website. We did review print copies. The one-page brochures highlight education, work incentives, and the benefits still available to participants after they find work. In terms of improvements from previous brochures, the Rewarding Work series provides a positive message to participants about the potential rewards of seeking work. The brochures also clearly target different categories. The brochure for single parents, for example, states "For Single Parents" across the top in large blue print.

Recommendations

- 5. It is recommended that a general guide to the EIA program be developed that contains information applicable to the majority of participants.**
- 6. It is recommended that brochures or booklets be developed that clearly identify the applicants for which the information would be useful, for example single parents.**
- 7. It is recommended that all brochures and guides be written in plain language, with sufficient detail so participants know the range of benefits available to them. It is recommended that brochures and guides be printable from any computer.**

Departmental Response:

The department has agreed to implement recommendations 5, 6, and 7 with a target date of late 2010.

EIA ADMINISTRATIVE MANUAL

Many staff noted that if participants or advocates wanted more information about the program, they could use the online EIA Administrative Manual. The Administrative Manual is a collection of program policies. Almost all staff who suggested that the public use the online manual noted that it is very large and difficult to navigate. In the course of our review, we also noted that it can be difficult to navigate the online manual.

Staff regularly receive policy and procedure changes and updates in the form of “Circulars” (formerly called Directives). Some staff noted that the changes and updates explained in Circulars are not immediately reflected in the online Administrative Manual available to the public. For example, in early 2008, an internal department circular introduced a \$25 monthly “Job Seekers’ Allowance” available to childless single or couple general assistance participants. This benefit is not mentioned in the online Administrative Manual, nor is any information about other Rewarding Work initiatives included.

Analysis

The complainants explained that as organizations assisting EIA applicants and participants, they need access to current and authoritative policy to be able to properly assist their clients with EIA matters. For that reason they frequently need to access the EIA Administrative Manual online.

The volume of EIA policy included in the Administrative Manual presents additional challenges, but the manual does have a search feature.

Recommendation

8. It is recommended that the online EIA Administrative Manual available to the public be updated immediately as program changes occur to ensure currency of information.

Departmental Response:

The department has agreed to implement this recommendation.

THE RIGHT TO APPLY AND RECEIVE EIA BENEFITS

The complainants assert that people who need assistance are being denied the opportunity to apply for assistance and are being prematurely refused or diverted prior to an assessment of their eligibility based on their need, capacity, and personal circumstances. Their letter states, in part,

It is considered a right and a policy that every Manitoban can apply for EIA Benefits, yet it is quite common that a person who has no disability and no visible barriers to work, when they approach the program to apply for EIA they are told by intake staff that they must go to the employment centre or casual labour businesses for work without being enrolled on the EIA Program...EIA policy states that all decisions made by EIA staff and the reasons for the decisions must be provided to the participant in writing and this does not happen.

Application procedures have been established on the basis of requirements and obligations contained in both *The Employment and Income Assistance Act* and the *Employment and Income Assistance Regulation 404/88R*. Section 18 of the Act states that any person may apply for assistance, but requires that the application must be in a prescribed form.

The Employment and Income Assistance Act

Applications

18(1) Any person may make application for a income assistance or general assistance.

Form of application

18(2) Every application shall be made to the director in such form, and containing such information, as may be prescribed by the minister.

The Regulation requires that applicants and partners provide information and evidence necessary to determine their eligibility, and requires the director to calculate their financial resources and the cost of their basic necessities.

Employment and Income Assistance Regulation 404/88R

3 An applicant or recipient and the applicant's or recipient's spouse or common-law partner shall provide such information and evidence in support of the application as may be required by the director to determine the applicant's or recipient's eligibility for income assistance or for general assistance.

Determination of eligibility

4(1) For the purpose of determining eligibility for income assistance or for general assistance under subsection 5.3(1) of the Act, the director shall calculate

- (a) the financial resources of an applicant's or recipient's household in accordance with sections 4, 8 and 8.1; and
- (b) the cost of basic necessities for that household in accordance with sections 5 to 7 and Schedule A.

At the end of the pre-intake orientation process, potential applicants are given an application package that contains an application form and are required to make an intake appointment to complete an application with either an intake worker or an EIA Counsellor.

The EIA Administrative Manual provides guidance to staff dealing with applicants at the intake stage.

6.1.2 PARTICIPANT INTAKE AND DETERMINATION OF ELIGIBILITY

Overview

EIA staff provide a positive approach to participant service, emphasizing the mutual obligations of both the participant and the program. Assistance is provided to enable participants to achieve the maximum amount of self-sufficiency possible.

The appropriate intake procedure is determined, dependent upon employment expectations, during the initial contact with participants. Where employment expectations do not apply, participants are referred directly for an intake appointment. Where employment expectations may apply, participants' immediate needs are assessed and they are referred to a pre-intake orientation.

Participants complete an application during an intake interview. Where employment expectations may apply, participants review their Employment History and Personal Job Plan with a worker and discuss employment expectations. Where employment expectations will be applied, participants are required to sign their Personal Job Plan confirming their employment expectations, and their understanding of the sanctions that may be applied, if these obligations are not met.

While program staff do not take issue with the assertion that any Manitoba resident can apply, they point out that the requirement to meet both financial and categorical eligibility criteria means that there are people who will not qualify.

With respect to the right to apply, the view of most staff was that anyone who wanted to apply for assistance could apply. At the same time, it was acknowledged that during initial communication with workers there were circumstances where applicants could be given information suggesting they would not qualify for program.

Analysis

Although the majority of staff agreed that everyone can apply for assistance, there is no clear direction to ensure that this is always communicated clearly to applicants either verbally or in the program's written material.

It does appear that some workers tell applicants they will not be eligible early in the intake process if it appears obvious during initial assessment that they may not be eligible. Although this may ultimately be the case, workers should still go through the entire intake process, even if it takes time, with the applicant. Failure to do so creates a risk that people who may in fact be eligible are inappropriately turned away, in various circumstances related by complainants and staff alike. This is a particular concern where special medical needs or barriers to employment may not be obvious.

Completing the process provides an opportunity for the applicant to hear and understand why they are not eligible. As one worker explained, *"If people really understood why they were ineligible, they were okay with me telling them that."*

Finally, only when the application has been completed does the applicant receive a written decision that includes information about the right to appeal any denial to the Social Services Appeal Board.

Applicants who are denied assistance have a statutory right of appeal, but that right can be lost unless the application is complete and the decision letter, with appeal information, is generated.

The EIA program is described as a program of last resort. As such, it should not turn away an applicant who has no other resources at his or her disposal. The application process is designed to determine eligibility and it should be completed. It can be used to show applicants who are not eligible why they are not eligible, and it should be used to generate a denial letter with appeal information for the applicant.

Recommendation

9. It is recommended that the Pre-Intake Orientation materials and publications include the statement “You have the right to apply for EIA”, and that staff communicate this message to applicants during the in-person application process.

Departmental Response:

The department has agreed to implement this recommendation.

BARRIERS TO APPLICATION

In the application process there are a number of barriers and obstacles that may prevent a person from obtaining assistance.

Lack of an Address

Because the program is open to residents of Manitoba, applicants are asked for their Manitoba address. Providing an address is part of the application process. While this is not an unreasonable expectation, it can be problematic when applied to a population burdened by the consequences of poverty. Those consequences can include a lack of sufficient identification and, in some cases, homelessness.

Both the complainants and EIA staff raised this issue. Staff comments reflected two different approaches to this problem, one suggesting that applicants needed a residence to apply and would be turned away if they did not have an address, and another suggesting that staff would help applicants by accepting the address of a friend or relative with whom the applicant was residing temporarily or by referring them to a shelter and using the shelter address for the application.

Analysis

Many staff indicated that they work around the lack of a permanent address by allowing applicants to use addresses of shelters, family, friends, and even EIA offices to enable applicants to apply.

Program management subsequently advised that they could clarify program policy to ensure that applicants were not turned away without assistance because they were homeless.

Providing financial assistance for shelter is a benefit provided by the program. Not having shelter should not prevent a person from being able to apply for assistance.

Recommendation

10. It is recommended that no Manitoba resident be denied the opportunity to apply for EIA benefits due to the lack of an address.

Departmental Response:

The department has agreed to implement this recommendation.

“Homework” Before an Intake Appointment

Staff confirmed that in some cases, expectations are imposed upon prospective applicants prior to any determination of their needs or categorical eligibility. These expectations can include specific job search requirements even before being permitted to attend a PIO.

Analysis

Neither the statute nor the regulation requires that an applicant do certain things – apply for a certain number of jobs, for example – before making an application for EIA benefits. Although workers are likely trying to be helpful, the requirement for updating resumes or conducting job searches should be part of a participant’s action plan, a document to be created in collaboration with a worker at intake, and not be a prerequisite for application.

In discussions with program management we were advised that direction could be provided to staff, reminding them that persons have the right to apply for income assistance prior to placing any prerequisite activities on them.

Recommendation

11. It is recommended that anyone be able to apply for EIA without the need for prerequisite activities such as job searches and that program policy on this subject be clarified for field staff.

Departmental Response:

The department has agreed to implement this recommendation, with a target date of winter 2010/11.

Diversion to Job Banks and the Job Centre

The complainants' concern is that people may be prematurely referred to employment before having an opportunity to fully complete the application process, a process that should identify their individual needs and any barriers to employment, including certain types of disability that are not readily apparent.

The legislative framework for the EIA program clearly imposes an obligation on applicants and participants to strive for self sufficiency through employment. Anyone who is capable of work is expected to work. Specific provisions respecting employment obligations are contained in the *Employment and Income Assistance Regulation 404/88R*.

Employment and Income Assistance Regulation 404/88R

Obligations respecting employment

10(1) Every

- (a) applicant or recipient and the spouse or common-law partner of an applicant or recipient under section 5.1 of the Act;
- (b) applicant or recipient under clause 5(1)(b) or (c) of the Act whose youngest dependent child is at least six years of age;
- (c) applicant or recipient under clause 5(1)(b) or (c) of the Act who is receiving or has received assistance for an employability enhancement measure; and
- (d) child who is 16 years of age or more and is not actively pursuing a course of education or training;

has an obligation to satisfy the director that

- (e) he or she has not terminated employment or engaged in a course of conduct that caused or provoked the termination of employment that he or she might reasonably have held;
- (f) he or she has not refused any employment that she or he might reasonably have obtained; and
- (g) where the director recommends that the person undertake an employability enhancement measure, he or she is undertaking the recommended measure.

The Regulation also sets out the authority for the denial, reduction, suspension, or discontinuance of benefits when employment expectations are not met by participants in the GA category, and the incremental reduction of benefits for participants with children.

10(2) Where

- (a) an applicant or recipient under section 5.1 of the Act who does not have dependent children; or
- (b) the spouse or common-law partner of such an applicant or recipient;

fails to meet an obligation set out in subsection (1), the director may deny, reduce, suspend or discontinue the general assistance otherwise payable to or on behalf of that household.

10(3) Where

- (a) an applicant or recipient who has one or more dependent children;
- (b) the spouse or common-law partner of such an applicant or recipient; or
- (c) a child;

to whom the obligations set out in subsection (1) apply, fails to meet an obligation set out in subsection (1), the director may reduce the amount of income assistance or general assistance to which the applicant or recipient would otherwise be entitled by

(d) \$50 per month; and

(e) if the obligations under subsection (1) are not met after any six months of benefit reduction under clause (d), whether the months are consecutive or not, by a further \$50. per month;

for each household member who fails to meet the obligations set out in subsection (1), until the obligations under subsection (1) are met.

Information from EIA staff confirms that the application of these provisions can result in diversion to employment before the intake process is complete. This can mean an immediate referral to casual labour agencies or, in Winnipeg, to an in house "Job Centre" located at 111 Rorie Street, which also houses the central intake office for GA applicants in Winnipeg.

An internal report from 2008 commented on the existence and operation of the Job Centre, noting that:

The Centralized Services Office developed a Job Centre in 1999 to assist potential ELA participants to find employment. In addition to locating employment, the program also serves as an alternative to individuals from becoming dependent on the Program. Clients in the Job Centre are not registered as ELA Program participants while they are Job Centre participants. Participants who are enrolled in the Job Centre are, however, generally provided \$40 purchase vouchers enabling them to shop at local vendors...

The report concluded:

Although Job Centre program information is included in statistical reporting in the Department's Annual Report and in Program literature for participants, we found that the Job Centre had not been clearly established in ELA Program policy. It would be desirable for the Job Centre to be included in ELA Program policy. At a minimum, the procedures relative to the Job Centre should be documented. It is our understanding that a preliminary application form is completed for all Job Centre participants, and that on the basis of these applications, it is understood that the participants would otherwise be eligible for assistance.

Diverting people who may be financially and categorically eligible for assistance, and who lack basics such as food and shelter, is permitted in program policy set out in the EIA Administrative Manual:

6.1.7 IMMEDIATE ASSISTANCE

When the potential applicant meets categorical and financial eligibility criteria, lacks food or shelter and cannot reasonably meet these needs without EIA's assistance, or, is in an emergency or crisis situation, short-term financial assistance may be authorized in advance of the intake and approval process.

Depending on local labour market conditions, childless potential applicants without employment barriers may be able to reasonably meet their immediate need through casual labour.

Analysis

Job search requirements, including visiting various job banks, should be part of a participant's action plan. Sending potential applicants to external job banks without first allowing them to apply appears to be contrary to the statutory entitlement to apply.

It also appears that there is no policy regarding the internal Job Centre. There should be policy that outlines the role of the Job Centre and its relation to the EIA program. Potential applicants who ask to use the Job Centre should be allowed to apply for EIA at any point in their job search process.

Recommendations

12. It is recommended that applicants be allowed to fill in an EIA application form before they are referred to a job bank, which could form part of a participant's action plan.

13. It is recommended that the department develop and communicate a policy regarding the role of the program's Job Centre.

Departmental Response:

The department has agreed to implement recommendation 13 as part of its 2010/11 EIA Action Plan.

The department stated that it disagreed with recommendation 12, and advised that the EIA program will continue to refer to the Job Centre and Job Banks to ensure people who seek diversion have the opportunity to avoid welfare. At the same time the department noted that the program will provide more direction to staff regarding the application process and will not deny or sanction applicants prior to a full intake and the development of an action plan.

Our Comment:

Referring people who seek such referrals is not contrary to the intent of recommendation 12. The intent was to prevent diversion prior to completing the application process necessary to determine an applicant's needs and circumstances. In our view the commitment to not deny or sanction applicants prior to a full intake and the development of an action plan is consistent with the spirit of the recommendation.

Obligation Not To Terminate Work Unreasonably Or Refuse Reasonable Work: “Irresponsible Job Termination Policy”

Pursuant to clause 10 (1)(e) of the Regulation, applicants have an obligation to satisfy the director that:

10 (1) (e) he or she has not terminated employment or engaged in a course of conduct that caused or provoked the termination of employment that he or she might reasonably have held;

EIA staff throughout the province spoke about the “Irresponsible Job Termination Policy” or *IJT* when in fact no such policy exists. The Regulation speaks to unreasonably terminating work and not refusing reasonable employment; it does not refer to participants being “irresponsible.”

Some staff were clear that that the “Irresponsible Job Termination Policy” could be used to divert people, indicating that people could be referred to a job centre or screened out.

Other staff expressed views reflecting a different approach to the “Irresponsible Job Termination Policy,” suggesting that despite breaching the “policy” there was a recognition that people in need still required assistance and should be given a second chance.

Analysis

Applying this policy correctly requires staff to conduct a factual inquiry about the circumstances of a job termination or refusal, to interpret a section of regulation and then to exercise discretion in making a decision that can have significant consequences for an applicant or participant. Guidance for interpreting and applying the regulation can be found in the EIA Administrative Manual:

6.5.4 OBLIGATION NOT TO TERMINATE WORK UNREASONABLY OR REFUSE REASONABLE WORK

Applicants fired without just cause

Some applicants may have been fired without just cause. For example, applicants may have been fired:

- for reasons that constitute discrimination;
- under circumstances that constitute harassment;
- for attempting to induce the employer to comply with occupational health or safety standards; or
- for attempting to organize a union at the employer's workplace.

In such cases, applicants are expected to take all reasonable steps to pursue the available legal remedies against their former employer, including:

- filing a complaint with the appropriate public body (such as the Manitoba or Canadian Human Rights Commission, Employment Standards, or Workplace Safety and Health);
- applying for EI benefits; and
- appealing the denial of EI benefits.

If the intake worker is satisfied that all reasonable steps have been taken, the applicant is enrolled.

Applicants who quit a job with just cause

In circumstances like those described above, applicants are usually expected to attempt to resolve their differences with their employer through available legal means rather than quitting. The test under section 10(1)(e) of the Regulation is whether the applicant might reasonably have held the job. Applicants who quit under such circumstances are also expected to pursue any and all of the available legal remedies described above.

Sometimes the applicant's reasons for quitting his or her job may relate to factors other than the job. For example, applicants may quit work because:

- a change in the applicant's health made it impossible or extremely difficult to continue doing the job;
- a change in the location of the workplace made it extremely difficult for the applicant to commute to work; or
- a change in the hours of work made it impossible or extremely difficult for the applicant to arrange suitable child care.

In such circumstances, if the intake worker is satisfied that the applicant first made reasonable attempts to solve the problem without quitting, the applicant is enrolled.

No staff we interviewed reported engaging in such a detailed analysis of an applicant's circumstances prior to making a determination about eligibility or sanctions based on the requirement to not unreasonably terminate or refuse employment.

The job termination policy does not state that a participant cannot terminate employment; the policy states that the participant cannot "unreasonably" terminate employment, or be terminated. The onus is on workers to determine what is unreasonable. Although it is implied, neither the policy manual nor circulars provide any explicit requirement that such a determination be made. None of the staff interviewed made reference to conducting such a determination before making a decision.

It would also seem unfair if the unreasonable job termination policy is applied to first-time applicants who may have, in fact, unreasonably terminated a job. At the time they were terminating their job, they likely had no knowledge that an "IJT" policy exists. As they would be unfamiliar with the eligibility requirements of EIA prior to applying for the program, it would seem unfair to deny an application based on a policy of which an applicant would have no knowledge.

Once an applicant applies for EIA, they sign an action plan that often contains the statement that they will not unreasonably terminate a job. Information regarding what "unreasonable" means should be clearly communicated to the participant and to staff, to avoid differing interpretations of the word.

At the present time, under section 10 of the Regulation, the program can deny assistance to childless general assistance participants by invoking the unreasonable job termination policy. Staff confirmed that participants with children are not denied assistance. In those cases, financial sanctions are applied. It appears the program treats childless participants and those with children differently. Childless applicants and participants may not have the additional need associated with dependants, but still have basic needs to be met.

Recommendations

14. It is recommended that the term “unreasonable” in reference to job termination, be clearly defined in policy for EIA staff, and clearly explained to EIA participants.

15. It is recommended that the use of the term “irresponsible” in relation to job termination be discontinued in any program communication or policy.

16. It is recommended that first-time applicants be exempted from unreasonable job termination expectations as they would not have been familiar with EIA policy prior to application.

17. It is recommended that the department clarify written policy to explicitly require staff to complete and document the detailed analysis required to support a finding that a termination or refusal of employment is “unreasonable” pursuant to the existing definition and guidelines.

Departmental Response:

The department has agreed to implement recommendations 14, 15, and 17.

The department has stated that it disagrees with recommendation 16 and advised that the EIA program “will clearly articulate ‘just cause’ for leaving employment in its communication products. The program will clearly outline the activities essential to re-establishing eligibility where just cause is not demonstrated. These policies apply to all applicants.”

Our Comment:

We have considered the department’s response but believe recommendation 16 is consistent with the findings and conclusions of our investigation.

APPLICATION FOR DISABILITY CATEGORY

The complainants believe that people with disabilities face particular barriers and obstacles in enrolling in the current persons with disabilities category, an eligibility category intended to provide additional benefits to offset the additional costs associated with a disability. The complainants assert that:

The lack of consistency, even between EIA Offices, as to how the policy or procedure for applying for the LAPDP has resulted in some persons not receiving the forms and information they need to apply for this program. Some EIA staff will not give a participant a medical form for their doctor to complete unless a doctor provides a note requesting this form. The Income Assistance Program for Disabled Persons various potential benefits are not outlined to participants who have been approved on the program. Therefore their health and wellbeing is unnecessarily at risk since they are not told about such things as special diet benefits, health phones, travel costs for medical appointments etc. The policy that outlines the definition of disability for this program is not being interpreted similarly and/or correctly by EIA staff.

Some participants who ultimately receive disability category benefits enter the program through the general assistance or single parent categories, others are referred directly for an intake appointment. Demonstrating eligibility for the disability category means meeting additional requirements, and can mean facing additional barriers.

APPLICATION PROCESS

The process by which applicants are identified as disabled can differ from region to region as well as from office to office. The majority of information from staff interviews indicated that if an applicant did not have an apparent disability, the onus was on the applicant to self-identify.

Most staff indicated that while they may not specifically ask if a person has disabilities (as they felt that would be inappropriate), often information obtained during the interview process would bring it to light. Staff interviews revealed a significant range of approaches to identifying disability, and varying degrees of comfort level and skill in dealing with disability issues.

Staff interviews confirmed that there was a particular problem in identifying “invisible disabilities,” particularly mental health issues which might not be immediately apparent. Staff reported as well that some participants do not or will not acknowledge their own mental health issues.

Some EIA offices have developed a list of suggested questions to act as a guideline to help obtain information. Several of these questions could be helpful in identifying if an individual has a disability. For example, staff are expected to ask: *Is there any type of physical or mental disability that might preclude you from working? Do you have any medical conditions or barriers to employment?*

We reviewed the application form and determined that the issue of disability may come to light in the “Barriers to Employment” section of the EIA application form which asks: *Are you able to start work right away? If no, provide details.* Another area that might provide information is the “Other Supports” section which asks: *Other agencies or counsellors? If yes, who or what agency?*

Analysis

There is no area on the application form where an individual is asked if they wish to declare any disabilities, impairment or medical condition. There is no consistent method used during the intake and enrollment process to identify if an applicant has disabilities.

Applicants with “invisible” disabilities (in many cases those with mental health issues) may get screened out of the disability category.

Recommendation

18. It is recommended that the EIA application form be amended to include an area where an applicant may declare a disability, impairment or medical condition.

Departmental Response:

The department has agreed to implement this recommendation.

ADDITIONAL INFORMATION REQUIREMENTS

Beyond the application form, enrollment in the disability category requires specific medical information confirming eligibility on the basis of disability. The program determines the form in which the information must be provided, and prescribes forms that must be completed. This is sometimes referred to as an “assessment package.”

The EIA Administrative Manual sets out the responsibilities of both the staff and the applicant with respect to applications for disability benefits.

7.1.5 EIA ASSESSMENT PROCESS

Responsibilities of the EIA office

It is the responsibility of EIA office staff to explain to applicants the eligibility requirements described in section 5(1)(a) of The Employment and Income Assistance Act and to provide them with the following letters and forms: To the Applicant, To the Physician, Disability Assessment Report, Statement of Account, Self-Report, and a copy of the participant's consent to the disclosure of their personal health information (last page of the signed EIA application).

Responsibilities of the Applicant

Under section 3 of the Regulation, applicants are required to provide information and medical evidence in support of their application for assistance under the disability category. The provision of such evidence can be waived only with the written consent of a director or designate of EIA.

Applicants are responsible for making arrangements for the completion of the required EIA Disability Assessment Report and the physician's billing form, Statement of Account. For applicants with mental health disabilities, the EIA Program may accept a Disability Assessment Report from a psychologist. The Program will provide up to \$45 as the remuneration to complete the EIA Disability Assessment Report; existing reports, additional assessment and therapy fees are not covered.

Applicants may also choose to include their own information about their disability or medical condition by completing the self-report and returning it to their EIA worker.

Most staff report that they will provide the disability assessment package if the applicant requests it or have indicated they have a disability even if it is not apparent. A few advised that they ask for a doctor's note first (usually if the disability was not apparent) while others commented that this was the "old practice". Several staff stated that it made no sense to send an applicant to their doctor twice.

Upon being advised that some staff might be asking for a doctor's note before providing applicants with a disability assessment package, EIA program management undertook to advise staff that this was inconsistent with policy, and to ensure that the forms are more readily available.

Enrollment in the disability category can mean additional benefits specifically intended to meet additional needs arising from the disability. It appears that the majority of staff interviewed attempt to advise applicants of benefits that they may be eligible for, although there is a significant variation in approach.

Many staff indicated that high case load numbers and time constraints were among the reasons that contribute to some information not being provided in a timely fashion, or only if the participant inquires.

There may also be a delay in providing information if the worker is waiting for a decision from the Disability Assessment Panel as to whether or not the applicant will be recommended for enrollment in the disability category. Some workers will get approval for disability for three months while waiting for the necessary doctor's forms to be returned while others will enroll the applicant in the GA category.

We were advised that an individual may be automatically enrolled in the disability category if the worker receives confirmation that the individual is followed by the Supported Living Program or provides evidence that they are receiving CPP Disability benefits.

Disability Assessment and Self-Report Forms

Generally speaking, staff believe that the program's revised Disability Assessment Report, to be given to an applicant's doctor, has improved as it has more room for comments, asks for more specific information and speaks to the patient's functioning. There are still some complaints that information is missing, that further clarification is needed and that the form is not returned in a timely fashion. Some workers advised that they follow-up on these issues, while others direct the applicant to do so. A "Self-Report" form participants use to describe the effect of a disability on their functioning has also been added, and staff generally view this as an improvement.

Numerous staff made comments indicating that applicants may not have a regular physician and experience difficulties with getting doctors at walk-in clinics to complete the forms. They felt that this also contributed to inadequate information on the forms.

Most staff commented that they felt it was very beneficial that the applicant fill out the Self-Report form as it provided additional information to the assessment panel about how the disability affects their daily lives. Staff report that applicants usually get help from family or friends to fill out the form, but would assist if asked. Comments made by the disability panel and appeal board staff also indicated that the Self-Report information is very helpful to their decision making.

Analysis

EIA pays physicians, nurse practitioners in private practice, and registered psychologists, \$45 for completing the EIA Disability Assessment Report for participants applying/reapplying for eligibility under the disability category. In an effort to reduce program costs, some staff provide the assessment form to participants only when the participant provides a doctor's note confirming the validity of the request. There is no policy that requires an applicant to get a doctor's note before the disability assessment package of forms is given out.

Filling out of the Self-Report form can be helpful as it can give an applicant the opportunity to explain the effect of a medical condition on their ability to achieve self-sufficiency. It is voluntary, but should be encouraged. Applicants who need assistance to complete it should be provided with that assistance.

Recommendations

19. It is recommended that applicants receive the Disability Assessment Report forms without the need for a doctor's note.

20. It is recommended that program staff encourage applicants to complete the Self-Report form.

Departmental Response:

The department has agreed to implement these recommendations.

DISABILITY ASSESSMENT PANEL

Although the Act and Regulations authorize EIA Directors to determine eligibility, there has been a long standing practice of relying upon the opinion of disability assessment panels to review medical information submitted by physicians, and more recently information from applicants of their self-assessment forms, and make recommendations on eligibility. The role of the Disability Assessment Panel is set out in the Administrative Manual.

7.1.6 EIA Assessment Panel

Responsibilities of the Panel

- a. To assess an applicant's capacity to earn sufficient income to support himself or herself, and, to assess potential treatment and/or rehabilitation plans.
- b. To recommend to the director or designate a determination of the length of time required for the applicant to regain the capacity for employment and appropriate treatment and/or rehabilitation plans to restore an applicant's capacity for self-support, if applicable.

