

Analysis of the ODSP Special Diet Allowance

Prepared for:

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Executive Summary

Introduction

The Special Diet Allowance of the Ontario Disability Support Program (ODSP) is an essential aspect of ODSP income supports. In theory, the Special Diet Allowance's objective is to enable recipients of ODSP supports to pay for food that meets their personal dietary requirements. The impact of the November 2005 cutbacks is that recipients are less able to eat properly and enjoy a healthy standard of living.

Findings

This report examines the Special Diet Allowance application procedure, getting cut-off and appealing decisions and identifies specific problems. The following are some of the major findings.

- The application process is an infringement on the privacy of the applicant. In order to apply for the Special Diet Allowance, applicants must disclose their medical condition(s) to ODSP staff.
- The application does not recognize ODSP recipients without specific dietary medical need but who have clear, undeniable nutritional needs.
- The application makes it impossible to prescribe a special diet as a preventative measure for those at risk of developing a serious health issue.
- The list of qualifying medical conditions lacks mental health conditions and environmental illness. Approximately 50% of ODSP recipients have mental illness.
- Recipients without regular doctors and/or consolidated medical histories or those living in rural areas or with limited mobility could have difficulty complying with the 90 day review timeframe.
- Recipients received a significantly lower amount for the Allowance following the initial review process. The Schedule amounts are low. Of the 47 listed medical conditions in the Schedule, 13 have an amount for \$10 and none have an amount for the maximum \$250.
- Annual reviews are required for permanent medical condition, such as diabetes and food allergies. This requirement poses a real cost to the health care system in terms of unnecessary appointments and medical tests. As well, the resources of the ODSP are also directed to administering this unnecessary process.
- Only 12% of eligibility or support amount decisions are overturned at the mandatory internal review stage.
- Applicants with legal counsel are far more likely to be successful at the Special Benefits Tribunal. One study found that 80% of applicants with legal counsel were successful in having the original decision overturned.

Recommendations

Policy Changes

- Ensure workers inform people on OW/ODSP about their right to apply for the Special Diet Allowance.
- Allow people on OW/ODSP to download the forms from the Ministry website.
- Allow health clinics, legal clinics and community agencies to photocopy and distribute the forms.
- Submit empirical evidence to the Expert Committee regarding the need for special diets for mental health illness and environmental sensitivities
- Amend Policy Directive 6.4 to increase length of time for completing an application for review to six months.
- Make decision guidelines relating to extensions for extraordinary circumstances available in application material and online.
- In the event the Schedule is not abandoned, increase the amounts provided to a reasonable level that could make a genuine difference to a recipient's food purchasing power.
- Amend the Schedule and Policy Directive 6.4 to make amounts available for preventative diets.
- Amend Policy Directive 6.4 to eliminate reviews for permanent medical conditions as the process constitutes an unnecessary burden on recipients and drain on health care and ODSP resources.
- Amend Policy Directive 6.4 to consolidate review dates for recipients with more than one medical condition to coincide with the CVP.
- Amend Policy Directive 6.4 to provide for a prescribed regular review of the Schedule with public announcements requesting input from a broad group of medical professionals, community groups and individuals.
- Amend Policy Directive 6.4 to require the Ministry of Community and Social Services collect statistics on the Special Diet Allowance and make these available to public on timely basis.
- Require the Disability Adjudication Unit's Internal Review Board and the Social Benefits Tribunal to take more active measures in making applicants aware of how and where to obtain legal counsel and the benefits associated with obtaining legal counsel in regard to appealing the initial decision of the DAU.

Legislative Changes

- Revoke the listing of medical conditions and corresponding amounts and return to amounts allocated based on a physicians determination of dietary need.
- Amend the *ODSP Act* to index the Schedule amounts for inflation.

- Amend Policy Directive 6.4 and part VIII of the *ODSP Act* to eliminate the Internal Review Board component of the Special Diet Allowance appeals process. The budget of the Social Benefits Tribunal, which would then constitute the first component of the appeals process, would have to be increased to deal with the resulting increase in the number of appeals it would hear.
- Amend Policy Directive 6.4 and s. 58(1) of the *ODSP Act* to increase the time period in which an applicant must appeal the decision of the DAU to the Internal Review Board from 10 days to 20 days.

Future of Special Diets

The importance of diet in preventing and treating medical conditions and overall health is indisputable. The government clearly recognized that social assistance rates were too low to afford all dietary items needed when the original Special Diet Allowance was introduced. Indeed, as the ODSP Action Coalition identified, it is the inadequacy of social assistance rates that is at the root of the crisis that the cuts to the Special Diet Allowance have caused. If rates were high enough for people to eat nutritiously, people on OW and ODSP wouldn't need to be so dependent on the Special Diet Allowance.

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Introduction

Why the Special Diet Allowance is an Issue

The Special Diet Allowance of the Ontario Disability Support Program (ODSP) is an essential aspect of ODSP income supports. In theory, the Special Diet Allowance's objective is to enable recipients of ODSP supports to pay for food that meets their personal dietary requirements.¹ In practice, however, the Special Diet Allowance fails to achieve its objective.

ODSP income supports are below the poverty level and do not allow for a healthy standard of living.² The failure of the Special Diet Allowance to meet the needs of people with specific dietary requirements compounds the difficulties of achieving a healthy standard of living. Food insecurity compounds housing insecurity. As the Ontario Coalition Against Poverty (OCAP) puts it, one must decide to pay the rent or eat properly.³

ODSP recipients in Nipissing have been found to spend an average of 24% of their ODSP income on food.⁴ Food is one of the most important expenses. The Special Diet Allowance has an excellent objective, but recent cutbacks as discussed below in the "Background to the Special Diet Allowance" section make eating properly even more unaffordable.

Time for Change

The Special Diet Allowance policies need to change. This is a priority area for the ODSP Action Coalition.⁵ It has also become a priority area for the Community University Research Alliance (CURA) on Mental Health and Housing. The CURA has previously identified the problems of ODSP as a barrier to people being able to afford safe housing. Over the past three years, the CURA has enlisted the support of Pro Bono Students Canada (PBSC) to help the CURA study and recommend changes to ODSP.

CURA's Involvement

The analysis has involved four main stages. In the first stage, extensive interviews were undertaken by the CURA to identify problem areas with the ODSP. In the second stage, law students were brought in from PBSC to study the problems identified and explained in the 2005 report "Examining the Ontario Disability Support Program: Issues & Solutions". In the third stage, specific legislative changes along with a draft ODSP Accountability Act were proposed in the 2006 report "Pathway to Progress – ODSP: Accountability, Reform & Systemic Change".

¹ ODSP Income Support Policy Directive 6.4 regarding the Special Diet Allowance

² Pathway to Progress – ODSP: Accountability, Reform & Systemic Change at pg. 46

³ <http://ocap.ca/rtr/diet/clinicsresume>

⁴ DNSSAB Community Services Review for ODSP Population Oct. 2006 at pg. 71

⁵ <http://www.odspaction.ca/~new/drupal/activities>

Now in 2007, the fourth stage involves a shift in focus from broad legislative recommendations concerning the entire ODSP to specifically addressing the Special Diet Allowance. Without losing view of the bigger picture that overall ODSP income support levels need to increase, recommendations are made below to address the problems of the Special Diet Allowance. Many of the changes proposed in this specific area can be applied throughout the entire program.

Background to the Special Diet Allowance

ODSP Cutbacks

In more than a decade, ODSP has seen only two raises to the levels of income supports. In 2004 there was a 3% raise and in 2006 there was a 2% raise. Combined together, these raises do not keep up with inflation. In fact, ODSP income support levels decrease each year when adjusted for inflation. Similarly, the Special Diet Allowance has seen major cutbacks in recent years.

A key date that major cutbacks were introduced is November 4, 2005. Prior to November 2005, the maximum Special Diet Allowance was \$250 per month per person. Many ODSP recipients were able to obtain this maximum if their doctor indicated that they were in need of a special diet.

Special Diet Allowance Cutbacks

After November 2005, the maximum Special Diet Allowance remains \$250 per month per person. But there were three major changes. First, an approved health professional must confirm eligibility based on a specific and listed medical condition (see the Sample Application Form in Appendix E). Approved health professionals are physicians, registered nurses and registered dieticians.

Second, the amount paid is outlined in a detailed schedule (see Appendix D) and it is usually considerably less than \$250 depending on the medical condition identified. Cardiovascular disease, for example, results in an additional \$10 per month.

Third, an extensive review took place to make sure that the amounts being paid for Special Diets was “correct”. Everyone receiving a Special Diet Allowance had to submit a new form to prove once again that they had a medical condition that qualified (they originally had to prove this in order to receive the Special Diet Allowance in the first place). In the majority of cases, the Allowance was drastically reduced.

Impact of Special Diet Allowance Cutbacks

The impact of the cutbacks is that recipients are less able to eat properly and enjoy a healthy standard of living. The alarm was raised and groups such as the ODSP Action Coalition have responded, forming a Special Diets Committee to look into the matter.

The Special Diets Committee has since wrapped up so that Coalition members can refocus on raising overall social assistance rates.⁶

As of early 2007, ODSP was reviewing its policies by means of an independent Special Diet Expert Advisory Committee. The findings of the Expert Advisory Committee are not yet available.

CURA hopes that it can make a contribution through its own analysis of the Special Diet Allowance, focussing on applying for the Allowance, undergoing a review of the Allowance, and appealing Special Diet decisions.

⁶ Special Diet Committee Evaluation 2006 available online:
<http://www.odspaction.ca/~new/drupal/activities/spdiet-commitee>

Special Diet Allowance Application Procedure

Special Diet Allowance Application Procedure

The Special Diet Allowance is available to recipients and their dependants who have a medical condition that requires a special diet. All recipients who require a special diet must have an original, new Application for a Special Diet Allowance/Pregnancy Nutritional Allowance (Form 3059/3060) completed (see Appendix E).

