



Healthcare Employees' Benefits Plan (HEBP)
Disability & Rehabilitation Plan

Terms of Reference for Appeal Hearing

September 26, 2014

1. Purpose

The Healthcare Employees' Benefits Plan (HEBP) Board of Trustees has established an Appeal Hearing in order to provide a final level of appeal within the Disability & Rehabilitation Plan (D&R Plan) for Claimants where Disability Benefits are in dispute.

2. Objectives

The Appeal Hearing exists to provide a forum wherein claimants receive final adjudication of the decision respecting Disability Benefits.

The adjudication is to be based upon the Claimant's then-existing file. No new evidence will be considered.

3. Evidence

The Appeal Hearing will be heard before a single Arbitrator based on the Claimant's file as it exists at **the date of the final adjudication of the Decision** which is now subject to the Appeal Hearing.

The Arbitrator shall not accept any new evidence at any Appeal Hearing.

If an Appeal Hearing in person is selected, any oral evidence to be tendered will be limited to evidence from the Claimant and a representative of HEB Manitoba, and shall be limited to matters in the Claimant's file as it existed at the date of the final adjudication of the Decision which is now subject to the Appeal Hearing.

4. Jurisdiction

The single Arbitrator has jurisdiction to make a determination as to whether the Claimant's appeal respecting Disability Benefits should be allowed or refused.

If the Arbitrator determines that the Claimant's appeal is to be allowed, he or she will make a determination as to the entitlement to Disability Benefits in accordance with the terms and conditions of the HEBP Disability and Rehabilitation Plan Text (the Plan Text).

5. Appeal Process

The method of appointment of the list of Arbitrators shall be as follows:

- Administration will compile a list of qualified individuals who are willing to serve as Arbitrator for Appeal Hearings.
- The list of qualified Arbitrators must be endorsed by the HEBP Board of Trustees.
- Each Arbitrator will be screened for any conflict of interest.

A Claimant who is pursuing an Appeal Hearing shall be provided with the names of two Arbitrators from the list, and shall select which of the two named Arbitrators the Claimant wishes to determine his or her Appeal.

6. Authority

The Decision of the Appeal Arbitrator will be final and binding, subject only to the review provisions of s. 44(1) of *The Arbitration Act (Manitoba)*.

7. Appeal Procedures

The procedures regarding the Appeal Hearing are as follows:

Claimant's Role and Responsibilities

- The Claimant shall, within 60 days, provide to HEBP notice of his or her intention to appeal the Decision made on their claim.
- The Claimant shall, following receipt of the list of Arbitrators, advise HEBP of his or her selection within a period of 14 days.
- The Claimant shall cooperate with HEBP and the Arbitrator in setting a date for the appeal hearing.
- The Claimant shall select either an Appeal Hearing in person or an Appeal Hearing in writing.

HEBP's Role & Responsibilities

- Upon receipt of a Claimant's notice of intention to proceed to an Appeal Hearing, HEBP shall provide to the Claimant the following:
 - a) A Request for Hearing form
 - b) The Member Agreement and Acknowledgement form
 - c) The outline of the appeal process
 - d) A list of eligible Arbitrators to hear the Appeal Hearing
- Upon receipt of notification of the Claimant's selection of Arbitrator, HEBP shall coordinate with the Arbitrator to determine if there is any conflict of interest and, if none is identified, to arrange for the scheduling of an Appeal Hearing as requested by the Claimant, taking into consideration the number of outstanding appeals.
- HEBP shall ensure that the Claimant receives notice of the Appeal Hearing date selected.
- HEBP shall provide the Claimant, and/or their advocate/representative, and the Arbitrator with a Case Summary, including all relevant material and documentation, no later than 14 days prior to the Appeal Hearing date.
- HEBP shall identify to the Claimant and Arbitrator the issues to be determined.
- HEBP shall ensure that all matters related to the Appeal Hearing are conducted in a confidential manner.

8. Hearings

At the time a Claimant elects to proceed with an Appeal Hearing, the Claimant shall be required to select either an Appeal Hearing in person or an Appeal Hearing in writing, based upon the Arbitrator's review of the paper file.

An Appeal Hearing in person shall be a *viva voce* hearing based on the file as it existed at the time of HEB Manitoba's final adjudication. The Claimant and representative of HEBP will be required to attend in person. Each shall be entitled, at their own cost, to the assistance of an advocate, representative, or lawyer/legal counsel. The Arbitrator shall direct the process to be followed at the Appeal Hearing. Any oral evidence submitted is limited to that of the Claimant and a representative of HEB Manitoba and shall be limited to the contents of the Claimant's file as it exists at the date of the final adjudication of the Decision which is now the subject of the Appeal Hearing. No new evidence may be submitted. In addition, the Claimant and HEBP may make oral submissions to the Arbitrator for consideration.

An Appeal Hearing in writing is a paper review without personal attendance. In the event of a paper review, the Arbitrator shall scrutinize the existing records and reports forming the Claimant's files and considered by HEBP at arriving at a decision. In addition, the Claimant and HEBP may provide written submissions to the Arbitrator for consideration.

All evidence, oral or otherwise, must be relevant in order to merit consideration by the Arbitrator. The Arbitrator may determine relevance at his or her discretion.

The Arbitrator reserves the right to adjourn an Appeal Hearing at such time as he or she is satisfied that he or she has sufficient information to make a decision.

9. Decision

A written decision will be provided by the Arbitrator no later than 30 days from the date the Arbitrator has adjourned the Appeal Hearing.

A Decision is final and binding, subject only to the review process contemplated by s. 44(1) of *The Arbitration Act* (Manitoba).

The parties to the appeal, and any representatives or legal counsel assisting them, shall maintain confidentiality of the written decision received from the Arbitrator, except for such disclosure as may be required by law.

10. Expenses and Reimbursements

The Arbitrator shall be reasonably compensated by HEBP for his or her attendance at the Appeal Hearing and for reasonable expenses incurred as a result of his or her attendance.

The Claimant shall receive reasonable reimbursement for relevant travel costs incurred as a result of attending an Appeal Hearing.

11. Annual Review

The Terms of Reference are the responsibility of the HEBP Board of Trustees.