Composition of the Panel

The EIA Assessment Panel is composed of the following personnel:

1. The EIA director or designate.
2. The Regional Medical Officer of Health (or a private physician if the Regional Medical Officer of Health is not able to serve or if there is no Medical Officer of Health in the area).
3. A regional representative from Personal Services (e.g., Vocational Rehabilitation Services, Employment Services, Community Living Services, Mental Health Services) may also be in attendance.

The EIA Disability Assessment Panel assesses each application submitted on the basis of disability. The applicant's EIA worker presents the case and acts as a resource to the Panel. The director or designate decides if the case is eligible, taking into consideration the Panel's recommendation.

The precise make-up of the panels varies around the province. The Winnipeg Disability Assessment Panel, which is utilized by several community areas in Winnipeg and the Interlake Region, has a nurse and occupational therapist, while most rural panels have medical doctors.

If the panel deems the applicant eligible for the disability category, they indicate the date until which the applicant is eligible. The panel members complete and sign the appropriate section of the assessment form as evidence of their review. The review constitutes a recommendation to the EIA office director, who makes the final determination.

There are some areas in Winnipeg that do not use the panel. Comments from staff in these areas indicated that they feel their process is quicker and that if last minute information is received they can process it faster. Other staff indicated that the panel worked well and some felt that a doctor should be on it.

There does not seem to be a consistent pattern regarding how or if workers participate in the panelling process. Several workers indicated that they complete a summary form as part of the

panelling process, while others indicated that they may attend the panel. One worker explained, *“If I feel they should be on disability, I will go to the panel and advocate on their behalf.”*

A decision to deny medical or “disability” eligibility is one that can be appealed to the Social Services Appeal Board. We looked at if and why the appeal board varies or rescinds the panel’s decisions.

The appeal board indicated that disability issues are seldom black and white. They further advised that the appeal board uses the term medical eligibility rather than disability.

The appeal board indicated that they vary or rescind many decisions related to medical eligibility. We reviewed some sample files, but we could not determine that there was one consistent reason for the change. Having the applicant appear in person to speak directly to the appeal board may be a contributing factor.

Analysis

Applicants do not attend Disability Assessment Panels. The panel reviews the Disability Assessment Report completed by an applicant’s doctor, and the Self-Report form, if completed by an applicant. The panel makes a recommendation to enroll or not enroll an applicant in the disability category based on its review of the completed forms. Workers’ participation in the paneling process is minimal, although some workers explained that they will advocate on behalf of applicants if there is a need to do so.

There appears to be a difference in how the panel and the appeal board determine eligibility for the disability category. The panel uses information contained in forms as the basis for its decision; while the appeal board uses that information, it also involves the applicant in the appeal process. The attendance of an applicant at the appeal process appears to influence the decision of the appeal board.

Some directors rely on recommendations from the panel to make decisions, while others do not involve the panel at all.

By statute, decisions about disability eligibility are to be made by program directors. When making those decisions, directors have a written recommendation from a medical professional and the applicant's self-report form describing how their condition or disability affects them. This, along with the information on the completed application form and the analysis of the counsellor, should in most cases be sufficient for the director to make a decision. In those cases the referral to a disability assessment panel is a further administrative process that appears to be unnecessary.

In cases where the director requires clarification about a specific medical condition, a medical panel or professional could be available for consultation.

Recommendations

21. It is recommended that a policy be written addressing in what circumstances an applicant can be temporarily enrolled in a disability category pending a disability panel recommendation on eligibility for the disability category.

22. It is recommended that policy be amended to require Directors to make decisions regarding disability eligibility except in circumstances where medical information in support of an application is unclear or contradictory, in which case a Director should consult with a Disability Assessment Panel.

Departmental Response:

The department advised that it partially agreed with recommendation 21. It advised that “Participants who are temporarily enrolled as a person with a disability often face financial challenges when they are later not granted ongoing eligibility in this category because their budget is reduced.” We were advised that as an alternative, “The program commits to providing benefits retroactive to the day that the complete Disability Assessment Report is received.” We were advised that this alternative action has already been implemented.

The department advised that it agreed with recommendation 22, but took the position that the recommendation is reflected in current policy, in which “directors have the responsibility to enroll applicants in the persons with disabilities category. The Disability Assessment Panel assesses the medical information and makes a recommendation to the director for a decision.” We were advised that “Communication to the staff and public will be corrected to reflect this policy.”

Our Comment:

We have considered the department’s response but believe recommendations 21 and 22 are consistent with the findings and conclusions of our investigation.

CATEGORICAL ELIGIBILITY

At the present time, most applicants who are financially eligible to receive EIA must also fit within one of the following categories: Persons with Disabilities, General Assistance, or Single Parents. Some participants are in other categories, such as the aged and persons in crisis intervention facilities, but these additional categories are not addressed in this review.

The complaint raised two separate but related issues in respect of categorical eligibility: the treatment of participants with work expectations, and the adequacy and appropriateness of the program's definition of disability.

PARTICIPANTS WITH WORK EXPECTATIONS

One of the program's stated responsibilities, particularly relevant to this aspect of the complaint, is described in the following statement:

EIA provides employability assessments, personal job planning, work incentives and other supports to assist Manitobans in entering, re-entering or remaining in the labour force.

If program participants are capable of work, they are expected to look for work. Section 10 of the *Employment and Income Assistance Regulation (404/88 R)*, states that employment expectations apply to all general assistance participants, sole support parents without children under the age of six, the spouses and common-law partners of the above, and sole support parents with children under the age of six if they have previously received assistance for an "employability enhancement" measure. Work expectations also apply to children over the age of sixteen, unless they are in school.

The program has significant numbers of policies, procedures, and initiatives aimed at connecting participants to the labour market. The complainants acknowledge the recent increase in measures designed to assist participants achieve independence, but assert that those measures are inadequate.

The complainants are particularly concerned with the development and implementation of the "personal plans" of participants. These plans are to be based on assessments of program applicants' capabilities and limitations, and intended to either achieve employment or address barriers to employment. Their complaint letter states:

"While the provision of education and employment services are increasing in the EIA program, they are not sufficient to actually enable someone to find work at a wage that will enable them to rise out of the depth of poverty. Therefore the goals of the EIA program are not being supported by these policies. It is also stipulated in EIA policy that a personal job or education plan should be negotiated between the EIA staff and the participant and need to take into account the labour market demands and realities in the community. It frequently happens that participants are told they must sign the Personal Plan, even if they do not agree with it, or they will not be approved for benefits."

The statutory authority for imposing employment expectations on program participants is found in section 5.4 of *The Employment and Income Assistance Act*, as is the authority for imposing sanctions when those expectations are not met.

Program policy, reflected in the EIA Administrative Manual, clearly emphasizes the focus on self-sufficiency through employment.

6.1.1 Purpose of Employment and Income Assistance

Employment and Income Assistance (EIA) is a program of last resort which provides temporary assistance to participants who have no other means to support themselves and their families. For participants who are able to work, EIA's primary focus is employment.

For program participants, their employment expectations begin even before they complete the application process that will determine their eligibility. Prior to meeting an intake worker the participant is required to complete and return the employment history and personal job plan form received as part of the a pre-intake orientation package, if participants have attended a PIO. They are to focus on their employability and on what they need to do to become employed. This is in addition to other pre-intake requirements, including assembling a package of documentation demonstrating financial eligibility.

The purpose of the employment history and personal job plan is described in the Administrative Manual:

6.3.1 EMPLOYMENT HISTORY AND PERSONAL JOB PLAN

The Employment History and Personal Job Plan form provides:

1. basic information about the participant's work history and skills;
2. documentation of the participant's personal job plan; and
3. documentation of the employment expectation for the participant and confirmation of the participant's acceptance of the employment expectation.

The description of the personal job plan again emphasizes the goal of entering the workplace and the responsibility of participants to find a job. It also assigns program intake staff the task of reviewing participants' plans.

6.3.2 THE PERSONAL JOB PLAN

The Personal Job Plan determines the specific employment expectations for each participant. In developing the plan, it is important to remember that the goal is to enable participants to enter the workplace. The responsibility of participants is to find a job and to reduce or eliminate their dependence on assistance. Therefore, no reasonable job offer may be refused. When participants are employed, they will have more opportunities to plan for the long term.

The steps included in a Personal Job Plan must be realistic for specific individuals, for the area in which they live, and for the job opportunities currently available. In reviewing the plan, the worker ensures that the participant has identified achievable steps. Unless the worker has specific concerns with the plan (such as, the participant wants to apply for positions for which he or she does not have the required qualifications, there appear to be steps missing, or employment is a long-term goal), the participant is encouraged to implement the plan.

The Administrative Manual sets out a number of factors in an "employability assessment" undertaken at intake - factors to be considered by program staff in their discussions with applicants - leading to the completion of the employment history and personal job plan form, and an agreement between the staff person and the participant. These factors are:

1. Family Responsibilities
2. Employment History, Skills and Abilities
3. Access/Availability of Resources
4. Physical or Mental Health, Physical or Mental Capacity
5. Children Under 18
6. Readiness/Motivation

Program policy indicates that while the completion of the plan amounts to an agreement between participant and worker, the worker has the final say in the event of disagreement. It also requires that the worker and the participant receive a copy of the completed form.

The employment history and personal job plan described above is in fact a precursor to another plan, an “action plan.” The action plan is the document referred to by the complainants as a personal job plan, the plan given to program participants.

CLIENT ACTION PLANS

The EIA Administrative Manual describes the purpose of an action plan, how it is completed, and the relationship between the personal job plan and the action plan. Action plans can involve more than the expectation to search for a job. The policy emphasizes attaining self-sufficiency but recognizes barriers to employment and permits activities to address those barriers to be included in plans.

6.11.20 GENERAL ASSISTANCE PARTICIPANTS

General Assistance participants have work expectations and are expected to find employment as soon as possible (see section 11.1.3). Where there are dependent children, participants are expected to balance child-care responsibilities and employment expectations.

Education, pre-employment, job readiness and skills training (or any combination thereof) may be considered as part of a participant's action plan when barriers have been identified that prevent the participant from job searching and finding employment. Participants who wish to engage in tuition-based educational or longer-term skills training programs will be required to explore any alternative means of financial support.

Education, training, and skills- or employment-focused vocational programs will not be supported for participants who quit a job for the purpose of upgrading their level of education or vocational skills.

In addition to the expectation that plans consider the unique circumstances of participants, program policy also recognizes specific circumstances that may impact a plan, including circumstances where necessary resources are not available:

6.5.3 Deferring Employment Expectations

Unavailability of resources to support the participant's action plan

To be realistically achievable, employment goals and action steps must match available resources (such as child care, training appropriate to the applicant's skills, aptitudes and circumstances, and suitable jobs in the community). If the supports required for an applicant to work are not available and cannot be arranged, a deferral of employment expectations may be

the outcome. The intake worker may assist in identifying ways to overcome these barriers. Any actions identified are incorporated into the action plan.

Once a plan is established, participants must report on efforts to implement it. Program policy sets out reporting requirements for program participants.

6.6.2 REPORTING

An employment activity report must be completed by the participant and returned to the worker, normally, on a monthly basis. The worker, however, may agree to a different reporting schedule, depending on the time required to take certain actions in the plan, or the availability of job opportunities in the area. For example, if jobs are seasonal in a particular community, the worker may agree to an initial report in time to prepare for seasonal hiring. The determination of the reporting frequency will take into consideration if the participant requires additional preparation time or skill upgrading.

Policy requires staff monitoring of action plans and sets out minimum standards for job search and employment activities.

6.6.3 MONITORING

The worker reviews the activity report and may verify the information. The worker may also meet with the participant to discuss the participant's progress.

Acceptable Minimum Standards

The following are considered to be acceptable minimum standards for job search and other employment activities:

1. The number of job-related contacts required for a specific participant is established at the EIA office, based on employment factors within a particular community. A combination of contacts and other activities may be negotiated between the participant and the worker. The suggested guideline in areas where there is a reasonable number of employment opportunities is 15 contacts per reporting period.
2. Contacts are appropriate to the participant's Personal Job Plan.
3. Contacts are verifiable.
4. Participants involved in specific programs meet the participation standards set by that program.
5. Participants accept any reasonable job offer.
6. Participants consult with their workers about difficulties that arise on the job or at home that may affect their employment, or Personal Job Plan, before taking action.

Reviewing Client Action Plans

As part of our review we received and examined approximately forty client action plans from EIA offices throughout the province.

Plans are agreed upon and completed by a worker and a participant after an employability assessment. The best description of what an effective plan should look like was found in section 6.3.3 of the Administrative Manual:

- Goals and actions included in the Personal Job Plan should match participants' skills and abilities, as demonstrated by their experience (paid or volunteer), their education and training, and the length of time since their last job.
- Goals and actions included in the Personal Job Plan must match the resources available, such as child care, transportation and jobs.

As well, plans can be crafted to address specific barriers to employment through referral:

Referrals to appropriate rehabilitation programs or other agencies, or a deferral of employment expectations for a specific period of time, may also be applicable.

In light of the extensive policy requiring that plans be the result of negotiation between participants and workers, based on the individual circumstances of participants, and contain goals which are realistic and attainable in light of available resources, we expected to see wide variation in the content of plans we reviewed. This was not the case.

Many plans looked identical. We noted that many plans had very similar or identical expectations for participants. There were some conditions which we would expect to see on all job action plans. These are:

1. To report any and all changes in circumstances.
2. To report any and all income, whether earned or unearned, regardless of the source.
3. To acknowledge that participants have been advised of work expectations and are aware of possible sanctions if they do not comply or unreasonably lose or terminate a job.

In one form or another, we saw the above conditions on the majority of the client action plans we reviewed. However, in some cases the three conditions above were the only conditions on a client's action plan. This raises questions about whether the plans were the result of discussion between the worker and the participant, and whether the plans took into account an individual's unique circumstances as required by program policy.

Some plans prescribed the number of job applications that participants must undertake to demonstrate their commitment to finding work. Participants must then report their job search activity to their worker.

We canvassed the views of program staff on their approach to employment plans and any concerns they had identified in working with these plans. Most staff spoke about the process of completing plans, and some described it as a negotiation. The majority of staff comments suggested that the onus for implementing the plan rested on the participant.

Some EIA staff told us they worked with participants to formulate plans that involved more than just efforts to find any job available, generally involving referrals to vocational or pre-employment training.

There were concerns raised about setting employment expectations in remote or smaller areas, because of limited employment opportunities available or the additional difficulty associated with searching for work. Staff identified the lack of transportation as a particular barrier. Many smaller centres have no public transit system and participants often lack any means of transport. Staff also

noted that pursuing employment could involve making the difficult decision to leave a person's home community in which they had family ties and other support networks.

Both complainants and some program staff we interviewed referred to a "cookie-cutter" approach, in which expectations were set without the required thorough assessment and negotiation. The cookie-cutter approach was also acknowledged by some supervisors and managers, who indicated that this was neither an encouraged nor an accepted practice but was sometimes done because of high workload issues.

It was suggested that workers did not have enough time to spend with every participant doing these plans, and that developing and following up on them properly takes a significant investment of time from a worker. This assertion is supported by an examination of the requirements imposed on workers by program policy.

During our interviews with staff we were informed that case counsellors spend a great deal of time following up on client action plans. These plans are often very fluid and can change from week to week. Workers are responsible for keeping the plans realistic and up to date. Monitoring these plans and determining appropriate next steps was described as one of the largest and most time consuming jobs of case counsellors.

Once a plan has been agreed upon, responsibility for implementing the plan and reporting on progress rests primarily with the participant. None of this is inconsistent with the statutory requirements imposed on EIA participants, although throughout the course of this review significant concerns have been raised about the ability of participants to meet all of the responsibilities and requirements imposed upon them by law and policy.

Many workers talked to us about their view that while employment is the ultimate goal of the program, it may be unreasonable to expect participants to find and maintain employment immediately. It may be necessary for participants to take intermediate steps in order to become "job ready".

A number of plans we reviewed, while identifying employment or independence from the program as the ultimate goal, had steps which served to help prepare the individual for eventual employment. For example, we saw examples of expectations where participants were to take courses to upgrade their English language skills. We also saw examples where participants were asked to undergo an Addictions Foundation of Manitoba assessment prior to beginning a job search.

Concerns were also expressed about the fact that many general assistance participants are required to conduct a job search without the benefit of any means of transportation or a telephone. This was described as a significant barrier. We were advised that in some cases funds for a job search are provided through a Job Seekers Allowance, consisting of \$25.00 per month for non-disabled single adults and childless couples receiving who are actively participating in an employment plan or who are working.

Sole Support Parent Exemption

One of the issues raised by staff during the course of the investigation was the exemption for sole support parent participants with a child under six. That exemption applies unless the participant has

previously received some kind of education or training assistance from the program in the past. Although the exemption is provided in recognition of family responsibility, workers spoke about the impact of a six year absence from the job market, suggesting that it disadvantaged young women in particular. Some staff suggested that women in this category be encouraged to work part-time or to improve their education to better prepare them for the expectations awaiting them when the temporary exemption expired.

The policy that notes the exemption for disability and sole support parent participants also notes that services are available for those participants on a voluntary basis, and states:

All EIA participants are encouraged to take advantage of EIA's employment services, whether or not employment expectations apply. Where employment expectations do not apply, participants may access EIA's employment services on a voluntary basis.

Encouraging sole support parents to work part-time or to improve their education is an area where a more proactive approach and a greater investment in the short term might have significant long term benefits and assist in the overall goals of the poverty reduction strategy.

Procedural Issues

As per the program policy, all participants are supposed to receive a signed copy of their action plan. In part, this is because this helps underscore the importance of this document and it indicates that the participant has signed and agreed to follow through with the program's expectations.

6.9.2 REVIEWING AND SIGNING THE EIA APPLICATION AND ACTION PLAN IN WINNIPEG

Both EIA and the applicant have legal rights and obligations that flow from the EIA application and the action plan...

Because the action plan documents any steps to be undertaken, a copy of each action plan is always provided to applicants (and the second adult, if applicable). On request, applicants will also be provided with a photocopy of their signed application form.

Based on our staff interviews, it appears that not every participant receives a copy of their plan. Some challenging participants or participants with possible mental health or other health and social issues, may not receive a copy of their action plan. This approach is inconsistent with the section 6.9.2 of the Manual which notes that a copy of the plan is always provided to participants.

In a 2009 Circular the EIA program reminded staff that action plans should be current and signed:

This circular is to remind staff of the importance of ensuring participant Action Plans are current and signed...

An Action Plan outlines the participant's responsibilities to the Program while in receipt of assistance and needs to be updated as required. Action plans can range from simply ensuring that the Program is informed of all changes in the circumstances of the participant to more specific requirements, such as obtaining childcare, pursuing child support payments through the courts or guiding an individual towards obtaining employment.

Action Plans are to be signed by both the case counsellor and the participant, including the action plan in the EIA application. A copy of the signed Action Plan is to be given to the participant and

the original one placed in the participant's file. If one or both signatures are missing, it could be interpreted as though the action plan has not been agreed to by both parties.

The complaint alleges that participants are forced to sign the client action plan, whether they agree with it or not, in order to receive benefits from the program. We posed this question to counsellors. We also asked counsellors what would happen if someone refused to sign their client action plan. No counsellors we interviewed could recall a participant ever refusing to sign the action plan.

Despite the legitimate concern about the time and effort invested in developing action plans, particularly in light of the detailed and prescriptive nature of written program policy, staff comments suggested that the majority of the plans were developed after some form of consultation between workers and participants and some consideration of the participant's individual circumstances.

Analysis

EIA intake workers and case counsellors have a great deal of discretion regarding the types of expectations that may be placed on participants. Depending on their worker, participants with similar circumstances may face very different expectations. Workers also appear to have a great deal of discretion regarding waiving employment expectations and utilizing penalties or sanctions.

In many cases, participant involvement in the development of their action plans appeared limited. This is inconsistent with the specific requirements of written program policy. When this happens, it is unfair to participants because it does not consider the impact of their personal circumstances on their ability to meet the expectations imposed upon them.

There was no evidence that participants were forced to sign their action plans, nor any indication of them objecting to the plan's content. Client action plans are correctly described by the program as having legal implications. They are an acknowledgement of the specific requirements imposed upon participants, in accordance with the legal framework governing the program.

Signing them is a program requirement. The more substantive issue is that they should be completed with participants' involvement, in the manner described in policy reflecting their importance to both participants and the program.

It was acknowledged that not all participants received copies of their action plans in accordance with program policy. It appears unreasonable to assume that because a worker believes someone is unlikely to follow the plan, or is likely to lose it or throw it away after leaving the office, that they should not receive a copy of their plan.

EIA program staff and management have acknowledged that the program is evolving in a way that enhances education and employment opportunities for participants, with the goal of achieving self-sufficiency through labour market attachment. Many recent initiatives confirm this evolution.

Program policy around employment expectations, however, does not support that shift for the majority of participants. Program policy focused on employment is consistent with departmental and divisional goals, but it is unfair in that it does not put the same focus on identifying and addressing barriers to employment.

While the Administrative Manual contains the authority and direction for the action necessary to address participant barriers, the focus appears to remain on immediate employment, rather than sustained employment.

The vastly different approaches taken by workers reflect the lack of clarity and obviously conflicting expectations imposed by written policy. Staff confirmed that while the prevailing attitude in the program was that “any job is a good job,” this approach appears to be changing with more of an emphasis on ensuring that people have the tools to be successful on a long term basis in the work force. However, because of the continuing policy support for the “any job is a good job” approach, the practice of establishing plans limited to fixed number job search contacts and monitoring compliance appears to be equally acceptable.

The program’s policies, particularly those in the detailed EIA Administrative Manual, need to be updated to reflect the ongoing evolution of the program. Greater emphasis should be placed on working with participants to better address any barriers to employment that they may face.

Assisting participants to identify and address barriers to employment before entering the work force is more consistent with the department’s broader goals aimed at poverty reduction. If the goal is long-term sustainable employment, with fewer people needing to re-apply for assistance, more effort needs to be spent working one-on-one with participants, establishing more realistic plans, and offering more support when roadblocks are encountered.

Recommendations

23. It is recommended that the process for developing client action plans ensures the full participation of participants, and reflects all issues identified in each participant’s employability assessment.

24. It is recommended that each participant receive a copy of their signed client action plan, regardless of their personal circumstances.

Departmental Response:

The department has agreed to implement both of these recommendations. It has set a target date of 2011/12 for implementation of recommendation 23, and advised that recommendation 24 is included in its 2010/11 EIA Action Plan.

PARTICIPANTS WITH MULTIPLE PERSISTENT BARRIERS

Discussions with program staff about participants with employment expectations led to the identification of a particular concern about people who were excluded from employment because of social issues or social barriers that were not recognized as a disability.

The list of reasons why a participant might not be considered employable, while still not eligible for the disability benefit category, was extensive: addictions, undiagnosed mental health issues, depression, lack of social skills, lack of education, lack of motivation, poor access to transportation, advanced age, homelessness, lack of literacy skills, and language barriers.

One manager we interviewed indicated that the program referred to many such participants as people with “multiple persistent barriers,” which we were told was a term used in another province.

It is clear that there are people enrolled in the GA category who are not employable. Program policy does not recognize any of their social barriers as a disability. Some are clearly not, such as illiteracy, homelessness, lack of education, experience or social skills. There are other barriers that some argue should be considered a disability or illness, such as alcoholism and drug addiction, but the program has declined to recognize them as either.

Many people with multiple persistent barriers have job expectations waived, for different reasons and for different periods of time, while others do not and are therefore subject to financial sanctions permitted by law when employment expectations are not met.

The Administrative Manual sets out certain circumstances and barriers that can result in work expectations being deferred:

6.5.3 DEFERRING EMPLOYMENT EXPECTATIONS

Employment expectations may be deferred for applicants unable to immediately focus on employment. The need for deferral may be identified by either the applicant or by the intake worker. Together the applicant and the intake worker determine the length of deferral, based on the estimated length of time required to resolve or stabilize the situation resulting in deferral. The intake worker may consult with the director or designate regarding the need for, or the length of, a deferral.

If there are concrete steps that the applicant could reasonably take to resolve some of the barriers to employment (such as taking a treatment program or exploring child care alternatives), employment expectations will not be deferred. These steps will be identified in the participant's action plan.

Some circumstances that might result in the deferral of employment expectations include:

Temporary inability to work due to physical or mental health problems

Applicants subject to employment expectations who are suffering from temporary physical or mental health problems complete those sections of the EIA application regarding their work history, job skills and employment barriers. However, the intake worker may defer identifying specific steps relating to employment in the applicant's action plan, pending medical advice from the applicant's doctor.

Family Violence

When an applicant enrolls with EIA immediately after leaving a crisis intervention facility, employment expectations may be deferred.

We canvassed staff on how the EIA program currently responds to people with multiple persistent barriers and how it might respond differently. Most staff indicated that more needed to be done to work with this group of participants, recognizing the extent and the impact of the obstacles faced by participants and the extent of the work and resources needed to address these obstacles.

We asked workers how they worked with this portion of their case loads. We heard a variety of answers. Some workers told us that while there may be a formal work expectation on these participants, workers knew that these people were not job ready and would not be able to find or hold down a job until they addressed the barriers facing them. In response, some workers largely ignored these files. They became “maintenance” cases where workers were just ensuring that cheques were issued and sporadic contact was maintained with the participant. Workers tended to not be overly involved in these cases.

Some workers expressed the view that in light of the additional challenges and barriers faced by some participants, the work expectation had to be more holistically defined. These participants would be expected to undertake activities intended to overcome these barriers and develop the necessary skills that one day might allow them to enter the work force. In that sense, the traditional job search was deferred. For example, an expectation might be to connect with a doctor.

For workers who assisted participants to find resources to address their personal barriers, there were two obstacles identified. The first was the limited availability of, or access to, necessary resources. Specific concerns identified were obtaining timely access to basic health services, mental health services, addictions treatment, and specialized services for issues such as FASD. A second concern was the ability of workers to keep up with the knowledge required about all of the services available, and the specifics of those services, in order to make appropriate referrals.

Other workers took a more hard line approach and insisted that the job expectation be followed explicitly. The job expectation was defined as finding and maintaining employment. If participants failed to adhere to strict conditions on their action plans regarding job searches and job activities, their benefits would be affected. We were told of situations where participants would have benefits either deferred or terminated multiple times for failure to follow through with their action plans. There seemed to be little discussion between the worker and participant about trying to identify why they were unsuccessful. As a result, there are participants for whom EIA files have been opened and closed multiple times in a relatively short period of time.

Some staff suggested that an intensive case management approach was necessary and pointed to the Job Connections pilot project as perhaps an appropriate model.

The Job Connections Initiative (JCI), launched in April 2008, is a holistic, intensive case management pilot project designed to:

“Support participants to achieve greater independence from the Employment and Income Assistance program by helping them address the barriers which prevent their successful engagement in employment and training

activities. Job Connections Social Services Case Managers will utilize a variety of specialized and comprehensive assessment tools in order to best determine the nature and level of supports required by participants to help them achieve their personal or family-centered plans.”

Participants in the JCI include both general assistance and single parent EIA participants. As the JCI is a pilot project, participation is limited to a small number of the total case load. As a model it appears to be one way of addressing the need for intensive case management that will clearly be required to work with a particularly challenging group of EIA participants. However, until the pilot project is complete it will be difficult to conduct any statistical analysis demonstrating its effectiveness.

Analysis

The current general assistance category is a catch-all category for individuals who do not qualify for disability, single parent, or any other benefit category. It appears, however, that participants in the GA category range from people who are essentially employment-ready, to those who have difficulty finding and keeping employment due to multiple persistent barriers.

Basic benefits, combined with the employment assistance available, may be appropriate for those participants who are "job-ready," and simply need financial assistance through a short period of unemployment.