This form is not to be issued to anyone other than ODSP recipients requesting the Special Diet or Pregnancy Nutritional Allowance⁷, and only original copies of the form will be accepted; altered and faxed versions are not to be accepted or issued.⁸ The Special Diet Allowance is not a benefit, but is calculated into the special budgetary requirements.⁹

The Application

Section 1 of the form requires ODSP staff to complete the applicant/recipient information section prior to issuing it to the applicant. The applicant can be a spouse or dependant of the recipient of ODSP. In addition to completing the applicant information in section 1, staff are also required to include the date the application was issued in the top right hand corner of the application.

The remaining sections of the form are to be completed by an approved health care professional, who are identified in section 2. The list indicates only physicians, registered nurses in the extended class, registered dieticians, registered midwives, and traditional aboriginal midwives are approved health professionals. The traditional aboriginal midwives must be recognized and accredited by his/her community.¹⁰ The midwives are only eligible to confirm special diets relating to pregnancy and breast-feeding.

The health practitioner must sign a declaration in section 2 confirming that the recipient requires the special diet due to the indicated medical conditions. As well, the approved health professional that completes the form is also required to provide a date. The date must correspond to the date the form was completed, and cannot be post-dated to before the application was issued. The amount for the Special Diet allowance to be paid commences the month that the approved health professional confirms the medical condition.

Sections 3 and 4 outline the medical conditions required in order to be eligible for a special diet. The condition must be indicated along with the length of time the recipient will require the special diet for that condition. The categories are very specific, but an

⁷ In fact, requests to obtain a copy of this form from the Toronto ODSP office for research purposes were rejected by an ODSP Income Support Manager.

⁸ ODSP Transition Document 2005

⁹ *Supra* note 1.

¹⁰ *Supra* note 8.

individual may be eligible for more than one medical condition. (See Special Diet Allowance Schedule in Appendix D) Section 4 deals specifically with the medical conditions for pregnancy, and the approved health professional must indicate the date the pregnancy was confirmed along with the expected delivery date.

Eligibility and Decision Criteria

Upon receipt of the application, staff will determine if an individual is eligible for the allowance in accordance with the Schedule. The opportunity to receive a healthy, balanced, diet is not available to all individuals with a medical condition receiving support. The list is very condition specific, and if a medical condition does not appear on this list, an individual will be deemed to be ineligible for the diet allowance. ODSP recipients residing in institutional settings are not eligible for this allowance.¹¹

The date the doctor confirms the medical condition is the month the payments for special diets commence.¹² Eligibility for the pregnancy conditions begins the date the pregnancy is confirmed and continues until the date of delivery. In addition, 12 months of coverage after delivery are included for a breast-feeding allowance. For the medical condition, staff will calculate the allowable amount and the Special Diet Allowance is issued on a monthly basis. There are no lump sums or retroactive payments. The health professional must indicate the length of time for which special diet is required for the condition indicated. If at any time, the health professional indicates the special diet is no longer required, the allowance will be removed from the budgetary requirements. Eligibility will be reviewed at least once every 12 months through a medical re-assessment¹³ and if the time required for the diet is indicated as less than a year, the review of the diet must take place before the end of the indicated time.

If an individual is not approved for the Allowance a letter will be sent, indicating the reason and their right to an internal review of the decision.

Critical Analysis of the Application Process

The specific medical conditions listed are each worth an indicated amount of money. Although the maximum amount per month is \$250, many of the conditions do not compensate anywhere near this amount. Of those who receive the allowance most receive considerably less than the maximum amount.¹⁴ It would seem the only way for a recipient to reach the maximum would be a situation where they suffered many of the serious medical conditions listed. The amounts which are associated with medical conditions are offensively low, and do not provide the support needed to support healthy living.¹⁵ The justification provided for the stringent list of conditions and amounts is to

¹¹ *Ibid.*

¹² *Ibid.*

¹³ http://www.dailybread.ca/get_informed/upload/DietaryBulletin.pdf

¹⁴ http://auto_sol.tao.ca/node/view/1605

¹⁵ http://dawn.thot.net/special_diet_supplement.html

ensure that the resources are being distributed to those most in need. Unfortunately, this leaves others who have special dietary needs with nothing.

The application process is an infringement on the privacy of the applicant. Medical conditions are confidential, and this application process requires medical professionals to release this information.¹⁶ In order to apply for the Special Diet Allowance, applicants must disclose their medical condition to the ODSP staff. Some of the medical conditions are serious diseases which an individual may not feel comfortable disclosing. To a degree, this issue has been addressed on the new application, where the conditions which result in a loss of body weight do not have to be specifically identified, but are grouped under the single heading “Wasting/Weight-loss”. However, disclosure of other conditions is still required to staff who essentially have no right to private medical information.

Access to the application form is somewhat limited. Copies of the application for a Special Diet Allowance are not readily available to individuals on ODSP. There is an onus on the individual to seek out a form from their local office, at which time only one copy will be provided. This is an issue because people are often unaware of this extra benefit and the ability to travel to the offices may be limited for individuals receiving ODSP. The single copy provided is not sufficient because there is no room for error.

The Special Diet Allowance does not explicitly recognize social assistant recipients without a specific dietary medical need but who have clear, undeniable nutritional needs. Only medical practitioners have the expertise to recognize when their patients’ health is at risk and if special diets are necessary. If the medical condition is not included on the list, there is no eligibility for the benefit. The application process makes it impossible to prescribe a special diet as a preventative measure for those who are at risk of serious health issues due to inadequate nutrition, despite income being a greater determinant of health problems than age.¹⁷

Moreover, there is ample evidence to suggest that individuals on ODSP are at an increased risk for developing such illnesses as diabetes, heart disease and osteoporosis.¹⁸ The risk for these illnesses significantly decreases with proper diet and nutrition. The Special Diet Allowance has no provision for preventative health measures. Until one is diagnosed with a medical illness, there is no additional monetary support, despite the fact that there may be a clear medical need for a special or nutritional diet.

The Schedule of approved medical conditions fails to include mental health conditions and environmental illnesses. Mental illness can be serious and long term, but there are almost no special diet eligibility for these individuals. Approximately 50% of ODSP

¹⁶ ODSP Action Coalition – Letter to Deb Matthews January 2006 available at <http://www.odspaction.ca/~new/drupal/node/44> .

¹⁷ Public Health Agency of Canada at <http://www.phac-aspc.gc.ca/ph-sp/phdd/determinants/determinants.html> .

¹⁸ Income Security Advocacy Centre (ISAC) – Special Diet Submission, Dana Milne, November 8, 2005.

recipients have mental illness.¹⁹ Individuals with mental illnesses are more sensitive to certain foods; coupled with the fact the physical side effects of their medications can put them at increased risk for developing additional medical conditions.²⁰

Recommendations for Improving the Application Process

Policy Changes

There needs to be increased access to the Special Diet allowance. This involves increasing awareness about the additional benefits available and making the program easier to access. Individuals may be suffering from medical conditions and surviving on inadequate diets without knowledge of this additional benefit. This can be achieved by ensuring special diet forms are more accessible through:

- ensuring workers inform people on OW/ODSP about their right to apply for the Special Diet Allowance;
- allowing people on OW/ODSP to download the forms from the Ministry website;
- allowing health clinics, legal clinics and community agencies to photocopy and distribute the forms, and;
- providing information about the Special Diet Allowance and the forms to medical professionals.

There is no good policy reason to have such strict limitations on access to this benefit.²¹

The issue of mental health must also be addressed. Individuals with mental health conditions are not only at risk for developing other medical conditions, but there is also the potential for side effects from their medications. Mental health illnesses require a diet that is high in fibre, with fresh fruits and vegetables, essential fatty acids, vitamins and mineral supplements.²² There is currently little to no recognition of mental health illnesses on the schedule of recognized medical conditions. There is ample evidence to show that illnesses, such as schizophrenia, require a well-balanced diet to ensure that the individual will thrive.

To address mental health illnesses there are steps that individuals can take in order to have these diets included on the schedule. Submission of proposals can be made to the Schedule review board containing evidence that individuals afflicted with mental health illnesses require special diets. The review board can choose to include those illnesses where empirical studies which show that a special diet is necessary.

As well, there must be greater representation of psychiatrists and psychologists on the Schedule review board and at all policy decision making levels. ODSP Income Support

¹⁹ *Supra* note 16.

²⁰ *Ibid.*

²¹ *Supra* note 18.

²² *Supra* note 14.

Policy Directive 6.4 (“Policy Directive 6.4”), specifically the Special Diet Schedule, must be altered in order to recognize individuals with mental health illnesses, such as schizophrenia, as individuals requiring a Special Diet Allowance.

Finally, environmental sensitivities are recognized medical conditions that should be added to the current Special Diet regulations in Policy Directive 6.4. There are individuals who require special diets rather than medications, because they have environmental sensitivities or because they require medical care from a naturopathic doctor. These individuals have no access to the current Special Diets Allowance due to the stringent eligibility criteria.²³ Again, inclusion of these special diet requirements on the schedule can be achieved through the provision of evidence to the review board.

There is a need for recognition of the ample medical evidence which has shown that people on social assistance are at a much higher risk of diseases such as diabetes, heart disease and osteoporosis yet cannot afford the dietary supplements they need to significantly reduce these risk factors unless they can get the Special Diets Allowance.²⁴ Access to the benefit should not be limited to those afflicted with a disease. There is nothing in the legislation to suggest that the Special Diet Allowance was not meant to be used to prevent an impending medical condition.²⁵ In fact, the legislation very clearly leaves that decision to medical practitioners – not welfare workers or politicians. By limiting eligibility to recipients with existing medical conditions, the government is ignoring important medical evidence, and depriving people in need. The government is also making it difficult for medical professionals to properly treat and care for ODSP recipients. This approach is short sighted as preventative diets will save the health care system money in the long-run. Policy Directive 6.4 needs to include preventative diets for those at risk for serious medical conditions.

Legislative Changes

The Special Diet Allowance should be based on specific diets, and not on medical conditions. The amounts specified by the Schedule do not provide adequate funding to ensure a well-balanced diet. Rather than tie the amounts to be received to a loss of body weight or a specific disease, the amounts should be directly related to what diet is necessary for that individual. The expertise of medical practitioners needs to be recognized by allowing them to decide whether the patient requires a special diet, rather than limiting it to a fixed Schedule. Each individual should be allowed as much funding as necessary and should not be limited by maximum amounts. The medical conditions listed in the Schedule should be listed as a guide for the medical practitioner, but the list should not be exhaustive, nor should it be tied to maximum dollar values. This recommendation would also address the privacy concerns. If the list is a guide only, the need to disclose the condition is eliminated.