It would be beneficial to both the program and its participants to distinguish between those who are job-ready and those who have significant social conditions that are barriers to employment. A list of these barriers, compiled from staff comments, includes:

- addictions
- undiagnosed mental health issues
- lack of literacy skills
- lack of social skills
- lack of adequate, safe housing
- homelessness
- family violence

Because participants with multiple barriers do not typically qualify for the disability category, they are subject to work expectations, unless a decision is made to defer those expectations. Because of this, managing their files has been described as particularly challenging. These participants can have multiple and complex barriers that require a significant investment of time and resources to overcome. Currently, staff do not have sufficient time to invest with these participants to identify their barriers and the resources necessary to address them. The program currently expects too much of these participants in light of the significant barriers they face and imposes too many different functions on staff.

The approach currently taken by the program seems unlikely to help these participants achieve independence through employment. They require an intensive case management approach, beginning with a thorough assessment of their barriers. For these participants, success cannot be

limited to finding employment. Their success will first need to encompass activities necessary to remove the barriers to self-sufficiency.

It appears that the department has recognized the need to work more intensively with certain participants. The Job Connections Initiative allows workers to do exactly that. JCI workers use a number of tools to help them assess how best to work with program participants. One such tool is known as the Comprehensive Assessment Matrix. It examines a number of areas of a participant's life including: food and clothing; housing; financial stability; transportation; care and safety; health and well-being; social development; life skills; employment; education and learning; family relations; and parent-child relationships. This tool allows workers to examine all aspects of a participant's life to determine an appropriate case plan to move the participant forward.

The department has also had the marketAbilities program in place for a number of years. Similar to the JCI, marketAbilities staff work intensively with participants in the disability category to address their barriers to finding work. Participation in marketAbilities is voluntary.

The program should address the issue of people with multiple persistent barriers to employment by adopting an intensive case management category. The focus for people with multiple persistent barriers should be the identification of specific barriers, and the identification of services and programs necessary to address those barriers as part of their individual plan. The role of the program would include completing a comprehensive assessment, developing a plan to address the participant's barriers, and assisting the participant to implement that plan.

Recommendations

25. It is recommended that the department develop a plan to provide intensive case management for people with multiple persistent barriers, to assess all barriers to employment and what supports are necessary to overcome those barriers. It is recommended that barriers should include social barriers, in addition to temporary disabilities or illness.

26. It is recommended that a comprehensive assessment tool be developed and used to assess each applicant to ensure that invisible barriers to employment are disclosed. It is recommended that staff receive training in the comprehensive assessment tool.

27. It is recommended that program policy around work expectations be revised to reflect the need to assist participants in identifying and overcoming barriers to employment.

28. It is recommended that the program consider how to foster employment readiness for disability participants and sole support parents who are currently exempted from employment expectations, and address any barriers arising from disability or family responsibility, such as deficiencies in education or the lack of child care.

Departmental Response:

The department has agreed to implement these recommendations. It has indicated a target date of 2011/12 for recommendations 25, 26, and 28.

Our Comment:

The department commented that it agrees with 27 and noted that this recommendation is reflected in current policy. Section 6.3 "Employment History and Personal Job Plan" states that "EIA supports employable participants to become employed within a mutually responsible relationship between participants and workers. Workers in the program provide the participant with information about appropriate opportunities, assist the participant in identifying job search resources and determine whether the participant is meeting employment expectations." The policy provides direction on setting realistic goals and steps to employment given a participant's barriers. Practices to further support this direction will be reviewed as described in the response to recommendation 23.

DISABILITY CATEGORY PARTICIPANTS

The disability category provides assistance to the largest number of program participants. The complainants took issue with the way the EIA program currently defines "disability":

The policy that outlines the definition of disability for this program is not being interpreted similarly and/or correctly by EIA staff. The definition refers to someone having a medical condition or disability for longer than 90 days and that due to this circumstance they are unable to earn sufficient income to cover their basic needs. Frequently persons are not considered eligible for the LAPDP if they can perform any work activities for any amount of time. The result of this is that a person with functional limitations that are ongoing is placed in the situation of finding work and not receiving the extra benefits available to a person with disability to address the barriers and attitudes that exist in our society toward people with disabilities. Also if someone is deemed employable, they are no longer considered eligible for the LAPDP extra funds and are placed - in the general assistance or single parent category, even before any employment is secured. Being able to work does not translate into not needing the disability supports provided in the LAPDP. Also the ability to carry out physical or mental activities does not in itself correlate to a relevant job that is available in the labour market. There is no consideration as to what jobs are actually available.

Manitoba Definition

The Act does not contain a definition of disability, and the statutory provision creating eligibility in this category covers people in a broad range of circumstances.

Employment and Income Assistance Act

5(1) The director shall provide income assistance, in accordance with this Act and the regulations, to or in respect of a person who, in the opinion of the director is a person

- (a) who, by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days
- (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any; or
- (ii) is unable to care for himself and requires to be cared for by another person or in an institution or home for the aged or the infirm...

The policy in the EIA Administrative Manual mirrors the statute and provides little additional guidance for staff or participants. The EIA Administrative Manual, section 7.1.1 states:

For the purpose of The Employment and Income Assistance Act and Regulation, the term "disabled" refers to those persons who, by reason of a physical or mental illness, incapacity or disorder that is likely to continue for more than 90 days, are unable to earn sufficient income to provide the basic necessities for themselves and their dependants.

The definition of disability and how it should be addressed in an income assistance program has been the subject of broader policy discussion. In 2001, the government proposed to redefine its income assistance eligibility requirements for persons with disabilities in *Full Citizenship: A Manitoba Strategy on Disability*. The proposed changes were to redefine disability so that it was not linked to a finding of "unemployability." A November 2008 Progress Report indicated that the proposed new definition had not been adopted, but noted :

A new functional assessment process has been implemented by Employment and Income Assistance Program, replacing the medical panel previously in place. Changes include: adding an occupational therapist on the Winnipeg/Selkirk panel to add a functional dimension, replacing the physician with a nurse, a new self-report form, and immediate enrollment of certain applicants, i.e. those on Canada Pension Plan Disability.

Information from both complainants and staff suggests that the new "functional assessment process" has not resolved their concerns. However, the immediate enrollment of people in receipt of Canada Pension Plan (CPP) disability benefits appears to be an administrative improvement.

It appears that despite changes to the assessment panel process to incorporate more of a functional assessment in the determination of eligibility for the persons with disabilities category, there continue to be differences in how the definition is being interpreted.

Definitions From Other Jurisdictions

As background to this review we looked at how other jurisdictions define disability or categorize benefits for persons with disabilities.

Canada Pension Plan

The CPP definition of disability is set out in section 42 of *The Canada Pension Plan Act*:

When person deemed disabled

(2) For the purposes of this Act,

(a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,

- (i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and*
- (ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and*
- (b) a person shall be deemed to have become or to have ceased to be disabled at such time as is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.*

As part of this investigation we reviewed the approaches taken by other provinces, as reflected by how they define disability.

Ontario

The Ontario Disability Support Program Act states:

Person with a disability

4. (1) *A person is a person with a disability for the purposes of this Part if,*
- (a) the person has substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;*
 - (b) the direct and cumulative effect of the impairment on the person's ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in one or more of these activities of daily living; and*
 - (c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications.*

British Columbia

The British Columbia Employment and Assistance for Persons with Disabilities Act states:

- (2) The Minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the Minister is satisfied that the person has a severe mental or physical impairment that*
- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and*
 - (b) in the opinion of a prescribed professional*
 - (i) directly and significantly restricts the person's ability to perform daily living activities either*
 - (A) continuously, or*
 - (B) periodically for extended periods, and*
 - (ii) as a result of those restrictions, the person requires help to perform those activities.*
- (3) For the purposes of subsection (2),*
- (a) a person who has a severe mental impairment includes a person with a mental disorder, and*
 - (b) a person requires help in relation to a daily activity if, in order to perform it, the person requires*
 - (i) an assistive device,*
 - (ii) the significant help or supervision of another person, or*
 - (iii) the services of an assistance animal.*

Saskatchewan

The Saskatchewan Assistance Program has implemented a new (effective October 2009) long term income support program for people with significant and enduring disabilities - the Saskatchewan Assured Income Disability Program (SAID). Saskatchewan Assistance Regulations subsection 43.1 (1) states:

SAID is an income support program intended to provide long term income support to Saskatchewan residents, 18 years of age or older, who:

*have disabilities that are significant and enduring, irrespective of whether the disabilities are physical, psychiatric, cognitive or intellectual in nature; and
have insufficient income from employment or others sources to permit self-sufficiency; and
are not expected to attain long-term financial self-sufficiency through employment or self-employment given available treatments or supports.*

** Significant disabilities are defined as disabilities that have a substantial impact on routine daily living activities, and which result in a person requiring help in the form of an assistive device, the assistance of another person, a modified environment, or other accommodation.*

** Enduring disabilities are defined as disabilities which are expected to last permanently or indefinitely, and which limit a person's ability either continuously or periodically.*

Both Ontario and British Columbia have significantly longer fixed periods before a disability qualifies a person for disability benefits. Both provinces tie their definition to the broader concept of impact on the activities of daily living, rather than just on employability.

The Saskatchewan program does not specify a period, but does define an “enduring” disability. It also makes reference to a situation where people are unable to attain self-sufficiency through employment “...*given available treatments and supports.*” This is a consideration in light of the fact that many EIA staff made reference to the absence or limited availability of treatment and support options in Manitoba.

EIA staff who were interviewed identified numerous concerns with the interpretation and application of the disability provisions governing their program. Their comments suggested that it can be hard for both participants and staff to understand what falls under that definition and that different programs within their own department can use different definitions. It was suggested that the definition of disability should not be tied to employability. It was suggested that the current definition was a “one size fits all” approach and what was needed was a means of distinguishing long term from short term disability. It was also suggested that people with permanent disabilities should not be part of a welfare or social assistance program and would be better served through some kind of a pension program.

Many staff expressed views on how to change the program's approach to disability, with most comments suggesting that there be a distinction between long term and short term disability or distinguishing permanent disabling conditions and conditions from which participants were likely to recover.

Some staff identified a concern with the current practice of tying the additional costs associated with disability to a determination on ability to work, suggesting that whether a person can work or not does not change the need for the additional benefit paid to cover additional costs arising from a disability.

During the course of this review some EIA staff made reference to disability participants who are also clients of the provincial Supported Living program, describing them as a maintenance case load, many of whom were in community residences and receiving services from workers in other programs.

Supported Living Clients

A program description for the Manitoba Family Services Supported Living Program indicates that it is intended to provide services to “*eligible adults with a mental disability in each region of the province. Services are planned on a person-centered basis to meet the unique need of each individual.*”

These are people with a mental disability who clearly fall within the broad definition of disability under the Act for EIA purposes, but must also meet eligibility criteria for the SL program. Applicants must be a “vulnerable person” under *The Vulnerable Persons Living with a Mental Disability Act*:

“an adult living with a mental disability who is in need of assistance to meet his or her basic needs with regard to personal care or management of his or her property. A mental disability means significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour and manifested prior to the age of 18 years, but excludes mental disability due exclusively to a mental disorder as defined in section 1 of The Mental Health Act.”

Selecting the Westman Region as a sample for analytical purposes, we inquired about the number of EIA participants who might also be clients of the SL program. We were advised that of a total of approximately 2800 EIA cases, 1650 are in the disability category and of those approximately 500 are also in the SL program. We were advised that most SL clients receive EIA benefits.

EIA participants who are also in the SL program have a Community Service Worker assigned by the SL program to manage the case on a daily basis. In the course of the review, some staff had suggested that this was a duplication of services.

In the Westman Region, there is currently one worker who carries a joint caseload. This position acts as the Community Service Worker for 83 SL clients and also handles their EIA business. The other 417 SL cases are divided up among 12 other EIA case counsellors.

This was described as unique situation, arising because of an individual staff member who possessed knowledge of both programs. It was also made possible because of the proximity of the EIA and SL programs in the same building on the same floor.

It was suggested to us that this would be a difficult situation to duplicate with new staff because of the extensive training required to learn both programs, in addition to the “*six months to a year to be fluent in SAMIN*” (the EIA program’s computer system). Nonetheless, it would be useful for the department to review whether or not there is a duplication of service and, perhaps more

importantly, to ensure that the provision of financial support does not come with unnecessary monitoring associated with EIA and that disability support services are provided by those best trained and equipped to provide them.

Analysis

Based on the Act and policy, disability benefits are available to a range of people; from those with permanent impairments precluding any possibility of self-sufficiency, to those who suffer from an incapacity, disorder or ill health, from which they will recover, but which will last longer than 90 days duration.

Excluded by practice from eligibility for the disability category are participants with disabling social conditions that prevent them from earning an income sufficient to meet basic necessities, for example, a debilitating addiction. As a result these participants do not receive the extra benefits available to those who are defined as disabled, and they are expected to seek employment. Included by practice in the disability category are some participants who are capable of, and often do work.

The interpretation of the Act and policy appears to be unfair. This unfairness arises because of the absence of a clear definition of disability, and a means of assessing conditions that are disabling and prevent a person from obtaining and sustaining employment. Despite suffering from a disabling condition that precludes them from obtaining and sustaining employment some participants will not be defined as "disabled" and will not receive the additional benefits available to participants within that category.

Currently, participants in the disability category receive an additional \$105 per month as well as a higher monthly basic needs budget than participants in the GA category. While a single, childless GA participant receives a monthly budget of \$195 for basic needs, plus a \$25 job seekers allowance (for a total of \$220 per month), a single, childless Persons with Disabilities case category participant receives a monthly budget of \$331.40, plus a \$105 Income Assistance for Persons with Disabilities (IAPD) benefit (for a total of \$436.40).

The policy on disability focuses on employability. Staff felt that the notion of equating disability with "un-employability" was outdated and demeaning. This kind of focus could result in unfair treatment of some participants who are living with a disability and require additional support, but are able to engage in some type of work. In 2008/09, there were 31,137 EIA cases in total, of which 18,068 were in the disability category. Thus 58% of the case load had mandated work exemptions, even though one of the program objectives is to help participants "*regain their financial independence from EIA by making the transition to work.*"

The EIA program has in fact enhanced its education, training and disability supports to assist persons with disabilities in finding and retaining employment. This is a positive shift in approach.

It would appear that the ability to work should not be the determining factor in assessing the need for additional benefits arising from a disability. That determination should relate to the additional costs associated with the disability. It is possible that some participants may be disabled and able to work, but require additional support for costs associated with their disability. Others may be disabled and unable to work, but may not have significant costs associated with their disability. The program does not currently recognize this difference.

For participants who are permanently disabled, assistance should be provided without the need for periodic reviews and the corresponding administrative work done to reconfirm eligibility. Effectively, the income provided to these participants would more closely and appropriately resemble a pension than it would a welfare payment.

Many people in the disability category are also in the Supported Living program and many also receive the services arising from supported residential living and/or supported employment. These participants have a Community Service Worker assigned to daily case management. Their attachment to the EIA program appears to be based primarily on the need to provide for the cost of their basic necessities. Accordingly, the role of EIA should be limited to the provision of financial benefit. Other services would be provided through the Supported Living program.

Recommendations

29. It is recommended that the definition of disability be clarified in program policy to distinguish between people whose disability will permanently prevent them from obtaining self-sustaining employment, and those who are temporarily precluded from meeting the cost of their basic necessities because of a temporary disability or illness.

30. It is recommended that for people who are permanently disabled and exempted from employment expectations, such as those in the Supported Living Program and those eligible for CPP disability benefits, long term disability benefits be paid in amounts sufficient to meet the cost of their basic necessities, which would include predictable recurring needs arising from their disabilities.

Departmental Response:

In September 2010, the department responded that recommendations 29 and 30 are under review.

A NON-CATEGORICAL SYSTEM

Although we have made specific recommendations to enhance or improve the administration of the current categorical eligibility system, our investigation and analysis of this issue raises larger questions about the necessity for and benefits of that system.

It appears that the categorical eligibility system may have become an institutional stumbling block to moving the EIA program forward. The department may wish to consider abandoning the current requirement for categorical eligibility in favour of a system that focuses on a comprehensive assessment at intake, identifying all needs and barriers to full societal and labour market integration, and the provision of intensive case management for those participants who require it.

This shift would allow a more precise tailoring of financial and other benefits to individual needs. A non-categorical system would be less arbitrary and may have the added benefit of simplifying administrative processes, for both participants and staff, and for those who need only financial support.

Recommendation

31. It is recommended that instead of the current categorical eligibility system, the department consider adopting a system that focuses on a comprehensive assessment at intake, identifying all needs and barriers to full societal and labour market integration, and the provision of intensive case management for those participants who require it.

Departmental Response:

In September 2010, the department responded that recommendation 31 is under review.

RATE SETTING

The complainants assert that the method used to determine EIA rates is inappropriate. With respect to the rate setting process, they wrote:

EIA Legislation states that the rates must be set by the government for shelter allowance and basic needs. The Legislation also states that the government will review these rates to ensure they meet the basic needs of Manitobans. To date no review process has been laid out by the government as to how and if this is done. There also has been no indication as to what type of measurement is used by the government to determine rates. Nor is there a transparent process or commitment to review these costs annually and increase benefits accordingly.

In December 2008, the Office of the Auditor General (OAG) issued a report that addressed a number of EIA issues, including the rate setting process. The full report, “Report to the Legislative Assembly – Audits of Government Operations”, is available on the OAG website at <http://www.oag.mb.ca>.

The report of the OAG provided a description of the current rate setting process. Below are some of the Auditor General’s comments and observations with respect to that process:

- The department reviews income assistance rates annually. However, this review is not conducted in a formalized or prescribed manner, and is not summarized in a specific single document.
- The annual review considers the rates for shelter and basic needs, as well as the benefits available to EIA participants in specific situations. These include (but are not limited to) benefits such as essential drug, dental and optical services, as well as allowances for school supplies, persons with disabilities, the high cost of healthy foods in northern and remote areas, and assistance in transitioning from income assistance to work. However, we noted that some less common allowances (e.g., allowances for various prescribed therapeutic diets) have not been reviewed for several years.
- Rates are not updated on a regular annual basis for all components of the rate structure for all recipient categories. Instead, based on the department’s assessment of need, rates are periodically updated for certain components of the rate structure relating to selected categories of recipients.
- The various levels of income and asset exemptions are also reviewed annually and periodically adjusted.
- The department conducts regular inter-provincial comparisons of the monthly basic and shelter rates for a variety of different household scenarios. ...
- The department also periodically reviews and considers the total benefit income obtainable by EIA participants from all available sources. ...
- The department monitors various existing measures of poverty thresholds, although there is no “agreed upon” or official basis for measurement. In the absence of an agreed upon measure, one reference point sometimes used by both the department and social policy advocates has been the Low-Income Cutoff statistics (LICOs) published by Statistics Canada. LICOs are a relative measure that approximate annual levels of income at which households of different sizes, in communities of different sizes, are forced to spend a higher proportion of their income on the

basic necessities of food, shelter and clothing than the average household would. We noted that a common criticism of this measure is that it places Winnipeg in the same community size category (populations of 500,000 and over) as cities such as Vancouver, Calgary and Toronto, without considering cost of living differences such as wide discrepancies in housing prices.

- The National Council of Welfare (NCW) is an arm's length advisory body to the Federal Minister of Human Resources and Social Development (HRSDC) on matters of concern to low-income Canadians. NCW issues periodic reports on patterns and trends in welfare incomes for four different types of households in the various provinces. For all provinces, reported welfare incomes fall below LICO thresholds. For example, the Summer 2006 report issued by NCW showed that 2005 welfare incomes in Manitoba ranged from 28% of the LICO for a single employable individual to 53% of the LICO for a couple with two children, ages 10 and 15.
- Recognizing the problems inherent in using LICOs as a poverty threshold, the department also monitors, on an ad hoc basis, some of the various market basket measures of low income that are available. These are typically determined by selecting and pricing a set of goods and services deemed essential to a person's functioning in society and may vary considerably, depending on the types and number of items included in the basket, as well as the method of pricing used.
- Data published on the NCW website in June 2008 used a HRSDC market basket measure (MBM) that showed 2006 welfare incomes in Manitoba ranged from 44% of the MBM for a single employable individual to 83% of the MBM for a single parent with a two year old child. For all provinces, the NCW reported welfare incomes were closer to the HRSDC MBM threshold than the LICO threshold.
- While various low income threshold measures are monitored by the department, they are not used as a direct input to income assistance rate-setting.

The adequacy of EIA benefit rates relative to participant needs was not part of the OAG review.

At the end of its review, the OAG recommended that *“the Department institute a formal documented process for reviewing and making recommendations for periodically updating basic and shelter rates, income and asset exemptions, and other income assistance allowances in a logical and equitable manner.”*

In September 2009 the Deputy Minister of Family Services and Housing advised the Standing Committee on Public Accounts that the department accepts the recommendations made by the Auditor General and is *“actively working to address these recommendations”* and *“working to develop formal criteria and internal processes.”*

Further comments to the Public Accounts Committee provided insight into how the current process works:

The department reviews income assistance rates yearly as part of the budget process and we, of course, present recommendations to government through the Estimates process. Since 1999, the department has increased the level of income available to participants, both directly through enhancing rates and, indirectly, by exempting other sources of incomes from being considered as a financial resource. And that includes enhancements to earning exemptions which allow people to retain more of their benefits while they're working.

We do look at inflation and CPI. We look at how our rates compare with other provinces. Most of the benefits that have occurred for people on low income have been because we've passed through federal incomes -

federal increases onto the child tax benefit...Government makes its decision based on those considerations as well as the resources that are available.

The last several years we've introduced a number of enhancements to the rates specifically in the north and communities that are facing higher food—particularly for food and essentials. So we've increased the rates there to better respond to local needs...We pay actual utility costs for the most part so that, you know, communities where utility costs are higher for whatever reason, we pay the actuals. So we try to respond in those ways to the higher costs that northern communities face.

In light of the review completed by the Auditor General we did not undertake an extensive investigation of the rate setting process itself. We noted, however, the various approaches to rate-setting in other provinces.

In Saskatchewan, British Columbia, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, and Prince Edward Island, rates are assessed annually as part of budget development process. In Ontario, rates for both Ontario Works and the Ontario Disability Support Program are set on an ad hoc basis by government.

In Prince Edward Island, the annual rate review requirement is set forth in legislation. There is no sanctioned measurement of poverty and no indexing of rates. In Nova Scotia, the personal allowance portion of rates is adjusted based on cost of living, but annual rate increases are subject to Cabinet budget approval. In Newfoundland and Labrador basic income support rates were indexed to the provincial Consumer Price Index (CPI) in 2007, and will continue to be indexed for the six years following 2007.

In the Northwest Territories, benefit rates are not indexed yearly but indexed by regions and communities according to cost of living measures. In Yukon, the Yukon Social Assistance Act and Regulations provides that the Director of Social Services review the rates annually and recommend changes, if any, to its Management Board. In February 2009, the Yukon government announced that basic social assistance rates (food, clothing, shelter and utilities) will be indexed annually to the CPI to ensure rates reflect cost of living.

Quebec has had automatic annual indexation of social assistance benefits for a number of years. The indexation rate used is the same as that used for the personal income tax system and related tax credits, which is the rate based on growth in the Quebec CPI for the 12-month period ending September 30 of the previous year.

We also canvassed the views of EIA program staff on the rate setting process. Most staff did not know how rates were set, but felt there needed to be a better way of having rates reflect the cost of living. Staff also expressed a desire to be consulted as part of the rate setting process, indicating that their front line experience could benefit the process.

Some staff commented on the practice of maintaining what they thought were low rates but providing add-on programs, benefits, and incentives as an alternative to increasing rates, and the practice of considering exempted income when reviewing rates. Generally, their comments suggested that the practice of providing add-on benefits made the program administratively more complex.

Analysis

The rate-setting process lacks transparency. The complainants feel the process results in a lack of accountability. Staff correctly point out that the rates are not determined by them, but by Cabinet. Cabinet is, however, relying on information and advice from the department on what is appropriate for rates. The rate setting process should be more transparent, and with greater transparency will come greater accountability. Currently, there is a recommendation from the OAG that the government is addressing. We endorse and repeat that recommendation.

Recommendations

32. It is recommended that the department institute a formal documented process for reviewing and making recommendations for periodically updating basic and shelter rates, income and asset exemptions, and other income assistance allowances in a logical and equitable manner. It is recommended that in that process, program staff be consulted.

33. It is recommended that the rate-setting process be documented and made available to the public.

Departmental Response:

The department has agreed to implement recommendation 32, indicating that it will review how best to achieve a more consultative approach to reviewing rates. It has set a target date of spring 2011.

In September 2010, the department has advised that recommendation 33 is under review.

Allowances for Shelter and Basic Necessities

Section 2 of *The Employment and Income Assistance Act* authorizes EIA benefits comprised of certain allowances: a basic living allowance, an allowance for shelter, essential health services and a funeral upon death.

Throughout the course of our review, complainants and staff alike identified shelter allowances as a particular problem. Many staff indicated that participants often use funds provided as a basic living allowance to cover the cost of shelter.

The department has addressed some concerns about the shelter allowance through recent increases to the Manitoba Shelter Benefit paid to participants. The Manitoba Shelter Benefit for persons receiving EIA is a flat rate benefit available to persons with a disability and adults without dependent children who rent accommodation from a landlord other than the Manitoba Housing Authority.

However, we were informed by the complainants and staff that for participants in private rental accommodations, the cost of rent frequently exceeds the amount of money received from the program for shelter. For some participants, the EIA program pays rent directly to landlords. We were advised that if a participant's rent is higher than the shelter rate amount, the participant must authorize the program to use some of their basic living allowance funds to pay for shelter.

It would appear to be unfair if participants need to use funds that were specifically allocated by government for the purpose of meeting the cost of their basic necessities, to supplement the allowances allocated for shelter.

Recommendation

34. It is recommended that the department determine whether participants are required to use benefits allocated for basic necessities to supplement benefits allocated for rent, and if so, how frequently and to what extent this occurs.

Departmental Response:

The department has agreed to this recommendation, stating it will undertake this analysis and set a target date of spring 2011.

PROGRAM POLICY

The complainant groups raised two broad and significant concerns with respect to EIA program policy; first, that there are certain program policies that serve to undermine the intent of the program and, second, that program rates are inadequate to achieve the program's stated goals.

Under the heading “Policies and Procedures that Undermine the Intent of the EIA Program” the complainants wrote:

“An example of this is that the ELA program policy is to provide only one damage deposit per participant for rental purposes. The possibility of being approved for more than one damage deposit depends entirely on the discretion of the supervisor/director of the ELA office. This policy has resulted in participants, through no fault of their own, being homeless or forced to live in housing that is unsafe or unhealthy. Even if the participant has filed a complaint with the Residential Tenancies Branch in an attempt to have their previous damage deposit refunded, the ELA program will not provide a damage deposit in order for the participant to move to more appropriate housing. This necessitates that participants must use their food budget to augment their shelter allowance. With a vacancy rate of 1%, it is almost impossible to find stable, clean and appropriate housing. Participants are forced to either live in substandard housing that is detrimental to their health, or to be nutritionally deprived in order to live in an adequate dwelling.”

The heading of this area of the complaint suggests that there are concerns beyond damage deposits and shelter rates. In discussions with the complainants we learned that their concerns included alleged incidents of withholding benefits for non-compliance with processes that are beyond participants' means or impractical in their circumstances.

As well, the complainants had concerns about the application of policy around specific benefits:

The policies that determine who gets phone and travel costs included in their monthly budget does not in any way meet the needs of participants to achieve the goals of the ELA program ... The fact that the cost for renting a home phone and travel costs are not covered as an automatic benefit provided to every person on the ELA program raises concerns and issues around the safety and community inclusion supports for all persons on the ELA program. It also impedes the participant from looking for work which is one of the main goals of the ELA program.