²³ *Supra* note 16.

²⁴ *Ibid.*

²⁵ *Ibid.*

Access to the Special Diet Allowance is restricted by unnecessary barriers. A greater perspective of what constitutes a medical condition, including those with mental health illnesses and those at high risk of developing a future medical condition, is necessary. Increased access to and awareness of the Allowance is critical to ensuring the program meets its intended goals: to ensure those in need are receiving an adequate diet necessary for healthy living.

Getting Cut-off of the Special Diet Allowance

Review Requirement

As of November 4, 2005 all current recipients of the Special Diet Allowance were required to re-confirm their eligibility under the new regulations. This review occurred in phases and has now been completed.

Initial Review Process

Recipients received a letter indicating their Allowance was under review. Enclosed was a new Application for a Special Diet Allowance to be completed by an approved health professional.²⁶ The completed application had to be returned within 90 days. An extension was available in exceptional circumstances by submitting a request in writing for approval to the ODSP office. During the review process, recipients continued to receive their existing Special Diet Allowance amount. Recipients were notified of the review outcome by mail.

Individuals grandparented from Family Benefits Allowance who were receiving a special diet amount in excess of \$250 will continue to receive these amounts following the changes to the Special Diet Allowance. If their dietary needs change and fall to \$250 or less per month, they will lose their grandparented special diet status and will be subject to the new regulations.²⁷

Future Review Process

Eligibility for the Special Diet Allowance will be reviewed on a regular basis either as part of the Consolidated Verification Process (CVP) review or 90 days prior to the date the Special Diet Allowance expires if such date precedes the CVP review.²⁸ Where a special diet is required permanently, eligibility will be reviewed at each CVP review.

An applicant may have more than one review date if he or she is receiving an Allowance for more than one medical condition. In such a case, a separate Application is required for each medical condition at the time of review.

An updated Application must be received by the ODSP office by the date indicated or the Special Diet Allowance will be cancelled.

²⁶ A new application form was made available in October 2006. This new form was created to address privacy concerns, specifically recipients being required to disclose certain medical diagnoses, including HIV/AIDS, Hepatitis C, etc. For more information see ODSP Action Coalition: <http://www.odspaction.ca/~new/drupal/node/44>.

²⁷ *Supra* note 1.

²⁸ Health professionals completing the Application are required to indicate the length of time the diet is required. ODSP Transition Directive 2005-03

Special Diet Allowances for medical conditions relating to weight will not be reviewed.²⁹ It is important that an individual whose body weight improves as a result of having access to the Special Diet Allowance is able to maintain their body weight. If an individual has more than one medical condition that requires a special diet, the review of all conditions that are not related to weight is to proceed as indicated above.

Review Criteria

The essential criteria of the review process are:

If a recipient has a medical condition that is listed on the Special Diets Schedule as requiring a special diet, then the recipient will continue to receive a Special Diet Allowance in accordance with the amounts on the Special Diets Schedule.³⁰

Reasons for getting cut-off or a reduction in a Special Diet Allowance include:

- Failing to supply the necessary information within 90 days of the request;
- Not having a medical condition set out in the new Special Diets Schedule;
- Not having a medical condition confirmed by an approved health professional on the required form, and;
- Amount listed for a medical condition in the Special Diets Schedule is less than the amount previously received.

Special Diet Schedule

In the spring of 2006, the Ministry of Community and Social Services established an independent Expert Committee to review the Special Diet list of conditions and amounts. The medical community and interested organizations were invited to make submissions. The resulting changes to the schedule were expected to be released in January 2007 but as of the time of writing were not yet available.³¹

In the future the Special Diet Schedule will be reviewed periodically to confirm it reflects medical conditions requiring special diets. Where new medical conditions are identified between the scheduled reviews, an ad hoc review will be undertaken and the Schedule will be revised as needed.³² These amounts will not be indexed to compensate for inflation.

There is no procedure in place for a recipient to challenge what kinds of medical conditions or amounts are provided for in the Schedule. This is not an appealable matter. Submissions may be made when an Expert Committee is convened.

²⁹ *Supra* note 1.

³⁰ ODSP Transition Directive 2005-03, Q&A For Use By Provincial Staff

³¹ *Supra* note 6.

³² *Supra* note 1.

Review Statistics

Statistics are not readily available regarding the impact of the changes to the Special Diet Allowance. The number of ODSP recipients is made public on the Ministry of Community and Social Services website on a quarterly basis.³³ This information is not, however, broken down by type of assistance/allowance, the amounts received, or the duration of receipt.

Critical Analysis of the Review Process

The initial review process was essentially another cutback to ODSP. Even if recipients were able to overcome the barriers inherent to the review process, they were still likely to see a significant reduction in the amount of the Special Diet Allowance.

There were several barriers recipients had to overcome during the initial review process. Recipients were only given 90 days to complete and submit the new Application forms from the date the letter was sent. In that three-month timeframe, recipients would have to make an appointment with a GP or specialist, see an approved medical professional and determine what existing medical conditions were provided for in the Schedule. Recipients without regular doctors and consolidated medical histories would have difficulty complying with this requirement. Additionally, recipients living in rural areas may not have easy access to approved medical professionals. Finally, ODSP recipients may have conditions affecting their mobility.

If a recipient wished to have an extension beyond the 90 days, they would have to submit their request in writing to the ODSP office. The criteria used to evaluate such a request are not readily available. As well, as all submissions are written, this can be a lengthy process resulting in a denial and lost time.

Most recipients would receive a significantly lower amount for the Allowance following the initial review. For example, a recipient under the old Special Diet Allowance structure with Osteoporosis could receive up to \$250 as per a health professional's recommendation to purchase calcium rich and other necessary foods. Under the current Schedule, the same recipient is entitled to \$10. Of the 47 listed medical conditions in the Schedule, 13 have an amount of \$10. Indeed, no single medical condition warrants the maximum \$250.³⁴ Recipients would have to have a multitude of medical conditions in order to approach \$250.

The future review process has the same inherent barriers as the initial review:

- 90 day timeframe;
- access to approved medical professionals;
- consolidated medical history;
- distance from medical centres, and;

³³ The information is current up until December 2006.

<http://www.mcass.gov.on.ca/mcass/english/publications/ODSPCaseLoad.htm>

³⁴ Wasting/weight-loss of >10% of usual body weight has the highest monthly amount of \$240.

- mobility.

Additionally, these reviews happen on an annual basis for each medical condition, even permanent conditions such as diabetes and food allergies. This requirement poses a real cost to the health care system in terms of unnecessary appointments and medical tests. As well, the resources of the ODSP are also directed to administering this unnecessary process.

An applicant may have more than one review date if he or she is receiving an Allowance for more than one medical condition. Recipients will continuously have to overcome the barriers in order to obtain an Allowance for their medical conditions.

The revised Schedule of medical conditions and allowances as prepared by the Expert Committee is not available at the time of writing. Hopefully, the revised Schedule will address the low allowances, limited number of medical conditions, and the inability to provide amounts to prevent the development of a medical condition. One way to accomplish this would be to abandon the list entirely and return to the previous system. If the list is not abandoned, a regular review process must be implemented with ample opportunity for input from a broad group of medical professionals, community groups and individuals. Additionally, if amounts are not indexed to account for inflation the value of the Allowance will be eroded.

Recommendations for Improving the Review Process

Policy Changes

- Amend Policy Directive 6.4 to increase length of time for completing an Application for review to six months.
- Make decision guidelines relating to extensions for extraordinary circumstances available in application material and online.
- In the event the Schedule is not abandoned, increase the amounts provided to a reasonable level that could make a genuine difference to a recipient's food purchasing power.
- Amend the Schedule and Policy Directive 6.4 to make amounts available for preventative diets.
- Amend Policy Directive 6.4 to eliminate reviews for permanent medical conditions as the process constitutes an unnecessary burden on recipients and drain on healthcare and ODSP resources.
- Amend Policy Directive 6.4 to consolidate review dates for recipients with more than one medical condition to coincide with the CVP.
- Amend Policy Directive 6.4 to provide for a prescribed regular review of the Schedule with public announcements requesting input from a broad group of medical professionals, community groups and individuals.

- Amend Policy Directive 6.4 to require the Ministry of Community and Social Services collect statistics on the Special Diet Allowance and make these available to public on timely basis.

Legislative Changes

- Revoke the listing of medical conditions and corresponding amounts and return to amounts allocated as determined by medical professionals in consultation with their patients.
- Amend the *ODSP Act* to index the Schedule amounts for inflation.

Appealing Decisions

Right to Reasons and Appeal

According to s. 21(1) of the *ODSP Act*, any decision regarding eligibility or the amount of income support to be received by an ODSP applicant may be subject to appeal.

If an applicant's original ODSP Special Diet Allowance application has been denied, Policy Directive 6.4 stipulates that the Disability Adjudication Unit (DAU) is to send the applicant a letter notifying him/her that their application has been rejected, the reason for their rejection, and information about appealing this decision to the DAU's internal review board.

Internal Review

The DAU's internal review is the first phase of the Special Diet Allowance appeals process (see Appendix F). During the internal review process, a person working in the DAU other than the individual who made the original decision will determine whether to allow or dismiss the applicant's appeal.

After receiving the DAU's original decision, an applicant has only 10 days to request an internal review. According to s. 22(2) of the *ODSP Act*, a request for an internal review regarding the original DAU decision must be made within the prescribed time period to qualify for an internal review. The request for an internal review may either be made in writing or called into a local ODSP office followed up by a written request.³⁵

Of those applicants whose original application is rejected, many request an internal review. From June 1, 1998 and March 31, 2001 approximately 25,000 requests for internal reviews were made.³⁶ Given the large volume of internal review requests and the fact that every request for an internal review must be granted according to s. 22(3) of the *ODSP Act*, the DAU processes a massive amount of internal reviews each year. According to a recent Ombudsmen Office report, the DAU has received 40% more internal review applications than the system was originally designed to handle.³⁷ During 2004, the DAU Internal Review Board handled 8,793 new requests for an internal review. However, the DAU still had 2,168 pending requests from the previous year that had yet to be processed, a number which represented 25% of the total new requests made during that year.³⁸

Very few original DAU decisions are overturned as a result of an internal review. From 1998 to 2002, on average only 11% of decisions were overturned at this stage in the

³⁵ Ministry of Community and Social Services website – ODSP –FAQ-
http://www.mcscs.gov.on.ca/mcscs/english/pillars/social/questions/odsp/about_odsp.htm#ie.

³⁶ Examining the Ontario Disability Support Program: Issues & Solutions, Pro Bono Students Cdn., 2005

³⁷ *Supra* note 4.

³⁸ ISAC – Freedom of Information Request

appeals process.³⁹ Furthermore, of the 10,257 internal review decisions made in 2004, only 1,279, just 12% of all internal review decisions, resulted in the original decision being overturned.⁴⁰

After receiving a request for an internal review, the DAU's internal review board must notify the applicant of the outcome of their request and provide reasons for the decision within ten days.

Social Benefits Tribunal

If an applicant's appeal to the DAU's internal review board is dismissed, according to s. 23 of the *ODSP Act*, they may then appeal to the Social Benefits Tribunal (SBT) (see Appendix F). The SBT is a tribunal that operates independently of the Ministry of Community and Social Services. The SBT was created in 1998 to hear appeals from people receiving social assistance under various acts including the *ODSP Act*. According to s. 21(1) of the *ODSP Act*, any DAU decision affecting eligibility or the amount of support requested may be appealed to the SBT.

An applicant has 30 days to appeal a DAU decision to the SBT.⁴¹ An applicant can also make an appeal to the SBT if they failed to receive an internal review decision within 10 days after submitting their appeal. In these situations, an appeal must be filed within 40 days of the internal review request to be considered by the SBT.

The SBT has the power to refuse to hear an appeal that it considers to be "frivolous or vexatious" according to s. 28 of the *ODSP Act*.

Approximately 50% of applicants who have been denied ODSP by the DAU have made appeals to the SBT since the program came into affect in 1998.⁴²

During 2004, 48% of all appeals from the DAU's internal review board were overturned by the Social Benefits Tribunal, a rate far higher than that of the internal review board.⁴³

Those applicants who are represented by legal counsel during their appeal to the SBT have a much greater chance of having the original DAU decision overturned then compared to those without legal counsel. According to SBT statistics from 2002, on average, 60% of applicants represented by legal counsel had their original DAU decisions overturned compared to only 30% of those who were without legal representation. However, despite the much greater rate of success for applicants with legal counsel, the SBT does not recommend that applicants seek legal counsel and further claim that it is

³⁹ *Supra* note 36.

⁴⁰ *Supra* note 38.

⁴¹ CLEO-Disability benefits in Ontario

⁴² *Supra* note 36.

⁴³ *Supra* note 36.

unnecessary.⁴⁴ The pamphlet “*Where to Get Help With Your Appeal*” however, is made available to ODSP applicants at local ODSP offices.

While an applicant is much more likely to have the original DAU decision overturned during an appeal to the SBT than during the internal review phase, the appeal process to the SBT often takes considerable time. Given the large volume of appeals made to the SBT, it often takes a year or more for an appeal to be heard and then another two or three months for a decision to be rendered. Those appealing a DAU decision to the SBT however may seek interim assistance until they receive the decision of the SBT if they are able to demonstrate sufficient financial hardship.⁴⁵ If they lose their appeal at the SBT, however, they are required to pay the interim assistance received back to ODSP.

If an applicant’s appeal to the SBT proves to be unsuccessful, according to s. 31 of the *ODSP Act*, they may then make an appeal to the Ontario Divisional Court on questions of law.

Critical Analysis of the Review Process

There are many inherent flaws involved in the internal review process. That so many appeals are denied during the internal review phase of the appeals process while far less appeals are denied during the Social Benefits Tribunal phase may be indicative of an institutional bias in the DAU. It is reasonable to assume that a DAU worker would be far less inclined to overrule the decisions of a fellow DAU worker than would an individual on the SBT who does not work for the same institution.

Additionally, those applicants with legal counsel are far more likely to have their original DAU decision overturned than those without counsel. This is demonstrated by the finding of the Nipissing study that 80% of applicants with legal counsel eventually had their DAU decision overturned. While information about seeking legal counsel through Legal Aid offices and Community Legal Clinics is provided, the SBT asserts that it is not necessary to obtain legal counsel.

Recommendations for Improving the Appeals Process

Policy Changes

Given the much higher rate of success of those applicants represented by legal counsel, the DAU and SBT should make it easier for applicants to obtain legal counsel in order to provide the appeals process with a greater degree of fairness. This could be accomplished by having the DAU and SBT take a more active role in informing applicants where and how to seek legal counsel and by informing appellants of the benefits associated with obtaining legal counsel.

⁴⁴ Social Benefits Tribunal (SBT) – “How to appeal your decisions to the SBT” pamphlet

⁴⁵ *Ibid.*

Legislative Changes

The appeal process as a whole would be rendered far more impartial and efficient if the internal review stage of the process were eliminated. This could be accomplished by an amendment to ODSP Policy Directive 6.4 and Part VIII of the *ODSP Act* striking out any references to the internal review component of the appeals process while transferring all of the duties of the internal review board to the SBT. While the elimination of the internal review process would no doubt lead to a dramatic increase in cases heard before the SBT, problems associated with this increase could be offset by increasing funding to the SBT using resources from the DAU internal review process.

Section 58 (1) of the *ODSP Act* stipulates that the prescribed time for requesting an internal review is 10 days from the day the decision is received. Given that many DAU applicants suffer from physical and/or mental disabilities and have limited financial resources, there are likely many factors which could prevent them from appealing a DAU decision within such a relatively short period. If the internal review component of the appeals process is to remain in effect, s. 58(1) of the *ODSP Act* should be amended to extend this time period to at least 20 days in order to give all potential complainants sufficient time to request a review and if necessary time to get legal advice.

To help facilitate these legislative changes, local members of provincial parliament should be made aware of this report's findings regarding the failings of the internal review process. In addition, groups such as the ODSP Action Coalition should be made aware of these findings in order to lend further support to their lobbying efforts to effect legislative changes in the program.

⁵⁷ *Supra* note 6.

Complaints Systems Available

To date, there is no effective complaints system available when an ODSP applicant or recipient is having a problem with the system. Most complaints are handled informally, at meetings between recipients and staff. However, due to the complex nature of the system and the problems people face, this is not always enough to resolve issues. Two possibilities include taking a complaint to the Ontario Ombudsperson and legislating the Draft *ODSP Accountability Act* (Appendix H).

1. Ontario Ombudsperson

Complaints to the Ontario Ombudsperson are complicated and difficult. Health Providers Against Poverty have made a complaint. In their complaint, they specifically cited the cuts to the Special Diet Allowance as taking money out of the pockets of people living in extreme poverty.

While the complaints mechanism to the Ombudsperson is great in theory, it does not address the specific concerns of individuals. Therefore, something more is needed, hence the rationale behind the *ODSP Accountability Act*.

2. *ODSP Accountability Act*

A copy of the draft *ODSP Accountability Act* is in Appendix H. The Act is designed to improve accountability in decision making and to provide a complaints mechanism for ODSP applicants and recipients.

Because of the complex nature of the ODSP system, individual complaints are better off being heard by a specialist, rather than an Ombudsperson. This is particularly true for Special Diet Allowance issues, which involve detailed medical information and individual needs.

The draft *ODSP Accountability Act* would be a great asset to the OSDP as it would set up the framework for resolving problems associate with Special Diets and any other ODSP issue.

Summary of Recommendations

Policy Changes

- Ensure workers inform people on OW/ODSP about their right to apply for the Special Diet Allowance;
- Allow people on OW/ODSP to download the forms from the Ministry website;
- Allow doctors, health clinics, legal clinics and community agencies to photocopy and distribute the forms.
- Submit empirical evidence to the Expert Committee regarding the need for special diets for mental health illness and environmental sensitivities
- Amend Policy Directive 6.4 to increase length of time for completing an Application for review to six months.
- Make decision guidelines relating to extensions for extraordinary circumstances available in application material and online.
- In the event the Schedule is not abandoned, increase the amounts provided to a reasonable level that could make a genuine difference to a recipient's food purchasing power.
- Amend the Schedule and Policy Directive 6.4 to make amounts available for preventative diets.
- Amend Policy Directive 6.4 to eliminate reviews for permanent medical conditions as the process constitutes an unnecessary burden on recipients and drain on health care and ODSP resources.
- Amend Policy Directive 6.4 to consolidate review dates for recipients with more than one medical condition to coincide with the CVP.
- Amend Policy Directive 6.4 to provide for a prescribed regular review of the Schedule with public announcements requesting input from a broad group of medical professionals, community groups and individuals.
- Amend Policy Directive 6.4 to require the Ministry of Community and Social Services collect statistics on the Special Diet Allowance and make these available to public on timely basis.
- Require the Disability Adjudication Unit's Internal Review Board and the Social Benefits Tribunal to take more active measures in making applicants aware of how and where to obtain legal counsel and the benefits associated with obtaining legal counsel in regard to appealing the initial decision of the DAU.

Legislative Changes

- Revoke the Schedule and the listing of medical conditions and corresponding amounts and return to amounts allocated as determined by medical professionals in consultation with their patients.

- Amend the *ODSP Act* to index the Schedule amounts for inflation.
- Amend Policy Directive 6.4 and part VIII of the *ODSP Act* to eliminate the Internal Review Board component of the Special Diet Allowance appeals process. The Social Benefits Tribunal would then constitute the first component of the appeals process. The SBT budget would subsequently have to be increased to deal with the resulting increase in the number of appeals it would hear.
- Amend Policy Directive 6.4 and s. 58(1) of the *ODSP Act* to increase the time period in which an applicant must appeal the decision of the DAU to the Internal Review Board from 10 days to 20 days.