For the purposes of this review we identified four broad policy areas for review: damage deposits; employment obligations; telephones and transportation; and financial sanctions.

Damage Deposits

The complainants raised a specific concern about the program's policy on damage deposits. Damage deposits are referred to in residential tenancies law and in program policy as security deposits.

Manitoba law permits landlords to collect up to one half of one month's rent from new tenants as a form of security against unpaid rent or damage identified at the end of a tenancy. Collecting security deposits has become a common practice among private landlords. *The Residential Tenancies Act* prescribes the process for collecting and returning security deposits.

Under *The Residential Tenancies Act*, landlords have 14 days after the end of a tenancy to return a security deposit to the tenant. Alternatively, if they believe they have a claim against a security deposit they have 28 days to notify the tenant of that claim. Either a landlord or a tenant may make an application to the Director of Residential Tenancies to determine the disposition of a security deposit. Thus, if a landlord fails to either return the security deposit to the tenant or to make a claim within 28 days, a tenant can make such an application, initiating an administrative tribunal review process of indeterminate length.

Disputes about security deposits can be determined by the Director of Residential Tenancies on the basis of evidence, both oral and documentary. In the case of claims based on allegations of damage the documentary evidence will usually be a “condition report,” a prescribed form where both landlord and tenant can endorse a description of the rental premises at the beginning and the end of a tenancy.

While security deposits might be considered mandatory in the sense that landlords have the legal right to require tenants to pay them, condition reports are not mandatory. Without a condition report there may be no agreed upon evidence as to the condition of the rental premises at the beginning or the end of a tenancy.

Policy on security deposits is contained in various circulars and in the EIA Administrative Manual, which states, in part:

The security deposit can be paid as a shelter benefit under Schedule A, section 2(b)(ii) of the Regulation. This payment is to be allowed once per case.

The security deposit is refunded at the termination of the rental agreement and applied to the next rental agreement. Participants are expected to recover the initial security deposit from the first landlord within the 14 day prescribed time frame established by the Residential Tenancies Branch.

19.1.8 SECURITY DEPOSITS

If, after 14 days, the landlord does not return the security deposit or returns only a portion of it, and the participant indicates that they do not have sufficient funds to meet their needs for the month, the director may approve additional funds as recoverable duplicate assistance, up to the amount of the previous security deposit which was not returned.

In light of the fact that even in cases where there is no dispute a landlord has up to 14 days to return a deposit, and 28 days to notify a tenant where there is a dispute, it is not surprising that tenants who are EIA participants will require a second security deposit when moving. For tenants who eventually recover their initial deposit, after the program has paid a second deposit, the program considers the recovered initial deposit a financial resource. That is a reasonable practice.

The problem arises, from the complainants' perspective, when a damage deposit is not recovered and the second damage deposit is provided by the program but considered an “overpayment,” which can then be deducted from subsequent benefits. They believe this is unfair for a number of reasons. First, any overpayment deduction is punitive in that it reduces benefits below what the complainants believe is already an unacceptably low level. They also believe that the expectation that tenants pursue disputed damage deposits is unrealistic for many participants, because they lack the

resources to engage in the tribunal process set up for that purpose, and sometimes face additional barriers that make the process more difficult for them.

Information from EIA program staff suggests that many program participants have difficulty finding adequate housing within their budget guidelines and, as a result, often live in sub-standard housing. As well, EIA staff have told us that the ability of some of their participants to engage in the existing legal process for pursuing un-retained security deposits are affected by a number of significant issues including diagnosed and undiagnosed mental health issues, addictions, and domestic violence. People affected by these issues could also be disadvantaged by other factors associated with poverty, such as a lack of transportation or basic telephone service.

The program places an expectation on participants to pursue un-retained damage deposits, but seems to offer little help for participants in doing so except to refer them to the residential tenancies process. We noted that current policy with respect to the referral process appears less helpful than one of the policies it replaced. Current policy states:

19.1.8 SECURITY DEPOSITS

The participant is to be referred to the Residential Tenancies Branch if they do not receive their security deposit within 14 days of vacating their previous accommodation.

Previous policy set out a referral process that contemplated some discussion between worker and participant, including giving practical advice on recovering the security deposit from the landlord and identifying circumstances when a referral to residential tenancies might not be appropriate. (Directive 1991-47)

While it would be difficult to characterize the security deposit policy as one that serves to “undermine the intent of the EIA program,” we did conclude that it fails to recognize the circumstances of the people at whom it is directed and that it provides no practical assistance to participants whose security deposits are not returned by their landlords.

Employment Obligations

Policies around participants seeking and retaining employment will be critical in meeting the broader goals of labour market inclusion and reducing dependence on the program through employment. The department’s best efforts in that regard have been by way of recent initiatives, rather than a redesign of core policies.

Among employment policies, we identified an area where current policy seems to focus on punitive measures while failing to recognize the circumstances of participants or offer any practical assistance.

The program generally creates an expectation that people will seek employment, a reasonable expectation consistent with the statutory framework. It specifically imposes an obligation to not unreasonably terminate employment or refuse reasonable work. As discussed earlier, this policy could be a barrier to initial application, but it could also have significant impact on a participant enrolled in the program in the form of financial sanctions or denial of benefits. Written policy appropriately recognizes that there will be circumstances where people are terminated from

employment without just cause, or leave their employment for legitimate reasons. The following policy is contained in the EIA Administrative Manual:

6.5.4 OBLIGATION NOT TO TERMINATE WORK UNREASONABLY OR REFUSE REASONABLE WORK

Applicants fired without just cause

Some applicants may have been fired without just cause. For example, applicants may have been fired:

- for reasons that constitute discrimination;
- under circumstances that constitute harassment;
- for attempting to induce the employer to comply with occupational health or safety standards; or
- for attempting to organize a union at the employer's workplace.

In such cases, applicants are expected to take all reasonable steps to pursue the available legal remedies against their former employer, including:

- filing a complaint with the appropriate public body (such as the Manitoba or Canadian Human Rights Commission, Employment Standards, or Workplace Safety and Health);
- applying for EI benefits; and
- appealing the denial of EI benefits.

If the intake worker is satisfied that all reasonable steps have been taken, the applicant is enrolled.

Both complainants and program staff alike said that the expectations this policy imposes upon participants in light of their circumstances may be unrealistic. Moreover, the “available legal remedies” referred to are often complicated processes that sometimes require legal counsel or involve lengthy administrative investigations followed by hearings, and can take years to conclude.

Similar but less specific rules are applied to those who may have had good reason to terminate their own employment. Written policy, from the same section of the EIA Administrative Manual states:

Applicants who quit a job with just cause

In circumstances like those described above, applicants are usually expected to attempt to resolve their differences with their employer through available legal means rather than quitting. The test under section 10(1)(e) of the Regulation is whether the applicant might reasonably have held the job. Applicants who quit under such circumstances are also expected to pursue any and all of the available legal remedies described above.

Sometimes the applicant's reasons for quitting his or her job may relate to factors other than the job. For example, applicants may quit work because:

- a change in the applicant's health made it impossible or extremely difficult to continue doing the job;
- a change in the location of the workplace made it extremely difficult for the applicant to commute to work; or
- a change in the hours of work made it impossible or extremely difficult for the applicant to arrange suitable child care.

In such circumstances, if the intake worker is satisfied that the applicant first made reasonable attempts to solve the problem without quitting, the applicant is enrolled.

The policy does not identify the available legal means participants are expected to use to resolve their differences rather than quitting. Nor does it offer any guidance on the “reasonable attempts” a participant might take to solve problems such as a change in health that makes it impossible or extremely difficult to continue working, or hold out any prospect that the program will assist a participant to “...solve the problem without quitting...”

In both policy pieces set out above, there is an onus on staff to satisfy themselves that participants have taken all of the reasonable steps necessary to comply with policy as a condition of enrollment. The burden this places on staff is as unrealistic as the expectations it places on participants. These policies appear to be vague, unrealistic for participants and difficult for staff to administer. That the consequences of failing to comply with such policies could result in a decision to withhold benefits, or to reduce them by imposing financial sanctions, seems both unreasonable and unfair.

Program policy also addresses the imposition of sanctions, or remedial measures, to be taken when employment expectations are not met. We asked staff how they deal with situations where employment expectations are not being met. Generally, staff reported two different approaches. Some staff set specific reporting dates and targets for job search contacts, with the understanding that sanctions might be applied, while others acknowledged that applying sanctions was unreasonable without having first addressed the underlying barriers to employment facing many of these participants.

Telephone and Transportation Policies

The Employment and Income Assistance Act defines “basic necessities” as things and services to which reference is made in section 2 of the Act. Section 2 contains both the definition of basic necessities and the authority for the government to take measures necessary to ensure they are provided. The definition does not identify either telephone or transportation costs but does refer to ...*“those things and services that are essential to health and well-being, including a basic living allowance, an allowance for shelter, essential health services and a funeral upon death.”*

Section 6 of the Act authorizes the Lieutenant Governor in Council to establish by regulation, the cost of basic necessities. Regulations under the Act set out assistance rates to be paid to program participants in various eligibility categories, for various items included in the definition of basic necessities. None of those basic budgets includes the cost of a telephone or a transportation allowance.

Telephone Policies

Program policy describes the circumstances in which telephone costs can be provided as an add-on to the basic budget. The EIA Administrative Manual confirms that telephone costs may be covered *“Where a participant's employment requires availability by telephone...”* As discussed elsewhere, what is missing from the program is the provision of telephone costs for persons seeking employment.

The program also has policy under which program participants can request and receive “... *the costs associated with maintaining a telephone for health reasons.*” As well, EIA directors or designates can approve telephone costs when they are deemed necessary for a participant’s safety.

During the investigation we canvassed the view of staff on the need for participants to have a telephone and whether it should be included in the basic budget. The overwhelming majority of program staff supported the complainants' assertion that the cost of basic telephone service should be included in a basic needs budget, despite the fact the program already provides the cost of basic phone service in numerous circumstances related to medical need or safety. These are discretionary decisions requiring documentation from participants, which they must obtain from a doctor, and which create administrative work for staff.

Beyond health and safety, and employment, staff pointed to a significant need for participants to communicate with the program and, generally, to a need for program participants to remain involved with their community and avoid the impacts of the physical and social isolation that can arise from poverty.

Because of the program’s focus on participants seeking and finding employment, and the requirement to communicate on a timely basis with their EIA counsellors and financial workers, the absence of basic telephone costs in support of that activity appears to be an impediment to stated program requirements. For single parent participants, the ability to have regular communication with schools, community supports, and for emergency purposes, would appear to be a necessity rather than an option.

The issue here is not one of a deficiency in specific written policy, but rather a policy decision to limit the availability of telephone costs to certain specific circumstances and make their provision contingent on an extraordinary request supported by documentation, and an exercise of discretion by program staff.

Comments from complainants and staff alike suggest that a policy change to include the cost of telephone service in basic budgets could play a part in allowing people to increase their participation in the labour market and their community, and to live with dignity and security. It seems clear that such a policy change would assist in meeting the following goals the department has established for its programs and services:

- to reduce the depth, incidence and effects of low income;
- to increase participation in the labour market and community.

Transportation Policies

The program has a policy on medical transportation, and a policy on work expenses that includes a section on work transportation.

Program policy on medical transportation establishes a hierarchy of acceptable transportation methods but appears primarily intended to address issues of cost control and administration. Some portions of the medical transportation policy appeared unrealistic in terms of the circumstances of people living in rural Manitoba. For example, where no public transit or licensed carrier (taxicab) is

available, people can be reimbursed for the use of their own vehicle, but only at rates well below the cost of operating a vehicle. If participants do not have a vehicle, which we are told is the norm, they can hire another privately owned vehicle, but are subject to this rule as set out in program policy:

The participant must hire and pay the owner of the privately-owned vehicle and submit receipts in order to be reimbursed by the EIA office. At no time should an EIA worker hire or pay the owner of the privately-owned vehicle directly.

This assumes that participants have the funds to hire a private vehicle and wait for reimbursement, which would be an unusual circumstance for people living on an EIA budget. Moreover, this policy appears to actually prohibit workers from assisting participants by arranging private transportation for them.

The program policy on work transportation states, in part:

Participants who are not in the persons with disabilities or aged categories are expected to use their income exemptions for work transportation.

This statement in written policy is not unreasonable by itself, but it appears to rely on the assumption that program participants will have the resources to pay for transportation during the job search and until they receive employment income in the form of that first paycheck.

Policy on transportation support while seeking employment is set out in Directive 98-18, which states, in part:

Transportation support is available to clients only if they lack the resources to pay for their own transportation and not providing the support would be a barrier to the client finding a job. The policy is not intended to automatically provide every client seeking a job with transportation support.

This statement appears to invite staff to engage in some kind of analysis to determine if a participant might already have the resources to support a job search or if the absence of transportation might hinder a job search. Finally, it makes it clear that transportation support for a job search is not for every job seeker. The policy goes on to specify the circumstances in which assistance for transportation to seek employment may be provided. Those circumstances are:

- clients have completed a Personal Job Plan and are actively pursuing employment;
- clients have demonstrated that they can manage a job search, particularly through previous job search activity;
- clients are job-ready and do not have outstanding personal difficulties that may prevent them from taking a job such as lack of child care or substance abuse problems;
- clients have interviews scheduled or are planning to visit specific employers;
- clients have either not received transportation support previously from the program or have previously received support and effectively utilized it;
- clients are not enrolled in a program that normally provides transportation support; and
- clients do not currently have sanctions applied or pending because work expectations have not been met.

We did note that participants under the work incentive initiative receive an enhanced exemption which is intended, in part, to be used to provide for transportation costs. The difficulty for staff is

that while the work incentive is intended to be a positive step, it creates yet another set of policies to be learned and administered while the core policies remain in place. The issue of administering voluminous policy was raised by staff, but may have been best described in a 2009 internal report that concluded:

...due to the volume of policy guidelines and directives distributed, there is no assurance that the users have the most current procedural guidance available to them with respect to transportation benefit processing...The EIA program procedures for processing transportation benefits in SAMIN are found in the EIA Administrative Manual, memorandums, circulars, protocols, operational directives, legislation and other documentation. It may be difficult for CSD [Community Service Delivery] staff to fully understand the processing requirements.

This observation raises an issue commented on by many staff - the necessity to link discretionary policy decisions to the program's SAMIN (information technology) system and justify them within the parameters of that system. The impact of this is an apparent blurring between policy, decisions based on policy, and administrative requirements imposed by information system procedures.

Most of the concern with transportation arose in discussions with staff in rural Manitoba, primarily because of the absence of readily available public transit. Transportation was frequently cited by staff as an issue that needed to be addressed, particularly in areas outside of Winnipeg. Many EIA staff spoke of the need for a transportation benefit, explaining that poor or non-existent public transportation options severely limit many participants from seeking independence from the EIA program.

We were advised that providing health transportation is a significant cost to the program in certain regions and that policies on health transportation are subject to frequent abuse by participants. The "abuse" described by staff may be generally characterized as using medical trips for non-medical purposes, such as purchasing necessities or other appointments. While some staff saw this as abuse of the system, other staff felt that it was simply a reflection of rural reality for people of limited resources who are trying to remain connected to their community or go about the business of living.

The program does acknowledge the need for transportation related to employment, medical reasons, or for other special needs such as day care if a parent is attending an educational program or job. The program also generally acknowledges that costs vary around the province and amounts allocated for basic needs are increased slightly if participants live in northern or remote areas.

We also note that the program acknowledges the need for social trips for persons using wheelchairs. Persons using wheelchairs are eligible for up to 24 pre-authorized wheelchair transportation trips per year for social activities (e.g., shopping, religious services, sporting events, visiting), as outlined in the Administrative Manual, whether they live in Winnipeg or elsewhere in the province.

Transportation is an area where some aspects of policy are confusing and unrealistic. The most significant issue however is that it results in differential treatment for participants living in rural Manitoba communities as opposed to those living in urban centres. The program can pay the necessary costs of transportation for medical reasons and for employment and seeking employment. To be consistent with departmental and program goals, transportation policy should acknowledge that looking for work involves transportation costs that participants are unlikely to be able to afford and that restricting those costs to a select few who meet an incredibly high threshold is counter-

productive. It should also acknowledge that the reality of rural poverty means it will be necessary to pay for transportation for more than attending medical appointments; for example, to purchase food.

Financial Sanctions

By law, the program may refuse or terminate benefits when staff conclude that participants are not meeting their employment obligations. They may impose financial sanctions of up to \$100.00 per month reduction in a participant's budget. The program has specific policy for staff concerning the implementation of these "remedial measures," and the steps to be followed, set out below:

6.7.5 INSTITUTING REMEDIAL MEASURES

The role of the worker is to support the participant in pursuing employment so that dependency on assistance is reduced or eliminated. If the participant is not taking the necessary steps to become employed, the worker provides counselling support to assist the participant to identify the necessary steps to secure employment and the means to carry them out.

As long as the participant remains actively involved in the process and makes progress, assistance is not reduced. The participant is given a reasonable amount of time, generally one reporting period, to take any necessary action. The responsibility for success rests with the participant.

Where the participant is not actively involved in the process, the worker may implement remedial measures as follows...

The policy then sets out a four step process which includes the following expectations on workers, summarized below:

Step 1:

- discuss the Personal Job Plan with the participant and identifies specific concerns.
- offer assistance to solve problems, identify available supports and revise Plan where necessary.
- set time to review progress.

Step 2:

- identify the steps in the plan not being taken and discusses possible solutions with the participant (preferably in-person).
- revise plan to identify specific actions to be followed by the participant, establish completion dates and set a time for review.
- confirm conditions and consequences of not following the plan in writing to the participant.

Step 3 is the administrative process of recommending a reduction and, if approved by a director, notifying the participant of the reduction. Step 4 is a review after six months to determine if a further reduction is to be implemented.

Simply stated, this policy is the means by which participants' behaviour is to be modified through the use of financial penalties or other penalties for non-compliance. The effect of this is that basic budgets, which both complainants and staff view as inadequate, can be reduced by significant amounts.

When sanctions are applied under the policy set out above, it is on the basis that participants are not complying with a personal job plan that has been developed in consultation between worker and participant. Our review has concluded that many personal job plans, or action plans, do not result from the prescribed consultation and are not reflective of a participant's circumstances.

Staff workload makes it highly unlikely that staff will have the time to discuss a personal job plan with a participant and identify specific concerns, offer assistance to solve problems, and identify available supports. Not all staff are trained to provide this function, described in policy as "counseling support to assist the participant to identify the necessary steps to secure employment and the means to carry them out."

For those staff who do have the training or professional qualifications to identify some of the significant personal barriers identified as characteristic of many participants, such as mental illness, addictions or the impacts of domestic violence, time constraints can limit their efforts to identifying an appropriate referral and encouraging the participant to pursue that referral. In many cases staff have identified the absence of necessary services, or waiting periods of lengths that render referrals impractical, as further impediments.

In these circumstances the value of sanctions as a means of modifying participant behaviour is questionable. Applying sanctions to modify behaviour in the absence of the time, tools and resources it takes to actually change behaviour appears to undermine the intent of the program.

Communicating Policy to Staff

Finally, during the course of the investigation it became apparent that there is a question about whether current program policy adequately supports what has been described as a changing philosophy. We examined this question and looked at how program policy is communicated to staff.

EIA provides employability assessments, personal job planning, work incentives and other supports to assist Manitobans in entering, re-entering or remaining in the labour force. EIA policies are contained in the program's EIA Administrative Manual, available to the public on the internet, and to staff on its intranet. In addition to the Administrative Manual, the EIA Program periodically issues numbered "circulars" (formerly called directives). The circulars may provide clarification on policy, procedure, a rate, or be for information purposes only. If a current circular replaces a previously issued circular, the number of the old circular is provided. If a current circular references the Administrative Manual or another circular, those numbers are also provided. A significant improvement has recently been made to how staff access policy, with the addition of a search feature to the online Administrative Manual and linking circulars to the manual on the department's intranet.

We found significant variation in how staff applied certain policies, such as the policies related to home visits, common-law investigations, and employment expectations. We noted as well that many staff acknowledged the variation in interpretation of policy. One of the most significant concerns expressed by staff was what they saw as a gap between program philosophy, which they saw as changing, and program policies, which had not changed. Most staff suggested that the philosophy of the program has shifted to a "kindler, gentler program" in recent years, although some argued that it is not a change reflected in policy. Throughout the course of the review many examples were provided in support of an assertion that program philosophy was changing in ways that benefited

participants. To the extent that those examples referred to recent initiatives specifically designed to assist participants achieve independence from the program through employment, that assertion appears valid.

During our review we noted that the program appears to have become more encouraging of participants with the introduction of the additional Rewarding Work benefits, aimed at the transition to employment. The benefits vary by category, but can include a monthly Rewarding Work allowance, Job Seekers allowance, Volunteer benefit, more educational and training opportunities, increased work incentives, and extended health plan benefits.

Staff, however, identified that this approach has added to the complexity of the program, as different Rewarding Work benefits are available to different categories, and it is challenging for staff to know which benefits apply in different situations. Staff also noted that with the new benefits, particularly the enhanced work incentives, participants may stay on the EIA program longer, contributing to higher caseloads.

In response to a question about how program policy was communicated to staff, the most common concern expressed by staff was that information about program changes was not communicated to them in a timely manner. Staff described hearing about program changes through the media or from participants or advocates. Some staff felt there should be more training around new initiatives to ensure staff were equipped to administer them.

Some staff complained about the volume and frequency of new circulars, suggesting there was not always time to read them or figure out how to implement them. Others complained about the language, which they said could be hard to understand. Some staff spoke of a communication gap between line staff and “head office,” and were concerned about the lack of consultation with front line staff when program changes occurred.

However, there were staff who felt that given the complexity of the program and the number of recent changes, the department was doing a good job keeping them informed. Many positive comments included reference to a recent change making the circulars available online internally on the department's intranet.

The program's central management advised us that two years ago, the program implemented a Quality Assurance Unit, with three staff, to monitor if policy was being applied as intended. In discussions with staff about varying interpretations of program policy, one staff person stated, “*The system shouldn't rely on individuals to do the right thing; the system should be designed to do the right thing.*” Policy in the EIA program is not always “designed to do the right thing.”

Policy is often mixed with procedures. Staff work in an environment where it is difficult to separate program policy from the requirement to navigate through SAMIN, the information technology system that seems best suited to issuing financial benefits and ensuring administrative approvals are obtained.

There are some program policies that impose expectations on staff that they cannot meet because of workload or lack of training, or other factors beyond their control such as the lack of necessary community resources.

The program has changed as reflected in additional initiatives and policies, but without rescinding or streamlining older policies. So although it is moving in a new direction, many of the old rules still apply. The program does not develop new policies, and keep the best of the old; it layers new policies on top of old – resulting in more bureaucracy and more complexity.

The program has introduced new benefits to make the prospect of work more attractive to participants (all of the Rewarding Work benefits), yet it still uses a punitive approach – sanctions or cutting participants off – in an attempt to gain compliance. When asked if sanctions work, most staff said “no.”

Recommendations

35. It is recommended that the department review all EIA policies to ensure they are supportive of both the department’s stated commitment to poverty reduction and to specific program goals. The review should include a mechanism for consulting with program delivery staff in all regions of the province.

36. It is recommended that program policy be streamlined, and that outdated or duplicate policy be deleted. The department should review policy and consider separately identifying financial administration procedures. The department should undertake a review to ensure that SAMIN facilitates the implementation of program policy, and not restrict or dictate it.

37. It is recommended that the department review the definition of basic necessities to ensure that support is provided for the communication and transportation needs of participants consistent with program goals and the requirements imposed upon participants.

38. It is recommended that the department consider including in any policy that sets out requirements or expectations on participants, a mechanism for determining their capacity to meet those expectations, what additional supports would be necessary to meet those expectations, and a plan to provide those supports.

39. It is recommended that the requirements of program policy for staff take into consideration limitations that result from staff workload, and be consistent with staff qualifications and training.

40. It is recommended that program policy include a clear statement of program philosophy, and all policies should be consistent with that philosophy.

41. It is recommended that program philosophy determine discretionary decision making, and that program philosophy and policy be highlighted and included in staff training.

Departmental Response:

The department has agreed to implement recommendations 35, 36, 39, 40 and 41.

With respect to recommendation 41, the Department advised that it will enhance training modules to further strengthen understanding of policy and how to apply discretionary decision making. The target date is set for fall 2011.

In September 2010, the department advised that recommendations 37 and 38 are under review.

With respect to recommendation 38, the department indicated that this recommendation is reflected in current policy. It advised that "Section 6.3.3 "Employability Assessment" provides direction on assessing a participant's family responsibilities, employment history, skills, abilities, access/availability of resources, physical or mental health, physical or mental capacity and readiness/motivation. Practices to further support this direction will be reviewed.... The target date for initiation is 2011/12."

COMMON-LAW RELATIONSHIPS

The complainants' issues included a concern about the treatment of women alleged to be in unreported common-law relationships. Their letter identified their concern in this way:

The policy and procedures for ascertaining if a participant is in a common - law relationship, are invasive and gender biased. If a woman begins a relationship with a person and that person visits the EIA participant on a regular basis, including over night, then the EIA participant is told that they must reapply for assistance as a couple, thus forcing people into relationships. The new person in their life must declare their income and it is considered as earned income for the whole family. This places an unfair burden upon persons meeting new people and expanding their relationships. The lack of financial independence leaves women more vulnerable to violence and abuse, given that it is more difficult for women to leave abusive and violent relationships when we don't have our own income. No opportunity is provided for couples to determine if the relationship is for the long term or not.

Applicants to the EIA program are required to disclose marital status and participants are required to report any change in marital status. For the purposes of program eligibility, a common-law relationship can impact both financial and categorical eligibility. To determine financial eligibility, the resources of a common-law partner must be considered in the same way as those of a married partner.

The Act requires that people in a common-law relationship be treated in all respects in the same manner as people who are legally married. There is no definition of “common-law” in the Act, but it does refer to people “...cohabiting in a conjugal relationship...” The Regulation uses the same phrase, but also defines “common-law-partner” as “...member of the applicant’s or recipient’s household...”

The Employment and Income Assistance Act

Common law relationships

5(5) Where two persons who are not legally married to each other are living together under circumstances that indicate to the director that they are cohabiting in a conjugal relationship, they shall, for the purposes of this Act and the regulations, be treated in the same manner as two persons who are legally married, and any application by either or both of them for income assistance or general assistance shall be dealt with in every respect in that manner.

The *Employment and Income Assistance Regulation 404/88R* defines common-law partner as follows:

“common-law partner” means a member of an applicant's or recipient's household who lives with the applicant or recipient under circumstances that indicate to the director that they are cohabiting in a conjugal relationship;

The EIA Administrative Manual refines the definition further by setting out the three factors, with examples, that staff can use to determine if in fact a common-law-relationship exists.

8.1.4 COMMON LAW UNIONS

Financial interdependence, family interdependence and shared residency are factors which establish a common-law relationship, with the financial interdependence factor being the most

important. Evidence of two of these three factors must be present in order to establish a common-law union.

Identifying Factors

The following list of identifying factors, which may indicate the existence of a common-law union, is grouped into three types: financial interdependence, family interdependence and residency. It should be recognized that the list does not exhaust all factors which might be considered in identifying these situations and that evidence of at least two types of factors must be present in order to establish a common-law union.

Financial Interdependence

- tendering of credit (i.e., one party can purchase goods and services in the name of the other, joint credit accounts)
- joint bank accounts or the pooling of other financial resources
- joint bank accounts or co-signing for loans
- joint investments or joint ownership of property or assets
- one party claims the other as a dependent for income tax purposes, unemployment insurance benefits or other benefits
- one party assumes total or partial costs of basic necessities, shelter and services for the other or both parties share these expenses

Family Interdependence

NOTE: While the traditional terms of "husband and wife" and "Mr. and Mrs." are used, the policy also applies to more contemporary terms, such as, "partner", "companion" or "spouse equivalent".