Conclusion

The Special Diet Allowance is an essential component of ODSP income supports. The Special Diet Allowance is designed to provide ODSP recipients with the ability to meet their dietary needs and enjoy a healthy standard of living. However, the November 2005 changes to the Special Diet Allowance were a significant cutback directed at the members of our community most in need of healthy food.

The importance of diet in preventing and treating medical conditions is indisputable. The government clearly recognized that social assistance rates were too low to afford all dietary items needed when the original Special Diet Allowance was introduced. Indeed, as the ODSP Action Coalition identified, it is the inadequacy of social assistance rates that is at the root of the crisis that the cuts to the Special Diet Allowance have caused. If rates were high enough for people to have a healthy diet, those on OW and ODSP wouldn't need to be so dependent on the Special Diet Allowance.⁵⁷

Implementing the recommendations contained in this report is only a small part of ensuring ODSP recipients have a healthy standard of living. Income support rates must be brought to a level that realistically provides for recipients' basic needs. Additionally, income support rates must be protected from further cuts and inflation to provide recipients with much needed stability and security.

Appendixes

Appendix A – Bibliography

List of websites, reports, etc. that we consulted.

ODSP Homepage

<http://www.mcsc.gov.on.ca/mcsc/english/pillars/social/programs/odsp.htm>

Income Security Advocacy Centre

<http://www.incomesecurity.org/index.html>

ODSP Action Coalition

<http://www.odspaction.ca/~new/drupal/>

OACAP – Ontario Coalition Against Poverty

<http://www.ocap.ca>

Social Benefits Tribunal

<http://www.sbt.gov.on.ca/>

Community Legal Education Ontario

<http://www.cleo.on.ca/english/pub/onpub/subject/social.htm>

<http://www.cleonet.ca/>

ARCH Disability Law Centre

<http://www.archdisabilitylaw.ca/index.asp>

Appendix B – List of Community Partners

List of individuals, groups, organisations, etc. that are involved with ODSP work

Community-University Research Alliance

Lawson Health Research Institute
Room D227, Nurses Residence
375 South Street
London, ON N6A 4G5

London ODSP Office

Ministry of Community and Social Services
Ontario Disability Support Program
Income and Employment Supports
217 York Street
Box 5217, Suite 203
London, ON N6A 5R1
Tel: (519) 438-5111
Toll Free: 1-800-265-4197
TDD/TTY: (519) 663-5276

ODSP Action Coalition

c/o Scarborough Community Legal Services
695 Markham Rd., suite 9
Scarborough, ON M1H 2A5
Tel: (416)438-7206

Income Security Advocacy Center

425 Adelaide Street West, 5th Floor
Toronto, ON M5V 3C1
Tel: (416) 597-5820
Toll Free: 1-866-245-4072
Fax: (416) 597-5821
E-mail: isac@lao.on.ca

Appendix C – Special Diet Allowance Policy Directive 6.4

DIRECTIVE 6.4 SPECIAL DIET ALLOWANCE

SUMMARY OF LEGISLATION

Each member of the benefit unit is eligible for additional funding to cover the costs of his or her special diet(s) if an approved health professional confirms that he or she requires a special diet(s) as a result of a medical condition.

The maximum special diet allowance is \$250 per month per benefit unit member and is part of budgetary requirements.

LEGISLATIVE AUTHORITY

[Sections 25, 30\(1\)4; 33\(1\)4; 33\(2\), \(3\) of the ODSP Regulation](#)

SUMMARY OF DIRECTIVE

- An approved health professional must confirm that a recipient and/or a member of the benefit unit requires a special diet(s) as a result of a medical condition(s).
- The amount of the special diet allowance is determined by consulting the *Special Diets Schedule* dated November 4, 2005.
- The maximum special diet allowance is \$250 per month per member of the benefit unit, and is part of the budgetary requirements.
- The special diet allowance does not cover items provided under the Ontario Drug Benefit Program.

INTENT OF POLICY

To provide funding in addition to the basic needs and shelter allowance, or boarding and lodging allowance (as appropriate), up to a maximum of \$250 per month for each member of the ODSP benefit unit, in order to cover the costs of a special diet(s) required as a result of a medical condition.

APPLICATION OF POLICY

A special diet allowance **is not a benefit** but rather is included in the calculation of the *budgetary requirements*.

An ODSP recipient and/or any other member of the benefit unit who requires a special diet(s) may apply for the special diet allowance.

The *Application for a Special Diet Allowance* and the *Special Diets Schedule* dated November 4, 2005 are used to determine the appropriate allowance.

A recipient who requests a special diet allowance must have one of the following **approved health professionals** complete the Application for a Special Diet Allowance:

- a Physician registered with the College of Physicians and Surgeons of Ontario;
- a Registered Nurse in the Extended Class registered with the College of Nurses of Ontario;
- a Registered Dietician registered with the College of Dieticians of Ontario;
- a Registered Midwife registered with the College of Midwives of Ontario; or
- a Traditional Aboriginal Midwife recognized and accredited by his or her Aboriginal community.

Midwives may only complete Section III of the application form for the following medical conditions:

- Inadequate lactation to sustain breast-feeding
- Breast-feeding is contra-indicated

and Section IV of the application form (Pregnancy Nutritional Allowance).

If an incompleated application form is submitted, the “Request for Information from the Approved Health Professional (Incomplete Application for a Sepcial Diet Allowance Form)” letter should be sent to the health professional identified on the form.

ODSP recipients are responsible for forwarding the completed application form to the local ODSP office.

Note: ODSP recipients residing in an institutional setting as defined under Section 32 of the Regulations are not eligible for a special diet as their needs are met by the institution.

Issuing the Application for a Special Diet Allowance (Form 3059/3060)

Any member of a benefit unit may apply for a special diet allowance.

Staff will issue an original copy of the *Application for a Special Diet* (Form 3059/3060) for each member of the benefit unit who makes a request for a new special diet by indicating the date the application was issued in the appropriate

place in the upper right corner of the first page and completing Section I.
Photocopies of the Form 3059/3060 may not be issued.

Determining the Amount of the Special Diet Allowance

Staff will ensure that Section II of the original copy of the application form was not signed by the approved health professional prior to the date of issue.

The *Special Diets Schedule*, dated November 4, 2005 is to be used to determine the amount of the special diet allowance. The *Special Diet Schedule* indicates the amount that may be provided for each medical condition listed on the application form.

The medical condition(s) confirmed by the approved health professional on the Form 3050/3060 are compared to the medical conditions and special diet(s) amounts listed in the *Special Diets Schedule*. Funds for approved special diet(s) are included in the recipient's income support in the month that the medical condition is confirmed by the approved health professional.

If an approved health professional confirms more than one medical condition for a single member of the benefit unit, the cumulative costs provided for the special diets cannot exceed \$250. In other words, **the special diet allowance cannot exceed \$250 per month per member of the benefit unit.**

When A Special Diet Request Has Been Approved

- the *Application Approved – With or Without a Review Date* letter is sent to the recipient notifying him/her that a special diet allowance has been approved, the amount approved and the review date if applicable (at which time the dietary needs of the person will be re-assessed).
- the approved amount is added to the recipient's basic needs allowance and shelter allowance or boarding and lodging allowance (as appropriate) with a review date if applicable.
- the special diet allowance will be paid commencing the date that the Application for a Special Diet Allowance was completed and signed by the approved health professional.

When A Special Diet Request Has Not Been Approved

- the *Application Not Approved – Appealable Decision* letter is sent to the recipient notifying him/her that the special diet allowance has not been approved, the reason, and his or her right to request an Internal Review.

Review Dates for Special Diets

On the *Application for a Special Diet Allowance* (Form 3059/3060), an approved health professional will indicate, in column two of Section III, the length of time the special diet is required for the medical condition. The expiry date is determined by the length of time the special diet allowance is required.

Ongoing eligibility for the special diet allowance will be reviewed prior to the expiry date. Where the approved health professional has indicated that the special diet is required “permanently”, eligibility for the special diet allowance will be reviewed at the time of the Consolidated Verification Process (CVP) review.

An applicant may have more than one review date if more than one medical condition has been confirmed. If this occurs, a recipient will be required to submit a separate *Application for a Special Diet Allowance* at the time of review for each special diet.

The eligibility review is initiated 90 days prior to the special diet review date or CVP review date. Recipients are to be notified using the *Notification of Review* letter accompanied by a Form 3059/3060.

If an updated *Application for a Special Diet Allowance* (Form 3059/3060) is not received by the ODSP office by the recipient’s review date or CVP review, the special diet allowance will be cancelled. Where there are exceptional circumstances, an extension of the 90 day period may be approved.

Where the approved health professional has indicated that a medical condition no longer exists, the special diet allowance will be cancelled.

Guidelines for Treatment of Special Diet Allowances where the Amount of the Allowance is Related to Weight

The amount of the Special Diet Allowance for some medical conditions is determined by weight changes resulting from the medical condition. It is important that an individual whose body weight improves as a result of having access to the Special Diet Allowance is able to *maintain* their body weight. For this weight maintenance to occur, the Special Diet Allowance required by the underlying medical condition should continue.

If an individual receives a Special Diet Allowance that is determined by that individual’s body weight, this portion of the allowance should **not** be reduced as the recipient changes weight, in order to help the individual maintain their weight over time.

Consequently, special diets provided for the following conditions should **not** be reviewed.

- HIV/AIDS

- Crohn's Disease / Ulcerative Colitis
- Cystic Fibrosis
- Malignancy
- Marasmus or Kwashiorkor or Anorexia
- Ostomies (e.g., jejunostomy, ileostomy)
- Pancreatic Insufficiency
- Short Bowel Syndrome
- Extreme Obesity

If an individual has more than one medical condition that requires a special diet, the review of all conditions that are not related to weight loss / gain is to proceed as outlined in the ODSP transitional directive 2005-03.

In some cases, an individual receiving a Special Diet Allowance for a medical condition where the amount is related to their weight change will change their weight in a detrimental way. In that case, they may re-apply for a Special Diet Allowance based on the weight change. This application is to proceed as usual.

Payments for the Completion of the Special Diets Application Form

Approved health professionals are to be paid \$20 for completing the *Application for a Special Diet Allowance* (Form 3059/3060).

Payments to physicians are processed through OHIP. The assigned OHIP billing code for the *Application for a Special Diet Allowance* is KO55, and is located on the top of the application form.

Registered Nurses in the Extended Class, Registered Dietitians and Midwives in both categories are also entitled to receive a \$20 payment for completing the Form 3059/3060. They are required to submit an invoice to the local office from which the *Application for a Special Diet Allowance* originated stating the recipient's name and member ID, and the health professional's name, address, telephone number, and college registration number. The local office is responsible for processing the invoice.

If the invoice form is not complete or the form does not identify the recipient, staff should send the *Letter to Health Professional – Re: Invoice* letter to the identified health professional.

Infant Formula

No Special Diet Allowance can be provided for standard infant formula (e.g. Enfalac, Similac).

A Special Diet Allowance may be provided for infant formula where an approved health professional has confirmed the following medical conditions:

- Breast-feeding is contraindicated due to intolerance to breast milk or contamination; or
- The mother is experiencing inadequate lactation to sustain breast feeding.

Infant formulas may be covered under the Ontario Drug Benefit (ODB).

Products Covered under the Ontario Drug Benefit Program

Products covered under the Ontario Drug Benefit Program (ODB) shall not be considered for a special diet allowance. A special diet allowance will only be paid in relation to a medical condition(s) listed in the *Special Diets Schedule*.

Limited Use Products

To obtain ODB coverage for limited use products, physicians must complete a *Limited Use Prescription Form* and include it with the prescription to the pharmacy for each product prescribed.

Lactaid tablets and drops are covered as limited use products under the ODB for the management of lactose intolerance which has been confirmed by history or by a lactose intolerance test.

Prescriptions for some individual vitamins (A, B₆, B₁₂, D and E) and folic acid may be covered by the ODB. In certain cases, these items may be limited use products. Multi-vitamins are not covered by the ODB.

Nutritional Products

Physicians must complete a *Nutrition Product Form* and forward a copy with the prescription to the pharmacy for each nutrition product prescribed.

The ODB considers infant formulas to be nutritional products. **ODB coverage will be withheld where the infant has normal gastrointestinal absorption function.** Some infant formulas are covered under the Ontario Drug Benefit Program (ODB), including:

- Alimentum Liquid
- Neocate Powder
- Nutramigen Liquid

- Nutramigne Powder
- Nutren Jr. Liquid
- Nutren Jr. with Fibre Liquid
- Pediasure Liquid
- Peptamen Junior Liquid
- Pregestimil Powder
- RCF Liquid
- Resource Just for Kids
- Vivonex Pediatric Powder

ODB will cover products on the current list of approved nutrition products included in the ODB Drug Formulary where they are prescribed as the patient's sole source of nutrition and the patient:

- has oropharyngeal or gastrointestinal disorder resulting in esophageal dysfunction or dysphagia (e.g. head and neck surgery, neuromuscular disorder, or cerebral vascular disease where dysphagia prevents eating);
- has maldigestion or malabsorption disorder and/or significant gut failure where food is not tolerated (e.g. pancreatic insufficiency, biliary obstruction, short bowel syndrome);
- requires the use of a chemically defined diet as a primary treatment of a disease where the therapeutic benefit has been demonstrated (e.g. Crohn's disease).

Coverage of Products through Designated Hospitals

For individuals who have cystic fibrosis, a number of nutritional products are covered through designated hospitals (Group T Hospitals under the *Public Hospitals Act, 1990*).

- McMaster University Medical Centre, Hamilton
- Religious Hospitallers of St. Joseph of the Hôtel Dieu of Kingston Hôtel Dieu Hospital, Kingston
- Kitchener-Waterloo Health Centre, Kitchener
- London Health Sciences Centre, Victoria-Westminster Campus, London
- Children's Hospital of Eastern Ontario, Ottawa
- Hôpital Régional de Sudbury Regional Hospital, Laurentian, Sudbury
- St. Michael's Hospital, Toronto
- Hospital for Sick Children, Toronto
- Toronto General Hospital, Toronto
- Hôtel-Dieu Grace Hospital, Hôtel Dieu Site, Windsor

Recipients Transferring from Ontario Works

Some Ontario Works participants will be granted ODSP while receiving an Ontario Works Special Diet Allowance. Eligible costs should continue to be paid without interruption until the Ontario Works benefits review date if an Application *for a Special Diet Allowance* (Form 3059/3060) has been completed.

If the Application *for a Special Diet Allowance* (Form 3059/3060) has expired, eligible costs can be paid but recipients transferring from Ontario Works are required to have a new Form 3059/3060 completed and submitted for review within 90 days.

Guidelines for Treatment of Grandparented Cases with Special Diets in Excess of \$250 Per Month

Individuals grandparented from FBA who are receiving special diet amounts in excess of \$250 per month continue to be eligible for funding up to the maximum amount they were receiving on April 30, 1998 under FBA. However, if their dietary needs change, an Application *for a Special Diet Allowance* (Form 3059/3060) is to be completed to determine ongoing eligibility.

The ODSP regulations state that individuals who are grandparented from FBA cannot receive a special diet allowance that is higher than the allowance they were receiving on April 30, 1998. They may, however, receive less if their dietary needs change.

For example, if an FBA grandparented case was receiving a special diet allowance of \$575 per month on April 30, 1998, under no circumstance can they receive more than \$575 per month. If their dietary needs change and they require special diets whose costs are \$500 per month, they are to receive this new amount. If they should have another change in their dietary needs which results in an increase in their current allowance of an additional \$323 per month, they can only receive up to \$575.00 per month (their maximum for as long as they remain on ODSP and qualify for a grandparented special diet allowance).

For all recipients described above, if their special diet requirements fall to \$250 or less per month, they lose their grandparented special diet status for all time and are subject to the \$250 maximum allowance for special diets. **In all cases, the November 4, 2005 Special Diets Schedule is to be applied.**

Decisions Related to Special Diet Allowance May Be Appealed

Decisions related to the special diet allowance may be appealed. Prior to an appeal to the Social Benefits Tribunal, an internal review must be requested.

HYPERLINKS ASSOCIATED WITH THIS POLICY DIRECTIVE:

Related Directives:

[6.1 Basic Needs Calculation](#)

[6.3 Board and Lodging](#)

[6.5 Pregnancy Nutritional Allowance](#)

[9.8 Drug Benefits](#)

Appendix D – Special Diet Allowance Schedule (Oct 2006)

Received by the ODSP Action Coalition from the Social Assistance and Municipal Operations Branch of the Ministry of Community and Social Services October 26, 2006

MEDICAL CONDITION that requires a Special Diet	MONTHLY AMOUNT for Special Diet
Cardiovascular Disease	\$10
Celiac Disease	
less than 2 years of age	\$58
2-10 years of age	\$115
11-18 years of age	\$147
19 years of age or older	\$131
Chronic Constipation	\$10
Chronic wounds requiring protein	\$10
Congenital Abnormalities of the Metabolic Type — Adults	\$10
Congenital Abnormalities of the Metabolic Type — Infants & Children	\$10
Congestive Heart Failure	\$44
Diabetes	\$42
Diverticulum/Diverticulitis	\$10
Dysphagia/Swallowing or Mastication Difficulties	\$25 AND \$75 one-time amount for the cost of a blender, if funding for a blender has not been previously provided
Extreme Obesity: Class III BMI > 40	\$20
Food Allergy — Eggs	\$10
Food Allergy — Milk/Dairy or Lactose Intolerance	
less than 2 years of age	\$95
2-10 years of age	\$97
11-18 years of age	\$55
19 years of age or older	\$35
Food Allergy — Soya	\$83
Food Allergy — Wheat	
less than 2 years of age	\$38
2-10 years of age	\$77
11-18 years of age	\$98
19 years of age or older	\$57

MEDICAL CONDITION that requires a Special Diet	MONTHLY AMOUNT for Special Diet
Gestational Diabetes [Diet is available during pregnancy and for 3 months post partum]	\$44
Gout	\$32
Hepatic Disorders/ Liver Failure	\$10
Hyperlipidemia	\$10
Hypertension	\$10
Hypertension and Congestive Heart Failure and Grade 1 to 2 left ventricular function	\$44
Hypercholesterolemia	\$22
<p>Inadequate lactation to sustain breast-feeding or breast-feeding is contraindicated during the first 12 months of infant's life</p> <p>A Special Diet Allowance will be paid during the first 12 months of an infant's life, if formula is necessary due to inadequate quantity of breast milk or if breastfeeding is contraindicated [e.g. infant is unable to tolerate breast milk; mother's milk is contaminated due to other conditions or medical treatments such as HIV/AIDS, chemotherapy; infant has galactosemia].</p>	
lactose tolerant	\$75
lactose intolerant	\$83
Macrocytic Anaemia	\$10
Malabsorption	\$20
Microcytic Anaemia	\$30
Osteoporosis/Osteomalacia/Osteopenia	\$10
Post-gastric surgery	\$10
Prediabetes: IGT or IFG	\$42
Renal Failure — Dialysis	\$44
Renal Failure — Pre-Dialysis	\$44
<p>Wasting/weight-loss due to one or more of the following medical conditions:</p> <p>Amyotrophic Lateral Sclerosis Crohn's Disease HIV/AIDS Malignancy Ostomies [e.g., jejunostomy, ileostomy] Pancreatic Insufficiency Short Bowel Syndrome Ulcerative Colitis</p>	
wasting/weight-loss \leq 2% of usual body weight [includes wasting/weight-loss of 0%]	\$75
wasting/weight-loss of $>$ 2% and \leq 5% of usual body weight	\$150

MEDICAL CONDITION that requires a Special Diet	MONTHLY AMOUNT for Special Diet
wasting/weight-loss of > 5% and ≤ 10% of usual body weight	\$180
wasting/weight-loss of > 10% of usual body weight	\$240
Wasting/weight-loss due to one or more of the following medical conditions: Anorexia Nervosa Cystic Fibrosis Kwashiorkor Marasmus	
wasting/weight-loss ≤ 2% of usual body weight [includes wasting/weight-loss of 0%]	\$75
wasting/weight-loss of > 2% of usual body weight	\$150