- the couple presents themselves in the neighbourhood or community at large as husband and wife
- the couple presents themselves to public authorities as husband and wife
- documents (such as leases) are titled or signed as Mr. and Mrs.
- contractual recognition of a spousal relationship (e.g., cohabitation contract)*
- the couple is invited and accepts invitations as Mr. and Mrs. and present themselves at social gatherings as husband and wife
- the couple presents themselves at church or benevolent organizations and their related functions as husband and wife
- the couple signs as Mr. and Mrs.
- the couple introduce themselves as husband and wife
- the alleged common-law spouse, the participant and the participant's children are registered with the Manitoba Health, Insured Benefits Branch as a family unit

Residency

- the couple occupy the same premises
- public records indicate that the alleged common-law spouse has the same address as the participant, including records such as:
 - Motor Vehicles (driver's licence, vehicle registration)
 - Land Titles
 - court dockets
- the alleged common-law spouse's telephone is listed at the participant's address
 - Henderson Directory lists the alleged common-law spouse as living at the participant's address
 - the alleged common-law spouse's name appears on utility bills for the participant's residence
 - other agencies (for example, the local municipality) list the alleged common-law spouse as living at the participant's address
 - the participant's landlord, caretaker or housing authority indicate that the alleged common-law spouse lives at the participant's address and/or is listed on the lease for that residence

Interpretation of Common-Law Relationship

Although the Act does not provide a definition of common-law, there is a wealth of case law that can be used as guidance for policy makers attempting to craft a way of determining if a common-law relationship exists.

In the case of *Siev v. Canada (Minister of Citizenship and Immigration)* (2005 FC 736), Mr. Justice Rouleau made this observation:

[15] From the language used by the Supreme Court throughout M. v. H., it is clear that a conjugal relationship is one of some permanence, where individuals are interdependent - financially, socially, emotionally, and physically - where they share household and related responsibilities, and where they have made a serious commitment to one another.

Based on these factors, the following characteristics should be present to some degree in all conjugal relationships, married and unmarried:

- mutual commitment to a shared life;*
- exclusive - cannot be in more than one conjugal relationship at a time;*
- intimate - commitment to sexual exclusivity;*
- interdependent - physically, emotionally, financially, socially;*
- permanent - long-term, genuine and continuing relationship;*
- present themselves as a couple;*

EIA Staff Definitions

While neither the Act nor the Regulation provides a clear definition of common-law union, the department has made a significant effort to provide guidance to staff through written policy. During the review EIA staff were asked how they would respond to a question from an EIA participant who asked them to define common-law relationship. The wide range of definitions provided by staff reflected varying levels of understanding of the concept of common-law, highlighting the difficulty the program has explaining this concept to participants. How a participant is treated can depend on a particular worker's understanding rather than a clear and consistently applied policy.

Discussions with staff also revealed that program participants can have very different interpretations and levels of understanding of the term common-law, and suggested a need for greater efforts to explain the concept to participants particularly in light of the potential consequences of being in an undeclared common-law relationship.

Providing a definition of common-law union for both staff and participants is a threshold issue. Other issues identified by both complainants and staff relate to the vulnerable position of women on assistance in the early stages of a relationship, their ongoing need for assistance during that early period, and the concept of a fixed time line for assessing the permanence or stability of a relationship.

These issues are not new. Informative commentary on these matters can be found in a 2002 judgment in which Mr. Justice Laskin of the Court of Appeal for Ontario (*Falkiner v Ontario*, Docket 35052) wrote, in part:

33. [32] *Both Mr. Thomas and the Director accept the definition of a relationship amounting to cohabitation used by the Board in its decision P1032-22:*

The concept of circumstances that “amount to cohabitation” includes circumstances that show the relationship to be marriage-like. The Board’s interpretation is that the social and familial aspects amount to cohabitation if there is evidence that, on the whole, the co-residents live and interrelate with family, friends, and community as a couple rather than as two individuals sharing a residence.

34. [33] *I accept this statement as a reasonable working definition of cohabitation, while acknowledging that its generality will likely produce some hard cases at the margins. At least this definition reflects a level of commitment that is inherent in a marriage-like relationship but is not present when two people simply spend a lot of time together. Indeed, two people may live together and spend nearly all of their time together for many reasons other than because they are spouses. Some of these reasons might be close friendship, economics or simply a lack of alternatives.*

62. [61] *The government submits, however, that the 1995 definition is at least an improvement on its predecessor, which mirrored the three year rule in the Family Law Act definition of spouse. The government points out that any time period will be arbitrary and that requiring a three year cohabitation period to be a spouse gives unmarried couples a grace period unrelated to the actual circumstances of their relationship. Thus, the government says that the former definition created inequities between married and unmarried couples. That may be so. But while the three year period was perhaps arbitrary, at least it was a bright line test that was easy to administer and generally accepted. I do not suggest that the Family Law Act model is the only solution to the government’s drafting problem. I recognize that the purposes of the Family Law Act regime and the social assistance regime are different. These different purposes may argue for different definitions of a spousal relationship. I simply say that the current definition of spouse in s. 1(1)(d) of Regulation 366 under the Family Benefits Act is too broad to capture only spousal or marriage-like relationships.*

Justice Laskin went further and made some observations. He stated in part:

106. [102] *What is more, because the 1995 definition potentially creates forced financial dependence, it likely has a chilling effect on the formation of relationships. The Board found that the definition has a chilling effect:*

The Board is satisfied that the uncertainty imbedded in the definition of spouse and in its application by social assistance authorities, combined with the drastic effect on the availability of assistance if one is found to fall within the definition, would have a chilling effect on a sole support parent’s attempts to build a new family through a relationship with a person of the opposite sex. She is not free to choose how to live her personal life, nor to pursue in the manner of her choice, an intimate relationship with a man without the fear of putting her own and her children’s survival at risk.

107. *The Divisional Court upheld this finding and, although the government argues otherwise, in my view it is reasonably supported by the evidence. Each respondent testified that she would not have entered into a co-residency relationship in the first place if it meant losing her entitlement to family benefits.*

108. [103] *Although the expert evidence canvassed by the Divisional Court in support of this chilling effect was largely retrospective, the chilling effect can be inferred from the definition itself. From the moment a single mother on social assistance begins co-residing with a man, she risks being reclassified as a spouse and losing part or all of her entitlement to social assistance. And if the co-residents reapply as a couple, the social*

assistance cheque may be made out to the male co-resident, leaving the woman in a position of economic dependence on a man who has no legal obligation to support her or her children. To the extent that the challenged definition of spouse has a chilling effect on relationship formation, it interferes with the respondent's highly personal choices and affects interests that go to the core of their humanity.

Many of the staff we interviewed spoke of their concern for women in situations not unlike those discussed above. They spoke of the potential for driving women into relationships in which they might not be safe, suggesting that a premature determination of common-law could force a woman into a dependant relationship for the sake of financial security. There was also concern about the presumption of financial interdependence in the early stages of relationships, where a woman might be in a relationship but still require assistance to provide the cost of basic necessities. Some staff spoke of the importance of not jumping to conclusions.

The complainants in this case support a three month period as a threshold test for a common-law union, viewing it as a more realistic measure of whether a relationship has any stability. Staff were asked for their views on the three month test, and about any possible drawbacks.

Some staff supported the concept, suggesting that it would at least make the concept of common-law easier to explain to participants. Others supported the concept because they felt it was a reasonable period of time for people to determine whether or not they were or wanted to be in a committed relationship.

Other staff felt a time period would not change the requirement to make a determination on the basis of the existing legal criteria.

Investigations

How women are treated can depend more on the approach taken in an investigation than on the specific definition of common-law union. How women are notified of an allegation, the process by which they are advised of the case against them and given an opportunity to respond, and who conducts the investigation are all important issues raised by both complainants and EIA staff.

The EIA Administrative Manual provides some guidance to staff on investigations and on termination procedures if an investigation confirms an undisclosed common-law relationship.

8.1.4 COMMON-LAW UNIONS

Investigation of Alleged Common-Law Unions

When there is a belief that an EIA participant is living in a common-law union, worker must determine if there is evidence of financial interdependence, familial interdependence or shared residency.

An investigation into a participant's situation will involve only activities which would not unduly infringe upon the rights and privacy of the participant and the alleged common-law spouse. For example, relatives, neighbours or the participant's children will not be contacted for information. Investigation of the alleged common-law spouse may include examining public or government records and contacting officials. Sources which require a signed release to provide information will not be contacted.

The participant's premises should not be searched to look for evidence of the alleged common-law spouse.

The Manager of the Investigative Unit may be consulted when determining whether the evidence of a common-law union is sufficient to support the allegations.

If the investigation results in conclusive evidence of a common-law union, the EIA worker should meet with the participant to discuss the evidence gathered and the conclusion that has been drawn from the evidence. The worker should discuss the options available to the participant of the common-law union and advise the participant of the right to appeal any decision to deny, discontinue, reduce or suspend assistance. The participant should then be given the opportunity to respond to the evidence presented.

If the participant admits to the alleged common-law union, assistance should be terminated in accordance with established policy. Depending on the circumstances, a signed declaration from the participant may be requested to confirm the common-law union.

If the participant is able to provide a satisfactory alternate explanation for the evidence, no further action should be taken.

Termination Procedures

If the decision is made to terminate assistance, the participant should be advised in writing. The letter should include the reason for the decision, notice of the right to appeal, and the options available if the family is in need of financial assistance or other services. Staff should facilitate referrals to a local municipality or other agencies as required.

Once the participant has been advised that the case will be closed, assistance should be terminated. If a participant requests the closure of his or her file due to a common-law relationship and does not intend to appeal, this intention should be requested in writing.

Once the participant has been advised of the closure of the case, interim assistance may be provided if the participant requires assistance while appealing the case or making other arrangements for financial assistance

Interviews with staff revealed a wide range of approaches to dealing with these issues, starting with how women are initially contacted and informed of an allegation. We were told that in some cases women were sent a letter indicating that benefits were held, "pending confirmation," or inviting them to come to a meeting in order "to avoid delay in benefits."

There were differences in how much information a participant might be given about the allegations to which they were required to respond, with some workers indicating they would reveal very little and others who felt the need to be more forthcoming. Some workers viewed these meetings as investigations of possible fraud and others viewed them as an opportunity to discuss a woman's circumstances to see if there had been a change that truly amounted to a common-law union.

Some workers spoke of unannounced home visits, in which they noted men's shoes at the front door or men's clothes in closets, or phone calls to a participant's residence to see if a man answered the phone.

At the same time there were many staff who spoke of the complexity of determining a common law union and saw the process as one in which they were trying to determine ongoing eligibility. We were advised that a common scenario was that they would find an unreported relationship, but not

one that reflected fraud because both parties required assistance. In such cases the result would be a change in status after an application as a family.

Investigations can be done either by counsellors or by investigators, by both together, or with a counsellor doing the initial investigation and then turning it over to an investigator. Some staff expressed some concern about the possibility of investigations putting them in a conflict with what they see as their helping role.

Other staff had concerns about turning over this function to investigators, suggesting that while there were cases of alleged fraud that required an investigator there were other circumstances where this was inappropriate and a social work approach was more appropriate.

Analysis

Defining common-law unions more narrowly than is reflected in society may run the risk of forcing women into unhealthy dependent relationships through the premature termination of social benefits. As cited on page 83 of this report, Justice Laskin of the Court of Appeal for Ontario made the following observation:

From the moment a single mother on social assistance begins co-residing with a man, she risks being reclassified as a spouse and losing part or all of her entitlement to social assistance. And if the co-residents reapply as a couple, the social assistance cheque may be made out to the male co-resident, leaving the woman in a position of economic dependence on a man who has no legal obligation to support or her children. To the extent that the challenged definition of spouse has a chilling effect on relationship formation, it interferes with the respondent's highly personal choices and affects interests that go to the core of their humanity.

Manitoba EIA policy lacks a mechanism to measure and evaluate the stability or permanence of a relationship that might affect program eligibility.

As well, the requirement that only two of the three enunciated factors must be present to “prove” the existence of a common-law union is a weakness. The case law suggests a better approach would be to examine and evaluate all three factors.

During the investigation we confirmed that three other jurisdictions, British Columbia, Saskatchewan and Ontario, have set time frames to address the matter of relationship permanence. These jurisdictions use a time frame of three consecutive months when determining residency and require both financial and familial interdependence be evident.

A time frame can help prevent assuming the existence of a common-law relationship prematurely. A minimum time frame may also serve as a safeguard to prevent a casual relationship from being deemed to be a common law relationship with its resulting impacts on a woman's eligibility for EIA benefits.

The policy in Ontario uses all these factors and defines common-law unions as follows:

The test to determine if two adults living together who have not declared themselves to be spouses and who are not close relatives are “spouses” is three part:

First, there must be a determination that the two adults have been living together for three months or more; and

Second, there must be a determination that the extent of financial support by one adult to the other adult or the degree of financial interdependence between the two adults is marriage-like; and

Third, there must be a determination that the social and family-like aspects of their relationship are marriage-like (i.e., the adults live and interrelate with family, friends and community as a couple rather than as two individuals sharing a residence).

It is worth pointing out that in Ontario, departmental policy addresses not only the definition of a common-law union but includes sections on *Decision-Making Principles and Standards*. Ontario also uses a *Questionnaire* as an investigative tool and provides staff with sections on *Assessment Principles* and *Assessing Responses to the Questionnaire*.

There might be a concern that requiring the presence of all three factors (financial interdependence, familial interdependence, and residency) will fail to address those common-law unions where one spouse works outside of the community (for example, a spouse working in Alberta). Staff interviews suggest that this would be the exception rather than the norm in the vast majority of common-law unions that EIA investigates annually.

The consideration of all three factors does not necessarily require that all three be present. In those exceptional cases referred to above, the program could make a determination with only two of the three factors, providing the evidence conclusively determines the existence of financial interdependence within the context of a common-law union.

The confusion among staff about the definition of common-law relationships and the diverse approaches taken toward common-law investigations, together with comments from staff about program participants' understanding of the issue, suggests the department needs to do a better job of explaining this issue to its participants.

There appears to be a great deal of discretion built into the EIA program that can be exercised to either assist participants, or be restrictive in the way benefits are administered. Likewise, there is discretion regarding the manner in which investigations are conducted and we were advised of inconsistent investigative practices in the field.

Some staff indicated that they would commence an investigation with an unannounced home visit while other staff noted they would first conduct the necessary background checks, which are less intrusive in nature, in order to substantiate the validity of a complaint or allegation.

The issue of undeclared financial resources can be addressed without pressuring women into the confines of a common-law union, where there may be no permanence to the relationship and no legal responsibility may exist for the partner to provide ongoing support for the woman or her children. Undeclared financial resources should be investigated by EIA but it should not presume the existence of a common-law union unless all three of the above noted factors are present.

In some offices, case counsellors, without any investigative training or procedural guidance, are conducting detailed investigations that would typically be assigned to investigators in other offices.

A common theme was the lack of specialized training offered by the program and lack of policy outlining the appropriate investigative steps that should be taken when responding to allegations.

Case counsellors could not identify any policy that articulates their role in the investigative process, or that identifies what matters should be referred to an investigator. A number of staff expressed concern that their relationships with participants would be adversely affected depending on their level of involvement in the investigative process while others noted they have been provided with no training in this particular area.

Based on the staff interviews, it does not appear investigations are typically reviewed or audited to ensure appropriate recommendations were reached or policy was correctly interpreted. Investigators report to directors of community areas or regions in which they work. Staff indicated the need to reinstate a Manager of Investigations, specialized in this area, to address issues regarding staff training needs, quality assurance audits and the development of investigative aids to assist staff in carrying out consistent and appropriate investigations.

Staff indicated there is a lack of training available to them in the area of investigation and a notable absence of investigative tools provided by the program to assist them in carrying out their duties.

While interviewing staff regarding the steps they take when investigating allegations of common-law unions, there were areas where the principles of procedural fairness did not appear to prevail (for example, giving notice to an individual being investigated and an opportunity for the individual to address evidence against them prior to conclusions being rendered). The Social Services Appeal Board made a similar observation in a case provided to our office.

Recommendations

42. It is recommended that policy on common-law unions be clarified to include a minimum time frame to address the permanence of a relationship and to ensure the consideration of all three factors (financial interdependence, familial interdependence and residency) when assessing the existence of a common-law relationship.

43. It is recommended that policy be clarified by articulating the role of case counsellors in the common-law determination process and clarifying when matters would be referred to the area investigator.

44. It is recommended that policy be amended to eliminate the practice of home visits by investigators.

45. It is recommended that an investigative policy be developed, considering other programs such as British Columbia and Ontario, including a package of investigative tools to assist staff in reaching the appropriate conclusions when investigating alleged common-law unions. Tools should include:

- **Clear and concise policy regarding the investigative process**

- Investigative checklists or standards to achieve consistent investigations and appropriate outcomes
- Questionnaires to assist staff and participants determine common-law relationships
- Standardized forms when conducting interviews that would document which parties were present, the duration of the interview, questions and responses, and the nature of the discussion

46. It is recommended that a position be assigned responsibilities for the duties formerly performed by the Manager of Investigations, to ensure quality assurance audits are conducted, training plans are established for investigative staff, and investigative tools are developed to achieve a consistent approach to investigations.

47. It is recommended that information about common-law unions be published in a plain language document available to all participants that defines “common law relationship” and explains how to talk to a case counsellor about changes in relationships, similar to an Ontario document titled, “Do you live with someone who might be seen as your spouse?”

48. It is recommended that policies around investigations include the principles of natural justice and that investigative staff receive training in the area of the requirements of natural justice as it relates to investigations conducted by the program.

Departmental Response:

The department has agreed to recommendation 42, advising us in June, 2010 that they would change policy to consider relationships common-law after three months. We were advised in September 2010 that this policy change was implemented.

The department has agreed to recommendation 43 and advised that EIA staff have been given new tools and procedures to assist with the assessment of common-law relationships. They have advised that Case Coordinators and Counsellors continue to have a role in determining and verifying eligibility.

The department has accepted recommendation 45.

The department has accepted recommendation 46 and advised that once an individual is assigned the responsibilities previously performed by the Manager of Investigations, this person will be responsible for clarifying the role of investigators. The target date is fall 2011.

The department has accepted recommendation 47, and advised that it will prepare a fact sheet on common-law relationships.

The department has accepted recommendation 48 and advised that the person assigned the responsibilities performed by the Manager of Investigations will be responsible for reviewing and revising policies and training. The target date is fall 2011.

The department disagrees with recommendation 44, stating that it continues to see value in conducting home visits by investigators but will develop policies and procedures to clarify the roles and responsibilities of other staff in the investigative process, with an expected target date of fall 2011.

Our Comment:

We have considered the department's response but believe recommendation 44 is appropriate in light of our investigative findings and conclusions.

CODE OF CONDUCT AND COMPLAINTS

The complainants assert that there is no “code of conduct” for EIA staff, nor any formal complaint resolution mechanism. Their letter to our office states, in part:

No code of conduct is made available to participants so that they are aware of what they can expect from their case coordinator. Also no neutral, transparent process or identified protocol exists for participants to formally register and have resolved, their concerns and issues about how they are treated by the EIA staff.

In discussions with the complainants we were advised that participants’ concerns covered a broad range of issues, from communication (workers not returning phone calls) and worker attitude (not treating participants in a respectful manner), to poor decision making (failing to properly exercise discretion in a participants’ favour) and inadequate benefit levels.

There are no provisions in the Act or Regulations relating to complaints from program participants, except for those matters to which the independent Social Services Appeal Board process applies.

There is no written program policy on the receipt and documentation of complaints, nor any policy that outlines how complaints are to be resolved.

The Manitoba Civil Service Commission’s Value and Ethics Guide applies to program staff, as it does to all public servants, and provides some guidance on both the standard of service and the treatment citizens can expect to receive from public servants. The Guide states:

Manitoba’s civil servants act with respect for others by:

Treating the public and colleagues with respect, courtesy and dignity

Treating the public and colleagues fairly and consistently...

Services to the public

We are committed to ensuring all contact with the public is prompt, courteous, respectful and contributes to making the experience of dealing with government as satisfying and constructive as possible.

The guide provides no details as to how these broadly stated goals are to be achieved.

Program Practice

Although there is no program-wide requirement or standard for a complaint mechanism, in one region we did find a standardized letter outlining what that region’s complaint resolution process looks like. This letter does not appear to be used only for EIA participants, but for clients of all programs for which the Regional Director has responsibility.

This region’s standardized letter lays out the process as follows:

We recognize that at times disputes and disagreements arise around the services that you may feel you should receive. A complaint/concern resolution process is available to you. We expect that when disputes occur people will first try to resolve the matter with their assigned staff person. Should that not be effective then the next

step is to discuss the matter with the staff person's supervisor or program manager. Finally, within the Region, the Regional Director may become involved in disputes that cannot be resolved at the manager level.

We were told that this letter is sent out by the Regional Director and is typically used when the program is dealing with what it feels are difficult or challenging participants. We were told that, at the time of our interview, this letter had been sent approximately three times over the course of the previous five years.

Staff in each region were asked how complaints are dealt with in their office. Based on staff responses, it appears that a similar approach to resolving complaints is being used in all regions of the province.

Staff reported that when participants called with a complaint they would attempt to resolve the complaint directly with the individual. If this was unsuccessful, staff would refer the participant to their supervisor. Typically, supervisors would then discuss the matter with the involved staff person and then determine an appropriate course of action. In many cases, supervisors directed the participant back to the staff person to resolve the matter. In other cases, supervisors would make a decision taking whatever action they felt was appropriate given the circumstances.

The final level of complaint resolution is either to the Regional Director if outside the City of Winnipeg, or to the appropriate Area Director if within the City of Winnipeg. We were told that these regional or area directors do one of two things: support the decisions and actions of staff, or direct staff to take a particular course of action to resolve the complaint.

As part of the Integrated Service Delivery model within Winnipeg, there is also an additional layer of management whereby Area Directors report to a Community Area Director (CAD), although CADs appear to have little role in the complaint resolution process.

We were advised as well that participants sometimes complained directly to office of the Minister of Family Services. These complaints are addressed by staff of the Service Delivery Support office in Winnipeg. This office houses program specialists, who, among other things, act as the Minister's designate for certain levels of program expenditure.

In these situations, it appears that although the complaint comes to the program through the Minister's office, the inquiry process mirrors the one described above where someone in a supervisory capacity will discuss the complaint with the assigned case counsellor in an effort to identify an appropriate response.

The documentation of complaints received varies from office to office, depending on the worker and supervisor involved. Typically, a letter of complaint received in an EIA office would be added to a participant's case file. We were told that other actions, such as discussions with participants or decisions changed in response to a complaint, were recorded electronically in case notes.

No office appeared to track either the number or type of complaints received.

It appears that the complaints reported by staff were similar to the concerns identified by the complainants. Complaints identified by staff include workers not returning phone calls quickly

enough, accusations that workers treat participants rudely, concerns about the inadequacy of the level of benefits provided by the program, and complaints about decisions made by case counsellors.

Regardless of the nature of the complaint, the process explained above is largely followed throughout the program.

Staff reported that they felt the complaint resolution process worked well for them. In most cases, staff felt supported by their supervisors and directors.

One of the specific complaints discussed was the allegation that workers were not returning phone calls in a timely manner. Through the course of our review we heard from workers regarding the challenges that they have in trying to stay on top of their case loads and the volume of calls that they receive on a daily basis. Some workers developed strategies whereby they would only check their messages at specific times of the day, others would only check once a day, while others would try and keep up with the messages as they came in.

In the absence of a specific incident or allegation that could be investigated, we did not engage in any analysis of staff attitude towards participants. However, we did hear candidly from many staff about what they felt was the basis of complaints from participants. Written communication with program participants is sometimes awkward and less than clear. This can result in calls from participants to both financial workers and case counsellors, seeking explanations of letters they have received from the program.

The program is complex and participants frequently seek information about additional benefits for needs not covered by the basic budget, and the processes they must follow to obtain those additional benefits. As well, there are significant reporting requirements for participants, particularly those to whom employment expectations apply.

Workers are also bound by law and program policy in their day-to-day decision making. Decisions are often made in accordance with program policy but viewed by participants as a worker exercising discretion to deny a benefit, when in fact the worker has had no discretion or authority to approve a request.

At the same time, program staff do exercise discretion in many areas. This leads to situations of conflict when a participant disagrees with a worker's judgment. This situation is exacerbated when participants are aware of situations where discretion is exercised differently by different workers or in different offices.

For all of these reasons, complaints about the program are inevitable and those complaints are often directed at staff. Despite this, most staff did not view complaints as a particular challenge in their day to day work.

Alternative Mechanisms

During the investigation we looked at how another jurisdiction deals with the issue of staff conduct, service standards and complaints. In British Columbia, the income assistance program has a Service Code, Service Standards, and a Service Commitment.

All of these may be viewed on the B.C. Ministry of Employment and Income Assistance's website (<http://www.hsd.gov.bc.ca/publicat/posters.htm>). Three posters provide the public with information about its Service Code, Service Standards, and Service Commitment.

The Service Code document indicates the following:

As a client or a member of the public, you can expect Ministry staff to provide:

- courteous, professional and consistent service, in a manner that emphasizes listening to understand;
- respect for your privacy and confidentiality;
- fair and thorough assessments of your situation and needs;
- assistance in identifying realistic approaches for meeting your needs;
- information and clear explanations of decisions as soon as possible;
- help in understanding the Ministry's legislation, and internal reconsideration and appeal processes.

The Service Standards document describes a number of benchmarks which the Ministry strives to meet. These standards include:

- phone calls being answered by the fourth ring;
- phone calls being responded to within 1 business day;
- decisions being made within set time frames depending on the nature of the decision. These time frames are discussed in the poster.

The Service Commitment document outlines the complaint resolution model. It directs participants to try and resolve the matter with their assigned worker, failing that, with the assigned supervisor, and failing that, with a Service Quality Manager. It is similar to the informal approach used in Manitoba.

These three documents outline, in plain language, the goals and values of the Ministry and describe how it plans to achieve these goals. They also provide an avenue for the public to bring their concerns or complaints forward when they arise.

Analysis

Manitoba's EIA program does not have a service code or established program standards in written policy, governing the interaction between staff and participants. It does not have a formal complaint or dispute resolution mechanism. Neither the number nor type of complaints is recorded in any information management system.

Addressing these gaps is necessary to achieve fairness for both participants and staff, and to allow program management to identify and address specific areas of concern. Learning from complaints can lead to program improvements.

Despite most workers' best efforts, it appears that in some cases, workers do struggle with ensuring prompt and timely service to participants. This seems, in part, to be a matter of the volume of work required by workers. The volume of interaction between staff and participants, in the context of a

benefit program characterized by the extensive use of discretion, increases the likelihood of complaints.

Despite the absence of policy, the program largely follows a similar process for dealing with and resolving complaints. That process is adequate but needs to be written into policy and formally communicated to both staff and participants. Based on our discussions with staff and considering the program's current method of trying to resolve complaints, the complaint resolution model should incorporate the following steps:

1. The participant should first attempt to deal with their complaint with their assigned case counsellor.
2. If the counsellor and the participant are unable to resolve the complaint, the matter should be referred to the appropriate supervisor.
3. If the supervisor is unable to resolve the complaint, the matter should be referred to the appropriate Area Director within the City of Winnipeg, or to the Regional Director if outside of Winnipeg.
4. File documentation should be completed at every stage of the process and should include the nature of the complaint, any decisions made or actions taken, the reasons for those decisions or actions, and how the disposition of the complaint has been communicated to the staff person and the complainant.

The first step noted above will likely mean communication by phone. Lack of basic telephone service has been identified by complainants and staff as a problem. If there is a process followed by staff, agreed to by management, where workers receive or return phone calls during a specified period each day; that information should be communicated to participants.

The program should also consider publishing documents similar to those by B.C.'s Ministry of Employment and Income Assistance. Those documents should set out the values of the program, and what participants can expect in terms of service when they need to contact that program. Finally, these documents should provide, in plain language, a complaint resolution model.

All program information about its service standards and complaint mechanism should clearly indicate that participants utilizing the complaint mechanism process do not give up any right of appeal that may exist for matters appealable to the Social Services Appeal Board.

Recommendations

49. It is recommended that the department write a policy setting out both service standards and a complaint resolution process.

50. It is recommended that the department communicate this policy to staff and the public on the department's website and incorporate the policy into program materials.

51. It is recommended that all complaints received and the actions taken to try and resolve them be recorded in a database.

52. It is recommended that information about complaints, both the subject matter and the number by region, be reviewed and analyzed for quality assurance and training purposes.

Departmental Response:

The department has accepted recommendation 49, and advised in June, 2010 that it will develop a code of conduct and service standards.

The department accepted recommendation 50.

The department indicated that recommendations 51 and 52 are under review, and advised in September 2010 that it will explore options on how best to address these recommendations as they may have significant resource implications. A winter 2010/11 target date was set.

EIA APPEAL PROCESS

The complainants' letter identified the following areas of concern with regard to the EIA appeal process and the Social Services Appeal Board (the appeal board).

In EIA policy it states that participants who file an appeal should be provided with travel costs to attend the appeal by the EIA Program. This policy is not applied consistently. Neither the EIA Program nor the Social Service Appeal Board (SSAB) has any formalized mechanism or policy to refer appellants to advocacy resources, to ensure that they are represented in a comprehensive and thorough fashion at the appeal. There is not any mechanism to ensure the imbalance of power that is inherent in the EIA Program is counteracted by an advocate. No provision for witness fees means that an appellant is at a financial disadvantage in having their case presented with all relevant information available. The SSAB is not obligated to provide reasons for all their decisions made in a case. While the SSAB does identify what rationale they have utilized in making their decision on an appealed issue, they are not required to explain their reasoning with regards to requests for reconsiderations or extended timeframe for filing an appeal. This leaves the EIA participant with little information and therefore little understanding as to why a participant may have been granted their request or refused.

The complainants believe that the lack of a formal policy on providing travel expenses and witness fees makes the appeal process less accessible to people of limited means. Their concern about reasons for decisions, when the appeal board considers requests for extensions of time or for reconsideration, raises an issue of procedural fairness.

The alleged “imbalance of power” and the availability of advocacy resources is a larger policy question. In discussions with the complainants, we were advised that they were seeking a publicly funded advocacy service available to assist anyone appealing an EIA program decision.

EIA APPEALS

Issues with the appeal board arise because it is the appeal body for certain decisions under *The Employment and Income Assistance Act*, as follows:

Right of appeal

- 9(3) An applicant or a recipient may appeal to the appeal board where the applicant or recipient feels his or her treatment was unfair because
- (a) he or she was not allowed to apply or re-apply for income assistance or general assistance;
 - (b) his or her request for income assistance or general assistance or increase in income assistance or general assistance was not decided upon within a reasonable time;
 - (c) his or her application for income assistance or general assistance was denied;
 - (d) his or her income assistance or general assistance was cancelled, suspended, varied or withheld; or
 - (e) the amount of income assistance or general assistance granted is insufficient to meet his or her needs.

Anyone affected by such a decision is entitled to written notice of the decision, stating the reasons for the decision and advising the person of their right to appeal the decision to the appeal board. Decisions of the appeal board may be appealed to the Manitoba Court of Appeal, but only on questions of law or jurisdiction.

Under *The Social Services Appeal Board Act*, appeals must be filed within 30 days after the date of the decision or order. The Act does give the board the authority to extend the time limit for filing an appeal, either before or after the time limit expires.

Social Services Appeal Board

The Social Services Appeal Board acts as the appeal body for certain decisions made under a number of designated statutes, including *The Employment and Income Assistance Act*. The board operates under the administrative umbrella of Manitoba Family Services, but at arm's length from departmental programs.

Pursuant to *The Social Services Appeal Board Act*, members of the board are appointed by the Lieutenant Governor in Council for a fixed term of two years and may be appointed for two further two year terms. By law, the board may establish its own rules of practice and, if it does so, must make them available to the public.

In December 2008, the board published its rules of practice in the *Social Services Appeal Board Policy and Procedure Manual*, available on the website of Manitoba Family Services and Housing at <http://www.gov.mb.ca/fs/ssab/index.html>.

Travel Expenses

The board is based in downtown Winnipeg. Most of the appeals it hears about the EIA program arise in Winnipeg. The board does travel and, by law, has the authority to hold hearings by teleconference. The board's policy on holding hearings outside of Winnipeg is set out in their *Policy and Procedure Manual*:

Hearings Outside of Winnipeg

The Social Services Appeal Board will make an effort to hold hearings in the community where the appellant resides. The three board members and a staff person will travel to the hearing location.

When the appellant lives more than 500 kilometres from Winnipeg, the board will hold the hearing by video conference where facilities exist, or by teleconference.

Determining the site and means for the hearing is at the discretion of the director of the Social Services Appeal Board.

The board deals with travel issues as they arise. Board staff advised us that on occasion they cannot find a facility in the community where the appellant lives in which to hold a hearing. In these cases board staff will contact the EIA program and arrange for them to provide transportation costs for the appellant to get to and from their hearing. We were advised that EIA has been very co-operative in such matters.

In Winnipeg, EIA workers may provide an appellant with bus tickets to attend the hearing but this is not required by legislation or policy.

Subsection 16(2) of *The Social Services Appeal Board Act* requires that at least six days before the hearing the board give the parties notice of the date, time, and place of the hearing. Board staff indicated that travel to hearings is not a significant issue when appellants raise this issue well in advance of a hearing, but can become a problem if it arises shortly before a hearing.

The board's *Policy and Procedure Manual* advises appellants that it is very important for both parties to call at least two days prior to the hearing date to confirm attendance and that the hearing will be cancelled if confirmation is not received. It makes no mention of travel costs for appellants, advocates, or witnesses.

Either an appellant or an EIA representative may bring witnesses to give evidence before the board at an appeal hearing. The board has the power to compel witnesses and its *Policy and Procedure Manual* provides guidance for appellants seeking to have the board issue a "summons" for witnesses. It makes no mention of witness fees, but does state that:

Requiring the Attendance of Witnesses

The department, the appellant or the board may ask witnesses to attend the hearing. Information from witnesses may be required to help the appeal board obtain all information needed to make a fair decision...

The person requesting the summons is responsible for serving it (making sure the summons is put in the witness's hands.) The staff of the Social Services Appeal Board can help with this if required.

Board staff advised us that there are no funds available for witnesses.

We inquired about the treatment of travel and other expenses with other administrative tribunals in Manitoba. The *Workers Compensation Board of Manitoba Policy Manual* outlines who is eligible for reimbursement of wages and expenses incurred to attend a hearing. Included are workers, dependants and witnesses appearing at the request of the Chief Appeal Commissioner. The *Policy Manual* provides details of the types and levels of expenses which will be reimbursed. Eligible expenses include transportation, meals and dependant care, and actual lost wages for subpoenaed witnesses. Expenses for representatives are not paid.

We were advised by staff of the Automobile Injury Compensation Appeal Commission (AICAC) that for appellants living outside of Winnipeg, the Commission may make arrangements to pay for the reasonable transportation (mileage), accommodation (hotel) and meal allowances in accordance with the provincial government rates as set out in the *General Manual of Administration*. This policy applies to appellants who reside at least 100 kilometers outside of Winnipeg.

We obtained information from Saskatchewan, Ontario and Quebec. In Saskatchewan, costs associated with appeals to the Saskatchewan Provincial Appeal Board are covered. The Saskatchewan Ministry of Social Services may provide funds at set rates for babysitting costs and travel outside of a community of residence.

Staff of the Ontario Social Benefits Tribunal (formerly Social Assistance Review Board) advised that the tribunal will pay travel and living expenses necessary for any party or witness to attend a hearing

if the tribunal is satisfied that there will be financial hardship, pursuant to the Ontario Works Act and Regulation, and the Ontario Disability Support Program and Regulation.

Staff of the Tribunal Administrative du Quebec advised that hearings are generally held within 100 kilometers of the appellant's home, and there is no provision for expenses to attend the hearing or to have legal representation.

Reconsideration and Extension of Time

Subsection 20(1) of *The Social Services Appeal Board Act* sets out the board's power to make written orders, as follows:

Order of the board

20(1) Unless the designated Act states otherwise, after a hearing the appeal board may, by written order,

- (a) confirm, vary or rescind the order or decision of the designated officer;
- (b) make any order or decision that the designated officer could have made; or
- (c) refer the matter back to the designated officer for further consideration by the designated officer in accordance with any direction of the appeal board.

Subsection 20(2) requires the board to give written reasons for its orders.

Reasons

20(2) The appeal board must give written reasons for its order.

Section 22 of *The Social Services Appeal Board Act* sets out the board's authority and responsibility in respect of requests for reconsideration of its orders, and requires the board to give written reasons if it decides not to reconsider an order.

Reconsideration of the order

22(1) At the request of a party to the appeal or on its own initiative, the appeal board may reconsider all or part of its order and may confirm, vary, suspend or rescind its order.

Time limit for making request

22(2) A written request for a reconsideration, stating the reasons for the request, must be filed with the appeal board within 30 days after the date of the board's order.

Time limit for deciding request

22(3) The appeal board must, by order, make a decision as to whether an order will be reconsidered, within 15 days after the date the request for a reconsideration is filed.

Reasons

22(4) The board must give written reasons if it decides not to reconsider an order.

The board's *Policy and Procedure Manual* indicates that when reconsideration produces a new decision, that decision may be appealed to The Court of Appeal, pursuant to subsection 23(1) of *The Social Services Appeal Board Act*.

If reconsideration produces a new decision, it replaces the board's previous decision and must be honoured by both parties. If the other party disagrees with this decision, they can apply for

reconsideration within 30 days, or they can go to The Court of Appeal. Each time the board issues a decision, there is a new 30-day time frame.

Section 12 of *The Social Services Appeal Board Act* contains the 30 day time limit for filing an appeal in respect of a program decision, as well as the board's authority for granting an extension of time.

Time limit for filing

12(2) A notice of appeal must be filed within 30 days after the date of the decision or order, unless the designated Act specifies a different time limit.

Extending the time limit

12(3) The appeal board may extend the time limit for commencing an appeal, and may do so either before or after the time limit expires.

The Board's *Policy and Procedure Manual* sets out detailed process for making a request for an extension of time, and includes the criteria used by the board when considering such requests.

Extension of Time Limits for an Appeal

Anyone wanting to appeal a decision of the department must file their appeal within 30 days after the date the decision was made. However, the board does have the power to extend the time limit for filing an appeal.

Procedure for granting the extension:

A request for an extension must be submitted in writing to the board and include an explanation of why the appellant could not file within the legislated time period.

If the department objects to the board granting an extension of time, they must submit this objection in writing. They should also provide evidence that they correctly advised the appellant of their decision in writing and advised them they had the right to appeal.

Both parties will be given an opportunity to review the written submission of the other party and provide a response.

The board will review the written submissions from both parties and determine whether or not to grant the extension. Only in exceptional circumstances would the board ask the parties to appear before them in order to ask questions before making their ruling on whether or not to grant the extension.

Granting the extension:

If the department does not object to an appeal that is filed more than 30 days, but less than six months, after a decision, the appeal will be scheduled without review by the board.

The board will automatically review all appeals that are more than six months past the decision date, whether or not the department has objected.

If the designated officer objects to the extension, the appeal board will consider the following factors in deciding whether to grant an extension:

- a. the reason(s) for the extension – for example, if the appellant:
 - i. did not know they had the right to appeal the department's decision
 - ii. did not know that there was a time limit for filing an appeal

- iii. was unable to appeal for reasons beyond their control, such as coping with an illness or crisis
 - iv. discovered new facts about the case that didn't become available until after the time limit for filing an appeal had passed
- b. whether granting the extension would unfairly give one party an advantage over the other

Although this manual sets out general issues, every application for an extension of time will be dealt with on a case-by-case basis.

Board staff advised that individuals always receive a letter approving or denying a request for an extension of the time limit for filing an appeal, but as this is not an order of the board it is therefore not appealable to The Court of Appeal.

Upon inquiry, we were advised by staff of the Manitoba Residential Tenancies Commission that requests for an extension of the time limit for an appeal to the commission are approved or denied following a hearing (when there is an objection to the extension by either party) by either a single Commissioner (Chief or Deputy) or a panel. An order is issued which states that it can be appealed to The Court of Appeal. Written reasons are provided with or following the issuance of the order.

An extension of time is not an issue for the Workers Compensation Board Appeal Commission of Manitoba as an appeal of a decision by the Workers Compensation Board regarding benefits can be made at any time.

Analysis

Participants are informed in writing of their right to appeal EIA decisions in the letters that notify them of those decisions. That letter also contains contact information for the Social Services Appeal Board and clearly indicates that an appellant has a right to be represented at an appeal.

In some EIA offices, both in Winnipeg and outside of Winnipeg, copies of *The Social Services Appeal Board Guide* were available and on display. In other offices, there were display space constraints or front staff were not aware of the existence of this brochure. Both the appeal form and the guide are available on the Family Services website.

On the basis of our discussions with board staff we concluded that every effort is made to facilitate hearings in a manner that will be accessible to participants, and that they receive program cooperation in those efforts.

Neither the program nor the appeal board has a policy on funding appeal expenses. The appeal board does not pay any expenses for parties to attend appeal hearings. The appeal board does attempt to accommodate individuals outside of Winnipeg by holding hearings in their community or by teleconference.

Transportation expenses are sometimes paid by the EIA program, at the participant's request or at the instigation of board staff.

Many tribunals, such as Ontario Social Benefits Tribunal, Saskatchewan Social Services Appeal Board and AICAC pay reasonable travel and living expenses for parties and witnesses to attend the

hearing. Saskatchewan may cover babysitting costs as well. Both Ontario and AICAC will provide interpreters at their expense if requested. Saskatchewan also provides expenses for advocates if required outside the appellant's community of residence.

The lack of a definitive expense policy may be an unnecessary impediment or obstacle to individuals in accessing the appeal process. This could be addressed by establishing an expense policy for the appeal board and outlining clearly the criteria for its application.

The appeal board is authorized under its legislation to reconsider its orders, at the request of a party to the appeal or on its own initiative. The appeal board's policy manual outlines the procedure for review and reconsideration and is available on the Family Services website. An appeal board information bulletin details the issues that the board considers in deciding whether to reconsider.

The SSAB Act also states that decisions of the appeal board as to whether an order will be reconsidered must be made by order within 15 days after a request is made. Written reasons are required if the board decides not to reconsider. These orders can be appealed to The Court of Appeal as provided under the Act. Appeal board staff advised that ongoing practice is to comply with the statutory requirements, and there is no evidence to the contrary.

The Board's *Policy and Procedure Manual* outlines the detailed procedure for requesting an extension of time to file an appeal, and includes the factors it considers in making its decisions on such requests.

Decisions on whether to allow an extension are issued in the form of a letter with written reasons and therefore cannot be appealed on a question of law or jurisdiction (as can an order of the board) to The Court of Appeal.

In contrast, the Residential Tenancies Commission issues its decisions regarding extensions of the time limit for appeal in the form of an order which is then appealable to The Court of Appeal. The Manitoba Health Appeal Board also issues its decisions regarding extensions as orders.

While the board's process regarding time limit extensions is procedurally fair, the practice of issuing those decisions in a letter rather than an order of the board can result in an undue hardship for potential appellants.

Decisions on requests for extensions of time are important. A decision not to extend may result in a person losing the right to appeal a decision that deprives them of the basic necessities of life. The decision making process itself is fair and reasonable for both parties. The board gives serious consideration to these decisions, reflecting their importance. Like other decisions of the board, the decision not to extend time should be appealable.

Recommendations

53. It is recommended to the Social Services Appeal Board, that an expense policy that addresses the costs associated with participating in the appeal process be adopted, and included in its *Policy and Procedure Manual*.

54. It is recommended that the department consider funding attendance costs associated with an appeal to the Social Services Appeal Board through the EIA

program, pursuant to an expense policy adopted by the Social Services Appeal Board.

55. It is recommended to the Social Services Appeal Board, that it issue decisions on requests for an extension of time in the form of an Order of the Board that may be appealed to the Manitoba Court of Appeal.

Departmental Response:

Recommendation 53 is under review.

The department has accepted recommendation 54 and advised that “In exceptional circumstances, EIA participants can be supported in attending appeal board hearings. They may receive transportation assistance, staff of the appeal board may travel to alternate locations throughout the Province and/or hearings may be held by video or teleconference to accommodate barriers to participation.” We were also advised that this recommendation may have significant resource implications and that further work in this area will be dependent on discussions related to recommendation 53.

Recommendation 55 has been accepted and implemented.

ADVOCACY AND REPRESENTATION

By way of explanation, the complainants advised that the “power imbalance” referred to in their letter of complaint arises because of a number of factors, including the fact that most appellants are unrepresented, and unlikely to have any experience with a formal (statutory) appeal process. Going through the appeal process means they are dealing with a decision that has likely affected their income and resulted in increased stress.

They point out that it is extremely unlikely the average EIA appellant will have the knowledge of the Act, Regulations, and policies that EIA representatives will have in preparing for and presenting an appeal. Many will lack the basic resources necessary to prepare an appeal, such as a telephone to contact witnesses or access to a computer and printer or photocopier to prepare a written submission.

The Social Services Appeal Board Act recognizes an appellant’s right to be represented by an advocate:

Advocates

14 At the appellant’s request, another person may communicate with the appeal board at any time on the appellant’s behalf and may be present with the appellant at the hearing.

The EIA program recognizes an appellant’s right to counsel in its written policy. Section 6.10.2 of the EIA Administrative Manual contains the following:

A written order by the director or designate must be on file where income assistance to a participant will be discontinued, reduced, suspended or increased, as per section 9(1) of *The Employment and Income Assistance Act*. The letter must state the reason for the decision, the effective date when the individual has the right to appeal, and notification of the right to be represented by legal counsel at the appeal.

Decision letters sent to participants by the EIA program remind participants they have the right to representation at an appeal. The standard letter contains this paragraph:

You have the right to appeal this decision to the Social Services Appeal Board within 30 days of receipt of this letter. As well, you may be represented at the appeal by legal counsel or another person of your choice. Should you wish to appeal, please contact...
{SSAB information provided}

The board's *Policy and Procedure Manual* states:

The appeal hearing is set up to be an informal proceeding that will make both the appellant and the respondent feel comfortable.

The appellant may bring a lawyer, advocate, or another person to speak on their behalf or to give evidence.

There are a number of established community-based organizations already assisting people who appear before the appeal board, on an ad hoc basis. None of them has appeal advocacy as their primary function, none is specifically funded for that purpose, and none has a formal relationship or agreement with either the EIA program or the appeal board.

EIA and board staff interviewed during the review indicated that the quality of lay advocacy services is variable, dependent on the knowledge, experience and approach taken by individual advocates.

In addition to lay advocacy, Legal Aid Manitoba has a Poverty Law Unit that accepts "...eligible cases with merit that have a likelihood of success pertaining to income security and housing issues....including appeals of decisions by social assistance."

We interviewed staff and management of Legal Aid Manitoba, who acknowledged that they could provide more advocacy services, and work with existing community advocacy resources in a training capacity, but are currently unable to do so because of budgetary constraints.

We asked EIA staff for their views on having representation available for appellants. Most staff felt it would be helpful to participants to have someone assist them through the appeal process. Many staff advised that the appeal process, although informal, could be stressful for both them and participants. Some felt advocates might help participants resolve issues before they reached the appeal stage, which would also benefit staff.

Funding for Advocacy

There are models of funded advocacy services available in respect of some administrative tribunals, in Manitoba and elsewhere.

Appellants before the Automobile Injury Compensation Appeal Commission (AICAC) can be represented by a trained and funded representative from the Claimant Advisor Office. This office is funded by Manitoba Family Services and Consumer Affairs. The service is free of charge for individuals wanting to appeal Manitoba Public Insurance's decisions about bodily injury claims to the Appeal Commission. AICAC Hearing Guidelines state that an appellant can represent themselves or have legal counsel, a Claimant Advisor Officer or someone who the Commission is satisfied is authorized to represent a party in the appeal.

The Community Unemployed Help Centre is a community based model, independent of government, that provides assistance to people in their dealings with the federal Employment Insurance system. In that model trained advocates provide information and assistance in dealing with the EI system and represent claimants at appeal hearings before a Board of Referees when a claim is denied or a claimant's benefits are withheld. Advocates need not be lawyers, and when cases need to be appealed to the Umpire (federal court) level, clients are referred to Legal Aid Manitoba.

At the Ontario Social Benefits Tribunal there is no payment mechanism for either advocates or lawyers but the tribunal will provide an interpreter on request. Anyone over 18 who is not a witness before the tribunal can represent someone. However, Legal Aid Ontario operates community legal clinics within defined geographical areas which offer representation for social assistance cases, in respect of Ontario Works and the Ontario Disability Support Program.

A Legal Aid Ontario specialty clinic, the Income Assistance Advocacy Centre, based in Toronto works with low income communities in the province to address issues of income security and poverty.

In Saskatchewan, individuals who disagree with a decision must first send a written notice of appeal to the local department director. If the director cannot resolve the situation, they will arrange for a hearing before a Local Appeal Committee which is made up of appointed people who do not work for the department. Following the hearing, a written decision with reasons is provided (generally within seven days) advising the individual that if they disagree, they can appeal the decision to the Social Services Appeal Board.

Program workers in Saskatchewan may provide clients with names and addresses of advocates in the client's area and advocates of a client's choice can help present a case to the Local Appeal Committee. At a client's request, a \$45.00 fee per hearing may be provided for an advocate other than spouse or dependant child or funded agency. Expenses at set rates for travel and meals may also be provided for advocates if required outside the client's community of residence.

Regina's Welfare Rights Centre is funded by the province and provides advocacy and support for income assistance problems, and is mandated to help participants who file an appeal.

A list of advocates available for income assistance appeals is available on the Ombudsman Saskatchewan website, and the Saskatchewan Social Services Appeal Board also provides a listing of advocates to appellants.

At the Tribunal Administrative du Quebec, appellants are expected to represent themselves. If appellants want a lawyer, they must obtain the lawyer themselves.

Also of note is a recommendation by the board itself. The board's *Policy and Procedure Manual* describes its advisory function, as follows:

Along with its roles as an appeal board, the SSAB has a mandate to advise and make recommendations to the minister about social services in the programs specifically designated in *The Social Services Appeal Board Act*.

The board meets on a quarterly basis to discuss issues which arise out of the hearings and to make recommendations to the minister where particular patterns or issues of concern have arisen out of the hearings.

In June 2005, the board made a recommendation to Minister of Family Services and Housing that a Fair Practices Office be established in the EIA program. The board recommended that a Fair Practices Facilitator be established to hear from EIA participants who feel they have been unfairly treated. In addition, its recommendation stated that the facilitator would provide advice and counsel to participants and would be authorized to make specific recommendations for action at the appropriate department level. It was also recommended that the Fair Practices Office be a completely independent entity within the department or the function be delegated and financed to an appropriate independent agency that already exists.

Analysis

The complainants believe that appellants before the appeal board would benefit from accessible and competent advocacy services. EIA program staff do not disagree. An advocacy service could settle cases that need not proceed, which would benefit both the participant and the program. In cases that do proceed to appeal, a competent advocacy service could focus the issues and marshal evidence in a manner that would benefit all concerned.

Although there are some lay advocacy services available for EIA appellants, there is no dedicated funding for those services. They are add-on services provided out of necessity for clients of community agencies who are also participants in the EIA program. There is no standardized training or quality control nor any formal relationship with either the program or the board. The quality of these services varies.

Neither the program nor the board makes referrals to lay services, in part because of a concern for their ad hoc nature and the absence of any quality control. While this concern is legitimate and sufficient reason for the appeal board to avoid specific referrals to lay advocates, it should not prevent them from making a list of such advocates available to appellants. The appeal board could advise appellants that representation is available and could provide the list to appellants on request.

Legal representation is available from Legal Aid Manitoba, but only in limited circumstances and not to the extent necessary to meet the need.

The complainants suggest a new publicly funded advocacy service to assist in the overall navigation of the EIA program and represent people through the appeal process.

Some EIA staff have suggested establishing a Fair Practices Office model within the department that could serve to facilitate primary dispute resolution and result in better communication between

EIA counsellors and participants, thereby reducing the number of appeals filed. Both the appeal board and EIA senior staff have indicated that such an office would have merit for staff and program participants. A fair practices office is not an advocacy service, nor is it at arm's length from the department. A fair practices office may have a useful purpose for the program, and benefit the program in the way an effective complaint mechanism could, but it is not a substitute for the advocacy services required by the participants in this program.

Advocacy service for EIA participants, including representation before the board, should be independent from the program and the department. It should be publicly funded. It should be provided by advocates who are trained and monitored for quality control. Although advocates need not be lawyers, they should be trained and supervised by lawyers because many issues dealt with by the board involve questions of law.

There are various existing models that could be used to provide advocacy services to EIA participants. To achieve the type of advocacy service to which EIA participants are entitled does not require the creation of a new office or entity, as that would be a duplication of the services that should be available, and are available now in limited quantity, from Legal Aid Manitoba. Those services are primarily provided by paralegals, under legal supervision, and include providing informal advice and assistance to participants in conflict with the system; providing information about the system to individuals and community groups; representing clients at hearings before the board; and providing legal counsel for matters that must be elevated to The Court of Appeal. Those services are appropriate and necessary but, according to Legal Aid, limited by funding constraints.

Legal Aid Manitoba also has a role to play in assisting EIA participants and the community agencies that work with them. The needs of people living in poverty include the need for legal representation, but also the need for informal assistance, advice and information. Legal Aid should work with the community to ensure that that legal education, relevant to the EIA program, and advocacy training is available to the community. Based on the model employed by Legal Aid, it seems that with some additional funding they would be in the best position to provide a comprehensive "poverty law" service that would address the needs of EIA participants for both formal and informal legal services.

Recommendation

56. It is recommended that the department consider entering into an agreement with Legal Aid Manitoba to provide advocacy services for program participants requiring legal information and advice in dealing with the program or in appealing program decisions to the Appeal Board.

Departmental Response:

The department has indicated that it agrees with recommendation 56, and advised that “The Department supports resolving issues expediently and will explore options for how best to resolve issues prior to reaching appeal as well as supporting clients who wish to appeal a decision.

Without committing the Department will consider this recommendation and recognizes that it may have significant resource implications.”

Our Comment:

Although the department has indicated that it agrees with this recommendation, it appears that it still under review. This is an important issue that we believe can be effectively addressed through the recommended mechanism.

STAFFING AND WORKLOAD

The complainants assert that EIA staff workloads have become an impediment to the effective operation of the program. They wrote:

“Another factor is the EIA staff case load, (which averages about 150 files), virtually eliminates the possibility of EIA staff to conduct regular home visits with participants with the purpose of ascertaining the circumstances and needs of the participants. There are numerous examples of where participants have never met their case coordinator; despite the fact that there is an administrative policy that states each new participant must receive a home visit within 30 days of having been determined eligible to receive EIA benefits. This overload of cases also contributes to the inability of staff to provide any kind of social work services and support and assist participants to deal with their circumstances. The majority of EIA staff are not able to carry out more than a financial provider service for their cases. This ends up translating into very little service being provided to enable persons to improve their personal circumstances with the assistance of their case coordinators. The reality is that with the present case load, based on a full time position, EIA staff are only able to dedicate one hour per person per month.”