Appendix E – Sample Application Form

ABC Amber PDF2Image Converter Trial version, <http://www.processtext.com/abcpdf2.html>



Ministry of Community
and Social Services
Ontario Disability Support Program
Ontario Works

Application for

- Special Diet Allowance
 Pregnancy/Breast-feeding
Nutritional Allowance

OHIP Fee Code
K055 (\$20.00)

Date Application Issued to Applicant

Local ODSP/OW Office Stamp

Section I - To be completed by Ontario Works or Ontario Disability Support Program local office staff

Applicant Information

Last Name			First Name			Initial		
Date of birth D M Y			Member ID			Relationship to recipient <input type="checkbox"/> self <input type="checkbox"/> spouse <input type="checkbox"/> dependent child or dependent adult		

Section II - To be completed by an approved health professional [see list below]

This application must be completed by one of the following approved health professionals:

- A Physician
- A Registered Nurse in the Extended Class
- A Registered Dietitian
- A Registered Midwife or a Traditional Aboriginal Midwife recognized and accredited by her or his Aboriginal community

[Note: a Registered Midwife or a Traditional Aboriginal Midwife, who is recognized and accredited by her or his Aboriginal community, may only confirm that a special diet is required for the medical conditions *Inadequate lactation to sustain breast-feeding* or *breast-feeding is contraindicated* and for the *Pregnancy/Breast-feeding Nutritional Allowance*.]

Instructions:

1. Complete Section III if the applicant requires a special diet as a result of a medical condition or Section IV if the applicant requires a Pregnancy/Breast-feeding Nutritional Allowance.
2. If completing Section III, place a check mark next to the applicant's medical condition that requires a special diet (first column), indicate the length of time the diet is required (second column) and initial to confirm that the special diet is required (third column).
3. Complete the information below, including your signature, to confirm that the applicant requires a special diet(s) for the medical condition(s) you have indicated on the application form or for a Pregnancy/Breast-feeding Nutritional Allowance.

Last Name		First Name	
Street Number	Unit/Suite/Apt.	Street Name	
City/Town/Municipality		Province	Postal Code
Telephone Number		Stamp	

I am a legally qualified:

- Physician
 Registered Nurse in the Extended Class
 Registered Dietitian
 Registered Midwife or a Traditional Aboriginal Midwife
recognized and accredited by her or his Aboriginal community

and I confirm that _____ [Name of Applicant] requires

a special diet for each medical condition I have indicated for a total of _____ special diet(s) [i.e., the number of boxes checked] and/or the *Pregnancy/Breast-feeding Nutritional Allowance* I have indicated.

[Signature of Approved Health Professional]

[Date]

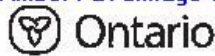
Payment - If you are a Registered Nurse in the Extended Class, a Registered Dietitian, a Registered Midwife or a Traditional Aboriginal Midwife recognized and accredited by her or his Aboriginal community, please forward your invoice in the amount of \$20.00 to the appropriate local Ontario Works office or ODSP office noted at the top of the application form. Please be sure to include the applicant's name and Member ID on the invoice.



Section III - Special Diet Allowance		
MEDICAL CONDITION that requires a Special Diet	Length of time the Special Diet is required for the MEDICAL CONDITION	Approved Health Professional's Initials
<input type="checkbox"/> Cardiovascular Disease		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Celiac Disease		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Chronic Constipation		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Chronic Wounds requiring protein		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Congenital Abnormalities of the Metabolic Type - Adults		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Congenital Abnormalities of the Metabolic Type - Infants and Children		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Congestive Heart Failure		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Diabetes		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Diverticulum/Diverticulitis		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Dysphagia/Swallowing or Mastication Difficulties		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Extreme Obesity: Class III BMI > 40		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Food Allergy - Eggs		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Food Allergy - Milk/Dairy or Lactose Intolerance		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Food Allergy - Soya		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Food Allergy - Wheat		_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Gestational Diabetes <i>[Diet is available during pregnancy and for 3 months post partum]</i>	_____ <i>Estimated date of delivery</i>	_____ <i>Health Professional's Initials</i>
<input type="checkbox"/> Gout		_____ <i>Health Professional's Initials</i>



MEDICAL CONDITION that requires a Special Diet	Length of time the Special Diet is required for the MEDICAL CONDITION	Approved Health Professional's Initials
<input type="checkbox"/> Hyperlipidemia		<u>Health Professional's initials</u>
<input type="checkbox"/> Hypertension		<u>Health Professional's initials</u>
<input type="checkbox"/> Hypertension and Congestive Heart Failure and Grade 1 to 2 left ventricular function		<u>Health Professional's initials</u>
<input type="checkbox"/> Hypercholesterolemia		<u>Health Professional's initials</u>
<p>Inadequate lactation to sustain breast-feeding or breast-feeding is contraindicated during the first 12 months of infant's life</p> <p><input type="checkbox"/> lactose tolerant</p> <p><input type="checkbox"/> lactose intolerant</p> <p><i>A Special Diet Allowance will be paid during the first 12 months of an infant's life, if formula is necessary due to inadequate quantity of breast milk or if breast-feeding is contraindicated [e.g. infant is unable to tolerate breast milk; mother's milk is contaminated due to other conditions or medical treatments such as HIV/AIDS, chemotherapy, infant has galactosemia].</i></p>		<u>Health Professional's initials</u>
<input type="checkbox"/> Liver Failure/Hepatic Disorders		<u>Health Professional's initials</u>
<input type="checkbox"/> Macrocytic Anaemia		<u>Health Professional's initials</u>
<input type="checkbox"/> Malabsorption		<u>Health Professional's initials</u>
<input type="checkbox"/> Microcytic Anaemia		<u>Health Professional's initials</u>
<input type="checkbox"/> Osteoporosis/Osteomalacia/Osteopenia		<u>Health Professional's initials</u>
<input type="checkbox"/> Post-gastric surgery		<u>Health Professional's initials</u>
<input type="checkbox"/> Prediabetes: Impaired Glucose Tolerance (IGT) or Impaired Fasting Glucose (IFG)		<u>Health Professional's initials</u>
<input type="checkbox"/> Renal Failure - Dialysis		<u>Health Professional's initials</u>
<input type="checkbox"/> Renal Failure - Pre-Dialysis		<u>Health Professional's initials</u>



MEDICAL CONDITION that requires a Special Diet	Length of time the Special Diet is required for the MEDICAL CONDITION	Approved Health Professional's Initials
<p>Wasting/weight-loss due to one or more of the following medical conditions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Amyotrophic Lateral Sclerosis <input type="checkbox"/> Crohn's Disease <input type="checkbox"/> HIV/AIDS <input type="checkbox"/> Malignancy <input type="checkbox"/> Ostomies <input type="checkbox"/> Pancreatic Insufficiency <input type="checkbox"/> Short Bowel Syndrome <input type="checkbox"/> Ulcerative Colitis <p><input type="checkbox"/> wasting/weight-loss \leq 2% of usual body weight [includes wasting/weight-loss of 0%]</p> <p><input type="checkbox"/> wasting/weight-loss $>$ 2% and \leq 5% of usual body weight</p> <p><input type="checkbox"/> wasting/weight-loss $>$ 5% and \leq 10% of usual body weight</p> <p><input type="checkbox"/> wasting/weight-loss $>$ 10% of usual body weight</p>		<p>_____</p> <p>Health Professional's Initials</p>
<p>Wasting/weight-loss due to one or more of the following medical conditions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Anorexia Nervosa <input type="checkbox"/> Cystic Fibrosis <input type="checkbox"/> Kwashiorkor <input type="checkbox"/> Marasmus <p><input type="checkbox"/> wasting/weight-loss \leq 2% of usual body weight [includes wasting/weight-loss of 0%]</p> <p><input type="checkbox"/> wasting/weight-loss $>$ 2% of usual body weight</p>		<p>_____</p> <p>Health Professional's Initials</p>

Section IV - Pregnancy/Breast-feeding Nutritional Allowance

<p>A monthly Pregnancy/Breast-feeding Nutritional Allowance is payable beginning the month an approved health professional confirms the pregnancy [i.e. completes, signs and dates this application] and continuing until the month the pregnancy ends. If the mother is breast-feeding, the Pregnancy/Breast-feeding Nutritional Allowance is payable for an additional 12 months after the pregnancy ends, up to and including the month the infant is 12 months of age.</p> <p>Please indicate whether the applicant is:</p> <p><input type="checkbox"/> lactose tolerant or <input type="checkbox"/> lactose intolerant</p>	<p>_____</p> <p>Estimated date of delivery</p>	<p>_____</p> <p>Health Professional's Initials</p>
---	--	--

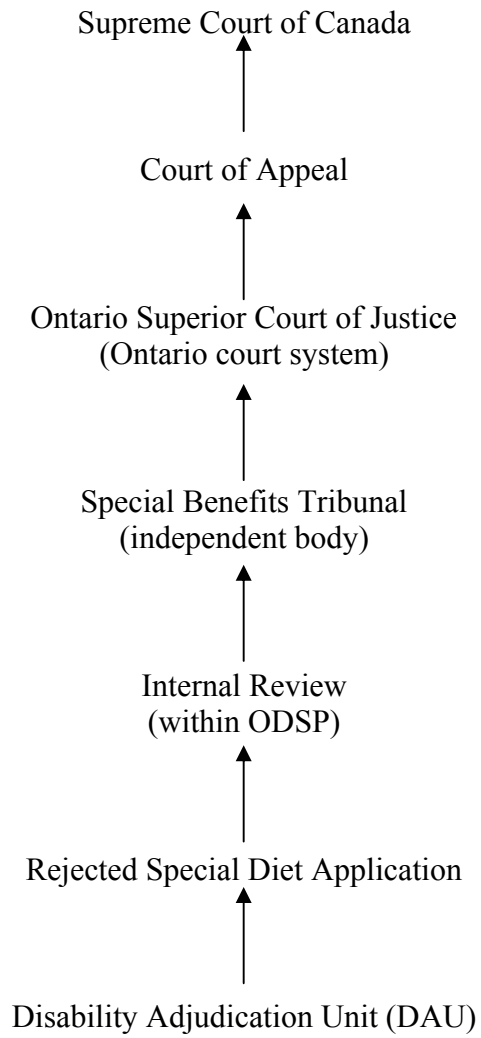
Notice with Respect to the Collection of Personal Information

(Freedom of Information and Protection of Privacy Act)
(Municipal Freedom of Information and Protection of Privacy Act)

This information is collected under the legal authority of the Family Benefits Act, R.S.O. 1990, c.F.2, sections 9 & 12, the Ontario Disability Support Program Act, 1997, sections 5 & 10, or the Ontario Works Act, 1997, sections 7, 8 & 15, for the purpose of administering Government of Ontario social assistance programs. For more information contact _____ at (_____) _____, in your local Ontario Works or ODSP office.