Although the complainants refer specifically to home visits, their larger concern is the belief that the program has been reduced to the role of financial provider, no longer the providing the "social services" contemplated by the Act.

The Act defines those services as “services having as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on income assistance...”, and specifically includes rehabilitation services, case work, counselling, and assessment and referral services.

There is no professional standard or generally accepted case load number for workers delivering services like those mandated by the EIA program.

Workload is driven in part by the number of people applying to the program, a factor over which the department has no control. It can be driven by policy decisions contracting or expanding the services made available, at any given time, from the range of services permitted by law. The services sought from the EIA program can also depend on whether services are available from other sources, public or private.

Current Case Load Size

Early in the investigation we requested case numbers for counsellors in each EIA office in the province. The range of cases held by case counsellors is quite large. Generally, the low end for case counsellors was approximately 130. The high end for case counsellors was over 250. We were informed that on average, case counsellors have approximately 150-160 cases at any one time. An exception to high case loads was the Job Connections Initiative. JCI workers typically had between 20-30 cases. This low number appears to relate to the JCI program design. As has been discussed in this report, the role of the JCI worker is to engage very intensively with participants.

We heard from some workers that in their view, case loads should be capped. These workers felt that with the increasing demands placed on them by the program to manage a file, additional resources were required. A hard case load cap would ensure that a case load does not become

unmanageable. We asked many staff what they felt the ideal case load number was. The number we heard most frequently was approximately 100.

In order to cope with high caseloads, staff have adopted various strategies, from working unpaid overtime to focusing their efforts on certain groups of participants or, in some cases, exercising their discretion to interpret policy in a way that reduces their involvement with participants.

The issues driving staff workload go beyond the number of cases assigned to a worker. They include the volume of activity and interaction with participants required of staff by program policy, the manner in which work is distributed among staff positions, and factors such as an antiquated computer system and the increasing demand for services in languages other than English.

STAFFING RESOURCES

Although the program has no control over the number of people needing assistance, it can and does prescribe the work it expects different program staff to perform. Most of the services provided to, or on behalf of, EIA program participants are delivered by counsellors, also referred to as case coordinators.

Case Counsellors or Coordinators

The job description for an EIA Counsellor describes the position in this way:

The Counsellor occupies the forefront position in the provision of the Employment and Income Assistance program's services and has the authority to provide employment and financial supports to participants with the goal of achieving greater independence, based on their employment, financial, medical and social circumstances.

The position duties and responsibilities of an EIA Case Counsellor can be broken down into the following ten areas:

1. Conducts pre-intake orientation.
2. Assesses financial and categorical eligibility.
3. Assesses participant service needs.
4. Provides on-going case management.
5. Provides case load administration.
6. Develops independence through employment.
7. Reviewing all participant cases where there is non-compliance to employment expectations.
8. Initiates administrative functions.
9. Liaises and communicates with participants, external agencies/resources.
10. Perform other related duties as assigned.

During our review, we learned that the various regions and community areas appear to have been given some discretion by the program regarding how to utilize their staffing resources. As a result, some regions and community areas have created specialized counsellor positions to address specific issues and challenges occurring within their respective areas. These specialized positions include but are not limited to:

- Intake Workers (in many areas and regions) who work through the application process with clients. In those areas and regions where intake workers are used, the intake function is not a responsibility of regular case counsellors. Some areas have implemented the intake worker role to accelerate the intake process and reduce wait-times for intake appointments.
- A Social Services Case Manager (in St. James) to work intensively with participants identifying and addressing barriers to employment. A large part of this role is referring participants to other agencies or services that may be more appropriate to provide service.
- Integrated Services Specialists (ISS) (in the Parklands Region) to work with participants who have multiple barriers and who may have involvement with multiple programs within the department. If a participant is involved with multiple programs and therefore multiple workers within the department, the ISS worker assumes their role. In this way, the ISS worker becomes the sole provider of services across program boundaries. It allows the worker to better coordinate services and work on addressing participant barriers to employment. Once a participant is considered to be stable, the ISS worker refers the participant back to the appropriate programs and workers.

These are in addition to specialist workers assigned to implement program wide initiatives such as Job Connections and MarketAbilities. These specialist positions are described as follows:

- Job Connections workers, who provide intensive case management services for a small number of GA and single parent EIA participants. Case loads for JCI workers are limited to approximately 20. This allows JCI workers, of which there are 17, to work very intensively and supportively with participants.
- marketAbilities workers, who provide intensive specialized services that complement existing resources for participants in the disability category.

Role of Case Counsellors

There appear to be three distinct approaches to the work of case counsellors. Some staff were comfortable in performing a role based on the belief that the primary function of EIA is the provision of financial aid. These staff did not feel that they had the time to do any “extra” work with participants. Given their caseload, these staff felt that they barely had time to ensure that participants were getting the benefits to which they were entitled. These staff also identified following up on participant action plans as a major piece of their job consuming a significant amount of time.

Many staff saw their role as a coordinator of services. For these staff, their primary function was to connect program participants with the appropriate community resources. These staff typically did not perform a lot of intensive work with participants, instead, preferring to let other agencies fulfill this role.

Another large segment of case counsellors appeared to take a “hands on” approach to case management. They saw their role as providing whatever services the participant needed, and

suggested that an ideal role for a case coordinator would be to perform the functions performed by Job Connections workers. These staff reported that large caseloads posed a significant challenge to their ability to do a lot of intensive work with participants. These staff also enjoyed spending significant amounts of time with participants when possible. Staff in this category usually felt that they were going above and beyond the traditional role of case counsellor.

All of these approaches involve activities that are either permitted or expected under existing job descriptions. All are consistent with existing program policy. The approach taken can depend on the interpretation of policy, or preference of individual staff or their supervisors, but remains largely dependent on caseload size and the ongoing requirement to issue funds for the cost of basic needs.

Financial Workers and Information Specialists

Participants can also have significant contact with financial workers or information specialists. The job description for financial worker describes the position in this way:

The Financial Worker functions as a member of a case management team responsible for providing Employment and Income Assistance program services.

Financial workers are employed in the regions. The position duties and responsibilities are broken down into four areas as follows:

1. Intake - Audits and verifies intake information to ensure completion and correctness or required information and makes necessary adjustments.
2. Assesses and activates initial benefits, and advises program participant in writing of enrolment decision, initial budget and explanation of program entitlements and obligations.
3. Provides on-going case management
4. Communicates with program participants, agencies and other stakeholders

Information specialists in Winnipeg perform financial administration functions similar to their financial worker counterparts in the regions. However, instead of performing a variety of tasks as financial workers do, information specialists often focus on a specific portion of financial administration work, such as processing income declarations or rent forms.

One-Worker versus Two-Worker System

During the course of the review, staff described two different methods used to divide work between counsellors and financial workers or information specialists, described as the “one-worker” versus the “two-worker” system. The one-worker system is used in all community areas in Winnipeg. In the one-worker system, the case counsellor is responsible for providing the complete complement of EIA services to participants. Winnipeg participants may also occasionally interact with an information specialist for a specific purpose. Under the two-worker system, each participant has a case counsellor and a financial worker. The two-worker system is used in all of the regions outside of Winnipeg.

We were advised that historically the program operated with a two-worker system with financial workers responsible for money matters and case coordinators responsible for social work functions.

Some staff suggested that this system worked better for both participants and staff. We were told that this system ended in Winnipeg in 1999.

Consistent with our review of job descriptions, staff noted that there has been a blurring of roles and financial workers or information specialists are now required to do some of the work previously done by counsellors. There was no evidence to suggest that this has reduced the workload of counsellors. We did hear that counsellors spend time doing work that can be done, and had previously been done, by financial workers or information specialists.

The different roles for case coordinators and financial workers appears to remain an issue for staff and supervisors as they consider how to provide high quality service in the face of high case loads and increasing expectations. It is an issue that should be reviewed as part of the program's ongoing transition.

Supervision

Counsellors, including specialist positions, and financial workers are managed on a day-to-day basis by various supervisors or program managers. The job description for one supervisor position, a Community Social Services Supervisor, describes the position in this way:

Reporting to the Family Services and Housing Community Area Director, or Director of Centralized Services, the Community Social Services Supervisor is responsible for providing leadership and support in a range of management and supervisory activities associated with the following responsibilities: service delivery including policy interpretation, integrated case management program recommendations, implementation and evaluation of services; operational planning, financial management and administration; human resource management; systems management; communication; and leadership support to staff through the ongoing integration and change process.

In addition to duties related to financial management and planning, the responsibilities of supervisors include service delivery and human resources management.

The supervisory function also includes counsellor file reviews. The EIA Administrative Manual indicates how frequently files are to be reviewed. According to the manual, each director or designate is responsible for reviewing no less than ten percent of new and re-opened files each month.

During our interviews with supervisors we were informed that conducting regular files reviews is a very difficult task. Most supervisors informed us that they did not have the time to devote to regular file reviews. As such, most supervisors indicated that they did not generally review 10% of new and re-opened files as per policy.

By and large, supervisors acknowledged the importance of conducting these reviews. They indicated that reviews can be very useful for determining how workers are performing.

Staff Comments about Workload

Regardless of the type of case coordination used, the vast majority of staff indicated that case numbers were too high to allow them to accomplish all of the tasks required. Very few staff described their case loads as manageable. Many spoke of working in a “crisis response mode.”

Many staff felt that expectations on them had increased because of changes to program philosophy over the years and particularly with recent initiatives. Staff spoke of changes over a long period, from changes around work expectations over a decade ago to more recent initiatives such as the volunteer benefit. It was felt that such changes required more work and, cumulatively, affected their ability to keep up with their required job functions.

Regarding Job Connections, while most staff were supportive of this initiative and saw benefit to having a Job Connections worker involved with their cases, they did not report any substantial impact on their overall workload as a result of this initiative.

At the management level people spoke positively about the impact of specialized positions, indicating that they saw positive outcomes as a result of these positions. While not necessarily lowering case loads, the work done by these specialists led to greater participant success in the long term.

Rural staff identified travel time as an issue affecting their ability to carry high case loads. They often travel to communities where there is no EIA office for the purpose of taking applications, and also for the purpose of conducting home visits. They also identified regular case management issues that require more time because of the size and isolation of some of the communities in which they provide service, such as setting and monitoring realistic employment expectations and dealing with requests for medical transportation.

Analysis

There is some uncertainty about the role expected of case counsellors in the EIA program. This confusion begins with the multiple roles identified for case counsellors in their job descriptions and the duplication of functions in the job descriptions of case counsellors, financial workers and information specialists. It is exacerbated by the clearly different approaches reflected in the one-worker and two-worker systems, and compounded by policy shifts, both old and new, which appear to have increased workload without a corresponding increase in staff complement.

Currently, the program appears to be evolving from purely a financially based program to a program which places greater emphasis on the services required to assist participants achieve self sufficiency. However, the evolution of the program does not simply refer to recent initiatives clearly designed to enhance participants' prospects of achieving and retaining self sufficiency through employment. It includes the employment expectations initiated almost twenty years ago, with a new set of policies and workload expectations, and it includes the natural growth and evolution of policy necessary to administer what has been described as the program of last resort.

By definition, a program of last resort is one to which people turn for assistance in meeting their basic needs when those needs are not being met anywhere else. By law, the EIA program can provide a range of services that goes well beyond financial assistance. By design, it has focused on

the provision of financial assistance. As a financial program in which program managers have no control over the volume of people requiring assistance, financial control has largely been achieved through policy.

Support for the assertion about financial control through program policy can be found in the volume and complexity of program policy and, until recently, policy that focused on financial management rather than on the services necessary to foster independence. It was suggested to us that this focus on financial control, and the time it requires, remains a barrier to achieving broader goals such as poverty reduction.

The need for prudent financial management, the application of eligibility tests and the monitoring of program compliance, is indisputable in a financial program that does not limit the number of participants. What appears to be at issue in this program is whether the focus on such measures, and the associated use of staff resources, has been to the detriment of overall program goals because that focus restricts the resources necessary to help people achieve independence from the program.

Based on the philosophy described above, the evolution of program policy has created a paradigm in which stable, predictable financial assistance is limited, and the norm has become a complex maze of requests, checks, verifications, and approvals, for even the smallest amounts of money for goods or services that clearly fall within the definition of basic needs, but are beyond the standard rates.

One of the results of this, in the view of staff, has been an administrative workload that currently restricts their ability to perform tasks associated with broader policy goals in aid of poverty reduction.

The results for program participants include complex and unrealistic requirements that put them in conflict with the system designed to assist them. Some staff suggested that it has also created a kind of learned or acquired dependence on the system that itself has become a barrier to becoming independent of the system. It has also resulted in this broad based community complaint not only about benefit levels and the fairness of the program but also about a perceived failure of the program to achieve the desired results.

There seems to be agreement among complainants and a vast majority of program staff that the current program shift in approach is both necessary and appropriate. There is general agreement that it appears to be happening piecemeal, adding layers of policy to an already complex program, and that it has not been effectively communicated to either staff or program participants.

The on-going shift from a traditional, financially-based model to a model which places more emphasis on providing the support and services necessary to achieve independence of the program has placed a greater strain on counsellors. They are now expected to provide those additional services on top of their responsibility for complex financial management and monitoring program compliance.

Under its current structure, the program places unrealistic expectations on counsellors to fulfill their mandates with the current average size of case loads. On the basis of a 7.25 hour work day, in a typical month workers have 145 hours of work time. With caseloads over 150, workers can spend less than one hour per month per participant. Given the program's shift to offering more supportive

services to participants, it is difficult to see how counsellors can provide adequate support, despite their best efforts, with case numbers as high as they are within the current structure of the program.

During our interviews with staff we were informed that the program experiences high staff turnover due to the challenging nature of the work. This turnover contributes to greater workload for a couple of reasons. Staff reported that when people leave, someone still has to be responsible for that case load. This creates additional expectations on staff. Staff also told us that because the EIA program is complex, it takes a long time to learn. Some staff felt that to become comfortable and proficient as a worker might take up to two years. As a result, newer workers typically do things more slowly and ask for assistance more often than more experienced workers. This contributes to an overall increase in workload. The significant learning curve also prevents the program from hiring staff for short-term relief.

In our view, the department should review whether the financial and supportive case management roles of counsellors can, and should, be separated with the result that financial workers would be utilized across the program to perform financial administration functions. The result would be that every participant in the program would interact with two workers: a case counsellor and a financial worker. Counsellors would retain responsibility for on-going case management, including the completion of a comprehensive assessment of the participant's strengths and needs, the establishment, implementation, and monitoring of client action plans, maintaining significant contact with participants, coordination of services, and liaising with other service providers.

A significant part of this responsibility would be the completion of a comprehensive assessment similar to the comprehensive assessment matrix utilized by the JCI. This type of assessment should be completed for applicants requiring intensive case management. It will allow a counsellor and participant to gather all of the necessary information to develop a realistic and achievable action plan.

Many of the specialized counsellor positions appear to have been created to work with participants with multiple barriers. The creation and utilization of specialized positions is consistent with the program's recognition that a different approach is necessary if the focus is to be on poverty reduction rather than on financial management alone.

There needs to be greater consistency across the program regarding these specialized positions. The program needs to have its counsellors working more intensively with participants with multiple barriers, and it must have and articulate a consistent method of doing this. We believe that the services made available through specialized positions should be available to all program participants, regardless of where in the province they live.

In some cases there appear to be important functions that are not assigned to anyone. Finding adequate housing and dealing with shelter-related issues was repeatedly mentioned as a significant barrier faced by many EIA participants. As part of its efforts to provide more intensive case management to address barriers, the program should develop capacity, either by creating specialized housing positions or by working cooperatively with other programs, to assist EIA participants with housing issues. A housing specialist could assist with finding appropriate accommodation, ensure rent guidelines are maintained, ensure condition reports are completed, and monitor return of damage deposits.

The Job Connections Initiative is currently a pilot project. It has broad support among staff who believe that all participants who may have a work expectation or a desire to work would benefit from the services offered through JCI. It appears that case counsellors are best positioned to identify participants who may benefit most from a JCI worker's intervention. Participants in the JCI should continue to be those program participants who have multiple barriers to employment.

Under an intensive case management model, the more time counsellors are able to spend with participants the more likely they will be able to help them be successful finding and sustaining employment and becoming more self-sufficient. This would appear to be more consistent with the program's larger goals. Financial workers and the case counsellors will be required to work very closely together but will need to have more clearly delineated responsibilities.

The differing approaches taken by staff in interpreting and applying policy, and the varying results for program participants, is an issue that can be addressed in part by more proactive supervision. We concur with the majority of the supervisors we interviewed who placed importance on conducting regular file reviews. In our view, greater emphasis must be placed by supervisors on conducting these reviews. File reviews contribute to greater consistency across the program, they ensure that workers are operating within the boundaries of policy, and they can serve as a training tool for new and junior staff.

Current policy indicates that 10% of new and re-opened files should be subject to review each month. File reviews are time consuming, but they may be a better use of supervisors' time than dealing with routine decisions that could be made by either financial workers or case counsellors. The benefits associated with regular file reviews, which include on-going staff development, outweigh any challenges posed by trying to conduct these reviews.

Recommendations

57. It is recommended that the department review whether there is a benefit to the clear segregation of duties between a case counsellor and a financial worker to try and relieve workload pressures, with case counsellors responsible for on-going case management, and financial workers responsible for all financial administration matters.

58. It is recommended that the department clearly communicate its philosophy, such as the current shift toward services designed to enhance self-sufficiency and independence from the program, to both staff and participants.

59. It is recommended that the department consider the incorporation of its pilot Job Connections Initiative with participants who have barriers to employment, throughout the system as part of the poverty reduction strategy articulated by government.

60. It is recommended that the practice of file reviews by supervisors for quality assurance and consistency be continued, with the department setting a target percentage of all files and ensuring supervisors have the time necessary to complete those reviews.

Departmental Response:

The department has accepted recommendation 57 and advised that it continues to consider workload issues in its review of all program options.

The department has accepted recommendation 58 and advised that it will develop a number of training and information materials for staff and the public to help ensure participants are getting appropriate program information and staff are well trained.

Recommendation 59 is under review, with the department noting that it will explore options to expand the Job Connections program to support more people, but stating this recommendation may have significant resource implications.

The department has accepted recommendation 60.

OTHER FACTORS AFFECTING WORKLOAD

During our interviews we heard of other factors which appeared to have an impact on workload including the provision of services in French and other languages, home visits, travel time in rural areas, and SAMIN, the program's information management system.

French Language Services

The provision of French language services appears to have a major impact on workload. SAMIN is an English based computer system. As a result, when workers have participants who wish to receive service in French, they are required to do everything in SAMIN in English, and then do it again, in French for the participant. This has a major impact on workload as workers are required to do many tasks twice. We were told that the extra work associated with the provision of French language services cannot be measured by looking at case numbers alone.

The provision of program services in French contributes disproportionately to workload. While this may be due in part to technology issues, we also heard evidence that the requirement to provide service in French was increasing, driven in part by an influx of French speaking immigrants in Winnipeg. The program needs to monitor this and develop a strategy to improve its capacity to provide service in French. The additional time currently required to provide service in French, because of technological inadequacies, should be factored into the determination of case load assignment.

We were advised as well that there is an increasing demand for services in languages other than French and English, driven by a need to provide program services to new immigrants.

Recommendation

61. It is recommended that the department consider adjusting case loads to account for factors that affect the time needed to provide service, such as providing services in a language other than English, or travelling significant distances.

Departmental Response:

The department noted recommendation 61 is under review, as it may have significant resource implications.

Home Visits

Although not required by statute or regulation, home visits have been a hallmark of the program for decades. Unless specifically waived, for a documented reason approved by a supervisor, home visits are expected. The cost of home visits, in terms of use of staff time, has to be weighed against their necessity and benefit.

Considerable policy has been developed to guide staff in their approach to home visits, and it has been built into the program's computer system. Much of the policy on home visits is contained in the program's Administrative Manual. The home visit policy describes the purpose of a home visit, the factors to be considered when making a discretionary decision to conduct or waive a home visit, and the file documentation required by the SAMIN system, all of which are set out on the following page:

6.7.7 HOME VISITS

Purpose

A visit to the home of a participant is an important form of participant contact. Home visits allow the worker to focus significant attention on participants and have four objectives:

1. to promote the participant's self-sufficiency;
2. to exchange information
3. to determine other agency involvement; and
4. to examine verification/control issues.

It may be necessary to conduct a home visit to follow-up questions or concerns raised by the participant, to discuss the participant's employment or training plans, to verify information, to assess third party complaints or to investigate alleged program abuse. Home visits may also be scheduled at the discretion of the director or designate.

When appropriate, other forms of participant contact (such as office visits, telephone contact, informal personal contact in the community, other worker contact) may be used instead of the home visit to review issues relevant to the EIA program.

Decision to Conduct a Home Visit

In all cases, workers have the discretion to conduct a home visit when a need has been identified or to waive the home visit when there is no apparent need. Workers may conduct as many home visits as deemed necessary, based on the participant's circumstances.

Participants who have developed Personal Job Plans are encouraged to work with their worker through office visits and phone contact.

Situations in which program verification and control issues have been identified are to be given the highest priority for home visits.

When a file is transferred to an EIA office, the worker must review the home visit requirement or exemption to determine if it continues to be appropriate.

File Recordings

A. Decision to Waive Home Visit

When the worker determines the case is to be exempt from a home visit, the specific reason must be documented on the Case Management Intake Record (CMIR), or the Case Management Record (CMR), and the appropriate home visit exemption code entered in SAMIN.

B. Decision to Conduct Home Visit

When the worker determines that a home visit is necessary, the home visit date is displayed in SAMIN. If the worker decides to make a home visit prior to the date displayed, the next home visit date is entered. The next home visit date entered cannot exceed two years from the last home visit date.

Following the home visit, the worker documents the purpose of the home visit, the major areas discussed during the visit, and any follow-up action required on the CMIR or the CMR.

Further policy regarding home visits is set out in a program circular and in section 6.7.7 of the Administrative Manual:

Circular Number 2008-36: Decision to Conduct or Waive Home Visits

If a home visit is not required and the need for a home visit is waived, staff must document the decision and rationale in case notes. When a home visit is completed, updates should be made in case notes and the "last home visit" date should be recorded in SAMIN (on the Change Case Screen: CHCA). The need to conduct home visits should be reviewed periodically. SAMIN will prompt staff to review the need for a home visit via the 'next' home visit date, which automatically defaults to 30 days after enrollment and 2 years past the 'last home visit' date after enrollment (1 year for General Assistance cases).

In all cases, workers have the discretion to conduct a home visit when a need has been identified or to waive the home visit when there is no apparent need. Workers may conduct as many home visits as deemed necessary based on the participant's circumstances.

Our office also reviewed Home Visit Guidelines dated June 1995 which appear to have established the program's practices regarding home visits and many of them are still utilized today. Regarding documenting home visits:

Following each home visit, the Income Security Counsellor will record on the Case Management Intake Record (CMIR) or the Case Management Record (CMR) the purpose of the home visit, describe the major areas discussed during the visit and document any follow-up action required.

Following the policy on home visits and complying with the reporting requirements can result in a significant amount of work for staff. In the event that a home visit identifies an issue requiring follow-up, that work is obviously increased further.

Program guidelines do permit substituting other forms of contact for a home visit, which has become a common practice:

When appropriate, other forms of client contact (e.g. office visit, telephone contact, informal personal contact in the community, other worker contact) may be used instead of the home visit to review issues relevant to the Social Allowances Program.

We heard varying perspectives from staff regarding the purpose and value of home visits. Many staff felt that home visits were important and beneficial, allowing them to build a relationship with participants, to understand their needs and circumstances, to explain program benefits and requirements, and to monitor their well-being.

Although the majority of staff saw home visits in a positive light and as an opportunity for relationship building, others indicated that home visits were done to verify eligibility and for other investigative purposes. A small minority of staff questioned the purpose and value of home visits, suggesting that not all participants welcome them and that they were not a good use of workers' time. Some staff raised concern for their personal safety during home visits.

The prevailing view of staff was that home visits should only be used if there is a clear purpose, such as assessing participant need or conducting an investigation.

As permitted by policy, staff in many offices have begun waiving home visits because of heavy workload. The program has sanctioned "significant contact" as a substitute for a home visit. Many staff support this, believing that what is important is regular contact in any form. Some staff see the reduction in home visits as a notable change in program priorities, primarily as a result of workload pressure.

Analysis

With respect to home visits, we heard from many workers that there must be a purpose for doing a home visit. In our view, it is important from the perspective of relationship building to have in-person contact with participants. Based on our review, it appears that the program places greater emphasis on what it defines as "significant contact" than it does on an actual home visit.

It seems reasonable that while a traditional home visit may not necessarily be required in every case, some type of in-person contact is necessary. This could include in-office visits or meeting with a participant in the community. Should a visit be arranged in the home, the purpose of a home visit should be made known to the participant and scheduled in advance.

Significant contact, whether in the home or elsewhere, should not be driven by the program's computer system. Regular contact with participants is important but the need for such contact will depend on the stability of a participant's circumstances, their needs, and the services they receive from other programs in Family Services or other government programs. As the program moves toward a focus on poverty reduction, with models like the Job Connections Initiative as a strategy, significant contact will be essential.

There is an additional challenge for workers when conducting home visits in rural areas. There is often a significant amount of travel associated with providing service to large geographic areas. Some staff told us that they may spend every other day out of the office visiting with participants. We also acknowledge that in the rural offices, it is more likely that counsellors will be required to go and visit participants in their homes due to the lack of public transportation in rural Manitoba. In rural areas, the program should monitor the additional time associated with travel in remote areas and adjust case loads accordingly.

Recommendation

62. It is recommended that the department adopt a clear policy that outlines the frequency of significant contact between a participant and the program, and sets out the circumstances where a home visit might be appropriate. Prior to a home visit, staff should set out the purpose of the visit for the participant and schedule the visit in advance.

Departmental Response:

The department has accepted recommendation 62, noting this recommendation is reflected in current policy.

Social Allowances Management Information Network (SAMIN)

The SAMIN system is a DOS-based information management system in English that is used by the program to administer benefits. As part of the investigation the program provided us with the following description of the purposes of SAMIN:

In 1986 the Province of Manitoba introduced the Social Allowances Management Information Network (SAMIN), a mainframe information system, to administer Employment and Income Assistance benefits throughout the province.

The SAMIN system is used to maintain personal, social, health and financial information on each program participant. In addition to maintaining records SAMIN is used for a range of case management and financial management purposes, such as: calculating benefits, recording payments, producing statistical reports, producing various forms and letters, and producing tax documentation.

Statistical information produced from SAMIN is used for the purposes of cost analysis, policy development, identifying training needs, determining trends and for quality assurance.

We also talked to staff about the SAMIN system and its impact on workload. Many workers indicated that SAMIN seems to do what it was designed to do fairly well, which is to ensure the timely payment of monthly financial benefits.

Many staff felt it was a difficult and complex system with a significant learning curve, requiring years to achieve proficiency. Most staff described the system as frustrating and not user friendly.

Of significant concern were questions raised by staff about the utility of SAMIN relative to their needs and the work they are expected to do as the program philosophy changes. SAMIN does not support the performance of social work functions such as assisting participants in improving their education and addressing their other barriers to employment.

Many staff acknowledged that SAMIN-generated documents were difficult to read and confusing for participants. Some staff prepared letters in Word format, and then made a note in SAMIN that they had done so. A prevailing view was that SAMIN needed to be replaced with a more current and accessible system.

A key concern is the view of some staff that SAMIN determines what workers can and cannot do. An example used to make this point was that SAMIN produces reports indicating workers are behind on home visits, creating pressure on workers, when in fact workers have significant latitude in deciding whether or not to conduct a home visit.

We were told that many decisions cannot be made and implemented until the requirements of SAMIN and its multiple screens have been satisfied. This can often involve both a financial worker and a counsellor, and require a SAMIN approval by a supervisor, even for decisions involving small amounts of money for the basic needs of participants whose entitlement is not in doubt.

Analysis

SAMIN has fulfilled its financial management purpose well for a long time. Based on our review of the EIA program, our interviews with staff at all levels, and our limited experience with SAMIN, we believe that the time has come for planning to replace SAMIN with a new computer system. As part of our review, we sent two investigators to a brief orientation of the SAMIN system to gain a better understanding of what it is and how it affects workers.

We heard a lot of staff frustration over SAMIN. Some of the main areas of contention were SAMIN letters generated for program participants are very confusing; it only allows a minimal amount of space to enter case notes; if a worker enters something invalid, SAMIN may alert them, but will not necessarily tell them what they have done wrong; workers must be able to memorize hundreds of codes to use SAMIN proficiently; it is not a bilingual system; and there is no ability for workers to write their own documentation and attach it to SAMIN.

SAMIN requires a second person, often a senior case manager or supervisor, to approve many requests before funds can be issued. Workers explained that getting approvals can be a very time consuming process and often slows down their ability to process payments.

The system is antiquated, representing a challenge for new staff and also for supervisory staff who may have been proficient in it but who no longer use it on a daily basis. We heard that many supervisors found that the longer they were in a supervisory capacity, the more they forgot how to use SAMIN and navigate its many codes and screens.

Because of SAMIN's complexity and resulting high learning curve, it prevents use by casual or temporary staff when staff shortages arise because of illness or vacations, which in turn results in higher workloads for remaining staff.

One of the biggest challenges reported to us by workers using SAMIN was trying to remember hundreds of codes to navigate the program. A new program could have drop down boxes with all of the possible codes for a particular field along with their definitions. This would save workers a significant amount of time and greatly reduce their need to memorize hundreds of codes and the need to access the manual to look up appropriate codes.

Most new workers use more current computer technology. If EIA adopts a new computer program, it would allow new workers to learn the program more quickly.

A new computer system should also have the ability to quickly identify any errors workers make when completing forms. This should save a significant amount of time and help to ensure accuracy. A new system could also have a built-in help function so that if workers forget how to complete a particular form or forget what a term or code means, they could quickly pull up the online help function for assistance in solving their problem.

Another requirement of a new computer system must be a significantly enhanced area for workers to enter case notes. Workers should be able to enter all of their notes regarding participant contact in a single case note as opposed to the current practice of workers having to enter multiple case notes for the same participant contact because of limited space. This is particularly important as counsellors fulfill a more supportive function. Space is required to document information they collect in the course of their duties.

If the EIA program wishes to continue to use letter templates as part of the new system, it should allow workers to personalize the letters as they see appropriate. A new system should also allow workers to attach to the system any letters they compose on their own. This is currently a major deficiency with SAMIN.

A bilingual computer system would also benefit the EIA program.

As a system that has functioned as a financial management and statistical reporting program for over twenty years, SAMIN has performed well. It does not appear to have been designed to facilitate intensive case management.

Recommendation

63. It is recommended that the department begin planning to replace SAMIN with an updated, user-friendly information system.

Departmental Response:

The department has accepted recommendation 63, and advised that it is developing a business plan to explore options for technology upgrades.

DISCRETIONARY DECISION MAKING

The complainants' letter to the Ombudsman raised the issue of staff discretion in this way:

The concept of "discretionary power" for a case coordinator, supervisor or director is not defined, so therefore the service and resources a participant receives has a great deal to do with how the ELA staff person chooses to interpret the participants situation. The lack of transparency and consistency regarding this, guarantees that participants are treated differently. This reality contributes to the feeling of powerlessness of the participant and dilutes any sense of being served by the program. Having the ability to use discretion is a valuable way of enabling ELA staff to consider each case on its own merits with understanding and compassion. However it is important that ELA participants know what issues ELA staff have the authority to apply discretion.

The complainants have suggested that how a participant fares under the EIA program can depend on which office they deal with, or on the approach taken by a participant's worker or that worker's supervisor.

The use of discretion was discussed in the 1983 report of the Manitoba Task Force on Social Assistance, chaired by Dr. Joseph C. Ryant (the Ryant report). The Ryant report contained a useful and instructive analysis of why discretion is employed, and commented on both the benefits and drawbacks of a system in which discretion plays a large part. Much of that analysis is worth repeating today, twenty-five years later, as a starting point for our analysis.

The Ryant report began the discussion of discretion with an explanation of why it arises in the administration of social benefit programs, set out below from pages 27-28 of the report:

As pointed out above, social assistance benefits are meager entitlements even in the best of systems. It is assumed that these benefits will meet the needs of the recipients. In many respects, for almost all the recipients, there will be needs which cannot be covered by the amounts provided but which are so important that they cannot be ignored. At this point, social assistance systems incorporate the use of discretion, either in the creation of benefits which may, but need not, be offered in certain circumstances, or in the making of extraordinary decisions not covered in the rules.

Discretion is also employed in considering eligibility for social assistance. There are virtually no means tests which do not require the exercise of some judgment or which do not permit a special decision to cover a unique situation. Once eligibility has become established, its continuation often depends on discretionary judgments about assets or income levels, marital status, continued disability or myriad other factors which might cause assistance to be reduced or discontinued.

Thus, whether in relation to eligibility or level of support, virtually all social assistance systems are heavily invested in the use of discretion. Much of the complexity of the administration of social assistance can be attributed to its use.

A discussion of the advantages and drawbacks of the use of discretion is found on pages 28-29 of the report, as follows:

Discretion is a mixed blessing both for recipients and for the system which employs it. For those receiving social assistance, the possibility that their entitlements can be altered through the recognition of special or extraordinary circumstances becomes a potential safety net to be appreciated; the system may offer additional help in situations of dire need. However, discretion

may also be used to reduce benefits or to cut off eligibility so there is never a guarantee that it will operate to the benefit of the applicant or recipient (Greaves, 1983). When requests are initiated by recipients, they become special pleaders, petitioning the authority with the legitimacy of their need and their lack of other alternatives. That this may be demeaning is obvious. Perhaps less obvious but equally important is the fact that the context in which discretion is exercised gives rise to excellent opportunities for social control and manipulation (Handler, 1979). Tying the need for income to attempts to manage behaviour is regarded by many as illegitimate. The use of discretion to correct the effect of benefit levels that are already known to be too low may also be illegitimate.

For the social assistance system itself, an advantage cited for discretion is that it affords the possibility of flexible response to the very special needs of the recipients. It is also regarded as cost effective by its selective direction of extra benefits only to those adjudged to require them. The use of discretion tends to be more feasible when caseloads are of manageable size but more difficult when workers are responsible for overly large numbers or recipients. Discretion permits workers to enjoy leverage over recipients in that they can invite, or actually demand, particular behaviour of the recipients as a condition of meeting their requests; some analysts of social assistance regard this as a strength rather than a weakness. Discretion also provides workers with opportunities to enact their biases, treating the requests of favored groups more positively than for recipients from devalued groups or with less likeable characteristics. For the system, a body of evidence has emerged to demonstrate that discretion is expensive not solely because of its labour intensiveness but because the variability of support levels creates problems in the administration of benefits and offers greater opportunities for error (Bendick et al, 1979; Piliavin, Master and Corbett, 1979; Greaves, 1983).

The following comments on the use of discretion in the Manitoba system, at it existed in 1983, can be found on pages 52-55 of the Ryant report.

As already noted, the providers of assistance generally have wide discretion about eligibility and benefits. This is certainly the case in Manitoba's social assistance system. It is clear that provincial legislation allows a great deal of room for the use of discretion in every aspect of social assistance program delivery.

In Manitoba, it is the limited nature of the basic budget provided which makes discretion so necessary. For example, the provincial social allowance budget excludes many predictable, regularly recurring, and essential expenditures except as provided on a discretionary basis from a special needs fund of one hundred and fifty dollars per year. (Additional amounts may also be approved by special requests to the Minister's designate). Discretion applies to expenditures for such things as essential household furniture and appliances, repairs, moving and transportation cost, children's educational costs (including books, school supplies, gym equipment), and so on. Thus, recipients must make special requests for what are essentially normal needs which are then subject to the judgment of program staff. In some sense, through exclusion of these items from the basic budget, the autonomy of the recipient is ceded to the assistance providers.

In the course of our review, we have encountered both administrative variation and case variation. Administrative variation refers to divergent general interpretations of discretionary policies between the various municipalities or the districts of the provincial Social Allowance Program. Case variation refers to unjustified differences in the way similar cases are treated even within a particular jurisdiction. The latter results both from inconsistency among field workers and differential treatment according to whether a recipient (or class of recipients) is favored or disfavored by a worker.

Essentially, administrative variation results in the development of different policies in different locales...

We asked staff about the scope of discretion exercised in their day to day work and discussed some of the issues arising from their perspective. Many staff spoke candidly about variations in approach to the exercise of discretion, lending support to the complainants' concerns. Staff spoke of "grey areas" and vague wording that opened the door for significant variations in interpretation in policy. Staff spoke of two very different philosophical approaches, a "control" model versus a "service delivery" model.

Some workers expressed frustration about the limits on their discretionary authority, and the resulting impact on their workload, while others felt comfortable with the approval process, particularly where they felt they had good supervision.

Some staff expressed concern about the limitations on exercising discretion regionally, and particularly about having to seek approval from a central office in Winnipeg, Service Delivery Support, from staff who had expertise in policy but little knowledge of the participants or of local circumstances. Some felt the limits on regional approval demonstrated a lack of trust in regional management, while others saw the requirement to seek approval from a central office as an impediment to efficiency.

While there were frustrations about the requirement to seek approval from Service Delivery Support, we also noted that many staff saw Service Delivery Support as helpful because staff of that unit possessed a comprehensive understanding of program policy.

Some staff comments highlighted both the benefits and deficiencies of a system that relies heavily on discretion, and how staff approach the use of discretion. Discretion was described as both a great thing and a terrible thing: great when discretion can be used to to meet an existing need that might not be clearly specified, and terrible when inequities arise because decision makers exercise discretion differently in similar circumstances.

Analysis

The Ryant report described the use of discretion as characteristic in both the determination of eligibility for assistance, and in the provision of extraordinary costs for things that were a legitimate and permissible need but not covered by recurring fixed payments. The report noted both "administrative variation" and "case variation." Twenty-five years later that remains to be the case.

At the point of intake, and sometimes before, staff can exercise the discretion to divert potential program participants to a job centre. Upon application, staff can exercise discretion under the Unreasonable Job Termination policy to deny benefits.

In respect of eligibility for disability benefits staff can either facilitate enrollment based on their own assessment and existing information, pending subsequent review by a Disability Assessment Panel, or impose requirements for further documentation before consideration for disability benefits can even begin. Prospective participants may lack the resources or capacity to obtain those documents.

Workers exercise significant discretion in the development of participants' action plans, including the discretion to determine the types of activities included in the plan, the expectations on the participant in respect of those activities, and the time participants are given to meet those

expectations. This discretion includes the authority to waive statutory work expectations and to substitute activities intended to address significant health, educational, social and personal barriers.

After eligibility has been established, there remain numerous circumstances in which program participants become, in the words of the Ryant report, “*special pleaders, petitioning the authority with the legitimacy of their need and their lack of other alternatives.*” This can include seeking discretionary approval for medical supplies, medical transportation, health related supplementary food allowances, additional rent, telephones, moving costs, eye glasses, dental services, educational support, and funding for treatment and rehabilitation programs.

There are numerous circumstances where staff actions and decisions may not be characterized as an “exercise of discretion,” but in which they do in fact exercise significant latitude in determining the approach taken to dealing with participants in certain circumstances. One example is the diverse approach taken to determining whether participants are in an undeclared common-law relationship. The approaches described to us by staff fall generally into one of two categories. Some staff take the approach that they are investigating an alleged fraud, and focus on obtaining proof that a fraud has occurred. Others view their role as determining ongoing eligibility, which includes an assessment of the needs and resources of the family unit regardless of any arbitrary characterization of the relationship between partners. The approach chosen can have tremendous consequences for women and children, with little discernable difference in the financial responsibility of the program.

Another of these areas that amounts to an exercise of discretion is the approach taken to home visits. They can be seen as a policy requirement with a primary focus on verifying eligibility information such as address and rental unit size, or they can be seen as an opportunity to form a connection with a participant and identify issues and needs that have not been identified during the application process or that have arisen since enrollment.

The 1983 Ryant report expressed disapproval of the use of discretion as a means of attempting to modify behaviour. The report noted that, “...*the context in which discretion is exercised gives rise to excellent opportunities for social control and manipulation (Handler, 1979).*” ... and added “*Tying the need for income to attempts to manage behaviour is regarded by many as illegitimate.*”

Tying the need for income to attempts to manage behaviour has become a feature enshrined in the EIA program by law, through the use of financial sanctions (benefit reductions) or file closures for non-compliance with work expectations.

The Ryant report also commented on the relationship between staff workload and the use of discretion. The following commentary from page 55 of the Ryant report describes the impact of high caseloads on the ability of staff to properly exercise discretion:

Discretionary decision-making is labour intensive and time-consuming. Savings from the discretionary rationing of benefits must be balanced by the increased administrative costs they engender. In our interviews, program providers confirm that much of their job involves the gathering of information and assessment of alternatives for such decision-making. This is certainly reflected in the job descriptions being developed by the provincial Social Allowance Program. However, in interviews, staff also report that caseloads are currently too high to allow proper consideration of discretionary requests.

Based on the views expressed by program staff, and on our analysis of both the tasks required of staff in their job descriptions and the manner in which those tasks must be completed pursuant to program policy, current workload is an impediment to the exercise of discretion in a fair and reasonable manner.

The program does not measure the time spent by staff or supervisors dealing with discretionary decisions or approvals. However, there has been an analysis of the process for approving what the program describes as “non-continuous need benefits.” In July 2008, an internal document noted that in 2006/07 there were “122,032 non-continuous need benefit approvals amounting to over \$20.2 million of which nearly \$8.5 million had been entered and approved in SAMIN by workers individually, without secondary review.”

These numbers confirm that discretionary decision making in the EIA program remains labour intensive and time consuming. It also suggests that the program’s efforts to ensure consistency in these decisions through file reviews conducted by supervisors and managers are lagging.

The conclusions reached in the Ryant report on pages 99-100 remain relevant to today, and are set out below:

The Task Force recognizes that the claim that a discretionary system is highly responsive to special need or unique circumstance is often valid. As the literature has revealed, discretion is accompanied by a whole host of attendant disadvantages, not the least of which is the degree of variation in decisions made about like cases (see Greaves, 1983 for a review of this literature). To this must be added the higher costs of administering discretionary systems, the flood of extra contacts between recipients and staff, the perceived injustice by those for who discretionary decisions have been negative, and finally that a discretionary system elicits the very paternalism and social control that we see as interfering with the achievement of independence.

We recognize that it is difficult to contemplate a system that is non-discretionary about the amount of benefits. However, assuming a benefit level which is adequate and an administrative system which is non-intrusive, we would recommend against the incorporation of separate “special needs” allowances. Instead, the basic income entitlement should recognize the probability that each recipient unit will have some unmet but predictable needs and therefore be adequate in amount.

Discretion is also highly implicated in the procedures by which eligibility is established and maintained. Many of the discretionary issues associated with categorical eligibility will no longer be a problem in the noncategorical system we propose. The administration of the needs test, particularly in the assessment of resources deemed to be available for applicant’s use, still remains a highly judgmental area. The assessment process cannot likely be made completely cut-and-dried and still remain fair. However, it is necessary to codify the procedures under which discretion is to be used to narrow its boundaries and to monitor decisions at regular intervals to ensure that like applicants are not being treated differently.

The Ryant report commentary on discretion began by tying the need for the extensive use of discretion to what it described as “meager entitlements” and noted that “...for almost all the recipients, there will be needs which cannot be covered by the amounts provided but which are so important that they cannot be ignored. At this point, social assistance systems incorporate the use of discretion...”

It concluded by recommending against the concept of special needs, in favour of a basic income entitlement that recognizes the probability that each participant will have some unmet but predictable needs.

The problems identified in 1983 remain characteristic of the system today. There are too many types of benefits tied to discretionary decisions. Benefit requests requiring discretionary approval should relate to extraordinary or unusual circumstances or needs that could not have been expected. Routine or predictable needs should not require a discretionary decision. Predictable needs such as school supplies for families with children in school, health supplies related to disability, and telephone and transportation benefits for those required to seek work should be part of the calculated entitlement based on a thorough assessment of a participant's needs.

Staff workload continues to be an impediment to the proper exercise of discretion. The exclusion of senior program managers from the category of staff with the authority to approve expenditures at the “minister’s designate” level results in unnecessary frustration and additional work for program staff.

Our review has focused on the current categorical eligibility system and we have recommended a restructuring of eligibility categories that should lessen the involvement of the program in the lives of some of its participants and reduce the administrative workload of staff correspondingly, while allowing workers to focus more on assisting participants who require more intervention:

- We have recommended that permanently disabled participants be provided a pension-like benefit that recognizes the cost of predictable but non-continuous needs.
- We have identified the need to distinguish between participants who are job-ready and those who will require intensive intervention and case management (people with persistent multiple barriers) in order to overcome the barriers that stand between them and sustainable employment.
- We have recommended that service be enhanced for people in the sole support parent category with children under the age of six, so that they can use those six years to become job ready through the appropriate education, training, and support.

For the use of discretion to be significantly reduced, the basic entitlement would have to be increased to reflect the cost of predictable, non-continuous needs. The administrative savings gained from reducing worker involvement in those categories could then be reinvested into the system, allowing workers to focus on program participants who require more assistance to overcome their barriers to achieving independence from the program. For those participants in categories with significant involvement with staff, there will continue to be a need for staff to make discretionary decisions.

While some of our recommendations support a restructured categorical eligibility system, we have also recommended that the department consider abandoning the requirement to fit applicants into categories, in favour of adopting a non-categorical system that evaluates the needs of all individuals when they require EIA support; a system that would assess the needs of all individuals when they walk through the door, regardless of whether they are single with no dependants, a single parent, married with children, in a common-law relationship, disabled, or non-disabled.

The Ryant report concluded that if discretion was going to continue to be used, it would be *“...necessary to codify the procedures under which discretion is to be used to narrow its boundaries and to monitor decisions at regular intervals to ensure that like applicants are not being treated differently.”*

The program has codified discretionary decision-making procedures primarily through its SAMIN system. As noted in a 2008 internal report, there are 179 “non-continuous or continuous/non-continuous codes in SAMIN.”

While there have been efforts to codify the discretionary decision making process through the information technology system, little effort seems to have been put into training or evaluation in respect of the decision making exercise itself.

All decisions affecting program participants must be fair and must be made fairly. While fairness is important in all government decision-making processes, it is particularly critical in circumstances where the outcome of decisions can have a significant impact on members of the public. It is hard to imagine a circumstance where it could be more critical than in a program of last resort that provides for people’s basic needs.

Making discretionary decisions always requires a decision maker to exercise judgment. Discretionary decisions are not exempt from the requirement that they be fair.

While it would not be reasonable to expect EIA program staff to be trained to the same extent as members of administrative or quasi-judicial tribunal, they should have a basic understanding of the following concepts of fair decision making:

- Procedural fairness:** how decisions are made - the steps to be followed before, during and after decisions are made;
- Substantive fairness:** the fairness of the decision itself; and
- Relational fairness:** how people are treated during the decision making process.

The 2008 internal report referred to previously highlighted another concern that we identified in the course of this review. In exercising discretion EIA staff are most often guided by their interpretation of written program policy, or the interpretation favoured by their immediate supervisor. At the same time, their ability to process non-continuous needs approvals is contingent largely on the SAMIN code system. There is often a lack of clear guidance in policy, and no easy means of connecting policy guidance with SAMIN approval codes.

The report described the issue as follows:

Need Code Guidance - The EIA Program did not have a need code guidance document available to workers to facilitate the selection of appropriate need codes for non-continuous need requests. Although EIA policy, consisting of the EIA Manual and Directives, provides benefit information, the policy guidance generally did not provide a suggestion of SAMIN need codes that should be utilized to process the benefits. A SAMIN Code Book provides a list of SAMIN need codes available, however, the Code Book does not provide a description of benefits that should be funded utilizing those codes and it is not cross-referenced to policy. Workers indicated that the Code Book and other workers were consulted if they were unsure of which need code should be utilized, but they also indicated a desire for enhanced guidance.

During our sample testing, we found that where EIA policy provided more definitive guidance on benefits, the need codes associated with the benefits were more consistently utilized. For example, as shown in Appendix E, Special Needs benefits were clearly described in legislation and policy. Correspondingly, our

sample testing found that the Special Needs benefits, with the exception of SNES, tended to be sufficiently described in the case notes or cheque message documentation and were consistently processed through the appropriate need codes across all the District Offices.

Conversely, for situations where the need codes were more generalized in nature, or could not be clearly linked to specific policy guidance, we found that the codes were often used for a wide variety of benefits, and in some situations, other more appropriate codes may have been available. Staff speculated that the codes that are more "open" may be more frequently utilized in lieu of other more specific codes as they are viewed as the quickest alternative and easy to use.

To address this concern the report recommended that the EIA program should:

Develop a Code Manual to provide guidance to staff on the purpose and appropriate use of needs codes. The following should be considered in the development of the Manual:

- The purpose of non-continuous need codes should be described and similar codes should be grouped to facilitate review;*
- For each major group of codes, the Manual should indicate a reference to the EIA Program policy and legislative sections associated with the needs being paid through the need code group;*
- Where required by EIA Program policy, any higher levels of staff that should be processing the benefits utilizing the given need codes should be listed. Where deemed appropriate, associated dollar limitations, by staff level should also be provided. If such dollar limitations are included in the Manual, the amounts provided should match any dollar limitations prescribed in policy or legislation.*
- The SAMIN authorization and approval dollar limits should be updated to ensure consistency with EIA policy.*

We endorse that recommendation.

The link between SAMIN codes and the EIA policy manual would be very helpful in ensuring consistency and likely make discretionary decision making easier for program staff. However, for this to be most beneficial the policy manual needs to be improved in a number of ways.

To address the concern set out in the 2008 internal report about the variation in the level of guidance provided in EIA policy, the EIA Administrative Manual should be revised to include not only legislative authority for discretionary benefits but specific guidance for staff on the process to be followed and the factors to be considered in making the decision.

There is one other way in which current policy should be improved to enhance discretionary decision making. The program can provide staff with a written policy on discretionary decision making, setting out the process staff are expected to follow and incorporating the program's expectations around fairness.

Recommendations

64. It is recommended that the department assess whether administrative savings could be achieved from moving from a system with ad hoc consideration of discretionary expenditures for items that are basic needs to a system with fixed benefit levels that reflect the cost of those predictable non-continuous needs, in particular in the long-term disability and employment-ready categories.
65. It is recommended that any expenditure reductions achieved through streamlined administration and the refinement of eligibility categories be re-invested in the system.
66. It is recommended that the department review the spending authority levels of Regional Directors and Area Directors to determine if they should have “minister’s designate” level, currently restricted to staff of Service Delivery Support.
67. It is recommended that the department adopt a Code Manual to provide guidance to staff on the purpose and appropriate use of needs codes for discretionary decisions.
68. It is recommended that all staff receive a written policy on discretionary decision making, setting out the process staff are expected to follow and incorporating the program’s expectations around fairness.

Departmental Response:

The department has accepted recommendation 64, but noted that it must be considered in conjunction with many other recommendations, and that it may have significant resource implications.

Recommendation 65 is under review.

The department has accepted recommendation 66, advising that it continues to review authority levels of all staff within EIA while maintaining a distinction between ministerial and director authority levels.

The department has accepted recommendation 67, advising that it will develop a manual to guide staff in use of needs codes for discretionary spending.

The department has accepted recommendation 68, and stated that it will clarify existing policies and develop a number of training and information materials for staff to ensure they are well trained in program expectations and the use of discretion.

Departmental Response (May 21, 2010)

The report was sent to the department and it provided the following response:

The Department would like to thank the Ombudsman for the report on the Employment and Income Assistance program. These reviews help programs determine strengths and identify ways to improve service delivery to increase efficiency and effectiveness. This review was a collaborative undertaking, which has resulted in a well-balanced and informed report.

Over 34,000 households rely on welfare and nearly 300 staff work very hard to deliver this program; sometimes under challenging circumstances for both. This report is a fair examination of the program's challenges and the improvements recently made. The Department agrees that the focus should remain on providing assistance that moves people from welfare to work. The report provides good insight into how the Department can move forward with that goal.

Welfare has evolved over decades to respond to changes in society, including greater workforce participation by women and persons with disabilities. Everyone should be provided with appropriate supports and the opportunity to work. The Department will enhance the way in which it delivers this program to make sure people are treated fairly. Staff is committed to improving administrative processes and to be more transparent, while at the same time recognizing that government has a responsibility to the taxpayers of Manitoba to spend their money wisely.

The Department appreciates the recognition of the good work that it has done over the past ten years, and agrees that it is important that we do a better job communicating this message. We are committed to ensuring that staff, the general public and social assistance recipients understand and can access the improvements made.

The Department would like to briefly highlight some of its achievements so that the public is aware of the improvements; particularly Rewarding Work which was introduced in 2007. This effort has resulted in moving people off welfare into jobs and training. Since 1999, government has made improvements, which means spending has increased by more than \$76 million each year for benefits and services to help people prepare for work or stay in jobs, including:

- Families with children get to keep \$43 million in federal child benefits, which means that they now have enhanced resources, which would have been otherwise clawed back.
- Families also get to keep the federal Universal Child Care Benefits, which means another \$10 million to ensure caring for children is not a disincentive to work.
- We have introduced a trust fund policy for people with disabilities so that they can plan for their futures and we have fully exempted the new federal Registered Disability Savings Plan.
- We have increased social assistance rates, northern food allowances, supplementary benefits for the disabled and school supplies allowance.

- For low-income working people, we have increased the Manitoba Shelter Benefit, improved child care subsidies and extended benefits to those who leave welfare for work.
- Our incentives for work are among the best in the country.
- We have enhanced funding for families looking after their adult children with disabilities.
- People with disabilities are now eligible for increased exemptions, double what they were originally entitled.
- We introduced Manitoba Saves! which improves people's financial literacy and helps them save for unexpected expenses.
- We offer voicemail services for job seekers to ensure that employers can get a hold of them.
- We also provide telephones for many families, including those at risk of domestic violence and persons with disabilities who need a phone for health reasons.
- Likewise the program provides thousands of families with significant funding for transportation in and outside of Winnipeg, including those who need to see a doctor, look for work or attend social outings for people with disabilities who may use a wheelchair.
- Through Rewarding Work, we have developed training and education services and support for volunteerism to help people transition into the workforce.
- As noted in the report, we introduced the highly successful *JobConnections* initiative, and market *Abilities* program, also as part of Rewarding Work. We also ran a myth busting campaign to remind employers that people with disabilities need to be seen for what they can do, not for what they cannot.

As the Department moves ahead on Rewarding Work to help people move from welfare to work, we will carefully examine and consider the recommendations of the Ombudsman.

Once again, thank you for your report. The Department looks forward to working with you in the future.

The department was asked to provide a formal response in accordance with subsection 37(1) of *The Ombudsman Act* as follows:

Where the Ombudsman makes a recommendation under section 36 he may request the department, agency of the government or municipality to notify him within a specified time of the steps that it has taken or proposes to take to give effect to his recommendations.

Our Comment:

Departmental responses to recommendations have been included in the body of this report.