Note: If the applicant appeals the decision, this and all supplementary medical information provided will be released to the applicant, their legal representative(s) and the Social Benefits Tribunal.

Appendix F – Appeal Routes Chart



Appendix G – Special Benefits Tribunal Appeal Form

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Social
Benefits
Tribunal

Appeal Form

Questions?

Toronto:
(416) 326-0978

Outside Toronto:
1-800-753-3895

Fax:
(416) 326-5135

Mail to:
Registrar
Social Benefits Tribunal
1075 Bay Street, 7th Floor
Toronto ON
M5S 2B1

Please attach copies of
the following to this form:

- the original Notice of Decision
- your request for an internal review and
- the Internal review decision (if you received one).

Disponible en français.

Office Use Only	
File number	_____
Date post-marked	_____

Before you can appeal to the Tribunal, you must request an internal review by the office that made the original decision.

1. General Information

Mr Mrs Ms Miss

Last Name _____

First Name _____

Address _____

_____ Apartment _____

City _____ Postal Code _____

Telephone () _____

• When were you born?

_____/_____/_____
Day /Month /Year

• Which Ontario Works or Ontario Disability office do you deal with?

Office name _____

Office address _____

Case worker's name _____

Case worker's telephone () _____

2. Internal Review

• What is the date of your Notice of Decision?

_____/_____/_____
Day /Month /Year

• When did you make your request for an internal review?

_____/_____/_____
Day /Month /Year

• Did you receive an internal review decision?

Yes

No

Introduction

The following document is a draft bill. Its general substance, format and style are designed for theoretical adoption within the Legislature of Ontario. It is framed in that manner in order to allow for the creation of a discrete oversight body specifically for ODSP, a system which does not presently exist.

There is fundamental importance to many of the decisions of ODSP in the lives of applicants and recipients. Denial or suspension of benefits can be a severe blow to an individual's hope of self-sufficiency. Such decisions add stress and turmoil to personal situations which are often already very difficult.

All individual citizens who access government services deserve accountability. This bill proposes to create a system of external accountability. It is hoped the result will be a more supportive and less restrictive system for all who wish to access it.

An Act to promote accountability within the Ontario Disability Support Program

Preamble

Section One of the Ontario Disability Support Program Act (“the ODSP Act”) sets out the purposes of the legislation to include “providing income and employment supports to eligible persons with disabilities” and to “effectively serve persons with disabilities who need assistance”.

Since its inception, the system of support developed by the ODSP Act has often failed to deliver this support “effectively” and therefore is failing to abide by the intent of the legislature of the Province of Ontario.

The government of the Province of Ontario has not adequately addressed the systemic delivery problems within the Ontario Disability Support Program that include, but are not limited to: significant delays in processing and determining applications, providing interim support through the Ontario Works program at a rate that is grossly insufficient, a lack of support for applicants and potential applicants in navigating the application process, and the enforcement of rules in a punitive and high-handed manner.

⁵⁸ Pathway to Progress – ODSP: Accountability, Reform & Systemic Change

The result of these problems include undue hardship, stress, and poverty, the result of which is the marginalization of recipients to a point where recipients often become dependent upon the system to afford a life of bare subsistence.

Definitions

1. In this Act,

“Applicant” means a person who applies for income support from the Ontario Disability Support Program or on whose behalf such an application is made

“Disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“Commissioner” means the Ontario Disability Support Program Commissioner as provided for in this Act.

“Recipient” means a person to whom income support from the Ontario Disability Support Program is provided.

“the Program” means the Ontario Disability Support Program.

2. Applicant’s Right of Access

a) Every person in the province of Ontario has a right to access from the Program, detailed information on eligibility, applications, deadlines, rules, processing times, available support, additional services or benefits that an applicant or recipient may be eligible for, and privacy by means of communicating with any office of the Program and by other means of communication chosen by the Program, which shall, at least, include communication by telephone and via the internet.

b) Every person in the province of Ontario has a right to make application to the Program.

c) The rights of access provided in paragraphs (a) and (b) above shall include providing assisted access to all persons with a Disability.

d) Any response to a request for information from the Program on available benefits or support will include a list of all possible benefits available to the requesting party and the procedures necessary to access the benefits.

e) Any failure to provide access and information that has had a prejudicial effect on the Applicant's ability to access the Program is grounds for the Applicant to file a complaint to the Commissioner under the procedure stated herein.

3. Recipient's Right of Access

a) Every Recipient has a right to access from the Program information on eligibility, available support, additional services or benefits, rules, processing times for requests, and privacy by means of communicating with any office of the Program and by other means of communication chosen by the Program which shall, at least, include communication by telephone and via the internet.

b) The rights of access provided in paragraph (a) above shall include providing assisted access to all persons with a Disability.

c) Any response to a request for information to the Program on available benefits or support will include a list of all possible benefits available to the requesting party and the procedures necessary to access the benefits.

d) Any failure to provide access and information that has had a prejudicial effect on the Recipient's ability to access the Program is grounds for the Recipient to file a complaint to the Commissioner under the procedure stated herein.

4. Right to Decisions & Appeal

Every decision of the Program, including but not limited to, the determination of the initial Application and any appeals, and any administrative decision affecting the individual's ability to access support or any benefits from the Program, shall include written reasons for the decision and if the decision is detrimental to the individual's ability to receive support from the Program, shall outline any steps that may be taken by the individual to rectify and resubmit their request, or if unavailable, shall clearly state the ability of any means of appeal and the relevant timelines for that procedure.

5. Right to Respect & Dignity in the Provision of Services

Every individual has the right to be dealt with by the Program:

- i. in a manner that ensures courtesy and respect of individuals,
- ii. in a manner that is fair and equitable,
- iii. in a manner that recognizes individual dignity and privacy,

- iv. in a manner that recognizes individual needs and preferences, including those based on ethnic, spiritual, linguistic, familial, and cultural factors,
- v. in a manner that recognizes and provides full access and accommodation to individuals with a Disability in a manner that is consistent with the *Ontarians with Disabilities Act, 2001*,
- vi. in a manner that recognizes and provides full access and accommodation to individuals with mental illness or disability.

6. Right to Complain without Reprisal

Every individual may take all reasonable steps in:

- i) questioning staff of the Program,
- ii) raising concerns about the administration of the Program,
- iii) requesting review of a decision or issue affecting their right to access the Program by a supervisor or by the Director,
- iv) making a complaint under this Act or any other legislative or regulatory system, without fear of interference, coercion, discrimination or reprisal.

7. Office of the Commissioner of the Ontario Disability Support Program

a) The Office of the Commissioner shall be created to provide oversight in the administration of the Program.

b) The Commissioner shall be responsible for ensuring the Program is:

- i) abiding by all rules, regulations, and legislation governing the Program,
- ii) observing the rights set out in this Act,
- iii) providing services in a manner that is fair, equitable, and respectful of the individual.

c) The Commissioner shall carry out their mandate by:

- i) accepting, investigating, and reporting on complaints as outlined in section 8 below,
- ii) seeking out and reporting on potential changes and improvements to the Program
- ii) reporting annually to the Minister responsible for the Ontario Disability Support Program and to the legislature of Ontario as to the results of their work in carrying out their duties outlined in this Act.

d) The Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

8. Complaints to the Commissioner

a) Any person may file a complaint with the Commissioner.

b) A complaint must be based upon one of the following grounds:

- i) the Program has failed to follow its governing rules, regulations, and legislation in the administration of the Program,
- ii) the Program has failed to observe any right set down in this Act,

- iii) any other basis with the express approval of the Commissioner.
- c) Any complaint to the Commissioner surrounding an issue over which the Program is still actively considering a decision or over which there remains a right of appeal to the Social Benefits Tribunal shall be held and a file not opened until the decision is complete and any rights of appeal have been exhausted.
- d) The Commissioner has the power to investigate complaints as if they were acting in the place of the Ombudsman of Ontario and in accordance with the powers and obligations prescribed by the *Ombudsman Act, (R.S.O., 1990 Chap. 06)*
- e) The Ombudsman of Ontario shall retain investigative authority over the Program but shall delegate that authority to the Commissioner to investigate matters that fall within the grounds of this section.
- f) The Commissioner will make a preliminary investigation of a complaint to ensure that it meets the required grounds and that there is *prima facie* evidence that supports the complaint. The Commissioner will then report to the complainant the results of the preliminary investigation, including, whether or not the complaint warrants further investigation.
- g) Upon concluding all investigations, the Commissioner will issue a report of findings to the following parties:
 - i) the complainant
 - ii) the Minister responsible for the Ontario Disability Support Program
 - iii) the Director of the Program
 - iv) any other staff member of the Program to whom the findings would be pertinent.
- h) The Commissioner may make an order to the Director of the Program requiring the Program to reconsider a decision or action which affected the complainant.

9. Limits on the decisions of the Commissioner

The Commissioner does not have the power to investigate, report or make orders over any decision of the Social Benefits Tribunal or any court of law.

10. Commencement

This Act comes into effect on a day to be named by proclamation of the Lieutenant Governor.

11. Short title

The short title of this Act is the *ODSP Accountability Act, 2006*.