

Volume 2, Issue 1
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Did you know?

- ISAC is a founding member of the 25 in 5 Network for Poverty Reduction. Get updates on the fight for poverty reduction on the 25 in 5 website: www.25in5.ca.
- You can subscribe to ISAC's email list to get updates on these and other issues. Just go to the sign-up page at www.cleonet.ca/email_bulletin_subscription
- Mary Marrone, ISAC's Director of Advocacy and Legal Services, has been appointed to the Social Assistance Review Advisory Council, to make recommendations to government about the upcoming Social Assistance Review. See page 4 for more information.
- ISAC has a website on the Social Assistance Review. Check it out at: www.sareview.ca.

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ISAC UPDATE

Special Diet Program Allowances Discriminatory: Human Rights Tribunal of Ontario

The long-awaited decision of the Human Rights Tribunal of Ontario in the lead Special Diet Allowance complaint cases was released on February 17.

In a hearing that began in 2008, Cindy Wilkey, ISAC staff lawyer, and Lesli Bisgould, the Clinic Resource Office Barrister, argued before the Tribunal that the provincial government's Special Diet Allowance Program discriminated against five complainants on the basis of disability.

Two cases were settled before the Tribunal decision, when government conceded that multiple sclerosis and lupus should

be included in the Special Diet schedule.

The 61-page decision of Interim Tribunal Chair David Wright agreed that discrimination was at play in the three remaining cases.

The Tribunal did not order the Ministry of Community and Social Services to redesign the program, as the complainants had asked, but did establish a clear set of guidelines that will apply to the resolution of the remaining 170+ complaints.

The Tribunal found that the three lead complainants were entitled to a higher allowance amount than the Special Diet Schedule cur-

rently provides for hypertension, hypercholesterolemia and obesity.

The Tribunal also found that hypoproteinemia (protein deficiency) should also be entitled to an allowance under the program.

The Ministry was ordered to provide increased retroactive and ongoing allowances for the three lead complainants within 90 days and to extend the same benefits to all eligible OW and ODSP recipients with hypoproteinemia, hypertension, hypercholesterolemia and extreme obesity within three months.

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Divisional Court Rules on ODSP and Child Support Income

The Divisional Court recently ruled that child support paid to the mother of a dependent adult child in accordance with a court order should not be considered income to that child when determining financial eligibility for ODSP.

This decision upholds an earlier decision of the Social Benefits Tribunal, which was subsequently appealed by the Director of ODSP.

Patty Robinet, ISAC staff lawyer, represented the respondent as co-counsel with Joseph Corbiere of Algoma Community Legal Clinic. The appeal was heard in October 2009 in Sudbury before a three-member panel of judges.

The respondent is a young adult with several disabilities including Asperger's syndrome. She lives with her single-parent mother,

who left a 23-year career to care for her full-time.

In 2005, the respondent's father was ordered to pay her mother \$800 per month in child support. Although the respondent qualified for ODSP as a person with a disability, the Director attributed the payments as income to the respondent and found her financially ineligible.

(Continued on page 2)



“We have just received, yes, a decision from the Ontario Human Rights Tribunal with regard to the special diets... We are reviewing this decision. It's a complex decision that could have a significant fiscal, policy and regulatory impact.”

Minister of Community and Social Services
Madeleine Meilleur, in
Question Period, in
March 1, 2010



...ODSP and Child Support Income

(Continued from page 1)

The main question before the Court was whether an order for child support represents a payment made “on behalf of or for the benefit of” the respondent adult child, in accordance with s.37(1) of the ODSP Regulation.

The majority found that it does not and dismissed the Director’s appeal. Key findings in the decision are:

- Ontario’s *Child Support Guidelines* are meant to ensure that children in a separated family continue to live at a standard that is consistent with each parent’s financial resources.
- Child support under the *Guidelines* is both compensation to the parent and a benefit to the child, neither of which is sever-

able or susceptible to allocation to either the parent or the child.

- The ODSP Act is intended “to create a partnership with families in order to encourage families to contribute financially to family members without being penalized for that contribution”.
- It would be “inconsistent and unfair” to interpret “income” in a manner that would allow children in an intact family to live at a standard consistent with both parents’ financial resources without deduction to their ODSP, but require a deduction of child support to a child from a separated family.

The Director has sought leave to appeal. ISAC will continue to act as co-counsel in this matter.

Tranchemontagne/ Werbeski Appeal

ISAC was one of five intervenors in the appeal of a decision on the human rights challenge to section 5(2) of the ODSP Act, which excludes people with addictions from benefits.

The claim that the exclusion is discriminatory was successful at the Social Benefits Tribunal and at Divisional Court on appeal.

The Ministry continues to dispute these decisions. At an Ontario Court of Appeal hearing March 10-11, ISAC addressed the claim that government is owed special deference when human rights complaints challenge government programs.

The two complainants are represented by Terry Copes of the Sudbury clinic and Lesli Bisgould of the LAO Clinic Resource Office.

MSN Travel Arguments for Caseworker Use

ISAC is working with a group of clinic caseworkers from around the province to prepare precedent arguments for use in challenges to the Ontario government’s Mandatory Special Necessities travel rate.

The government’s MSN travel rate — for people receiving ODSP and OW who use their own vehicles to attend medical appointments — is currently 18 cents per kilometer. This is

far less than in other programs and doesn’t cover actual costs.

Caseworkers raised this issue in Income Maintenance Study Group meetings held at regional trainings around the province, and a working group was set up including ISAC staff lawyer Patty Robinet.

The arguments focus on how other groups, organizations, jurisdictions, and

Ontario government programs calculate travel compensation rates, for use in appeals to the SBT.

Two cases are currently before the SBT, and decisions from those cases will be used to refine the arguments.

A final set of arguments will be drafted, which will then be made available to caseworkers through the CRO website.

Special Diet Discriminatory: Tribunal

(Continued from page 1)

Some of the decision's key findings are:

- Where an individual has a disability, as defined in the Ontario Human Rights Code, resulting in dietary needs within the purpose of the Special Diet Program, but which are not a specific, diagnosed medical condition, failure to provide a Special Diet Allowance is discriminatory.
 - To make a successful claim that the failure to fund his or her special diet is discriminatory, a claimant must show that there is general recognition in the Ontario medical community that modifications to a regular, healthy diet should be made to treat the disability or disabilities. It is not sufficient to show that a medical professional recommends a specific diet for him or her.
 - The purpose of the Special Diet program is to fund additional costs of food; it is not a violation of the Code that the program does not cover the cost of supplements or food preparation.
 - There is discrimination when those with different disabilities have significantly different proportions of the additional expenses of their special diet funded. Government is, however, entitled to significant deference in the costing process. Only where costs are significantly disproportionate, using equivalent methodology, will the amount of funding lead to a finding of discrimination.
 - Section 14 of the Code, which provides for a defence based on "special programs", does not change the analysis under Section 1 of the Code in these circumstances.
 - No damages were awarded for injury to dignity, feelings or self-respect.
 - Policy decisions about how to ensure the Special Diet Allowance scheme is made consistent with the Code are for the government to determine; the Tribunal made no orders about general changes to the Special Diet regime.
- The lead complainants were represented by co-counsel

from clinics across the province: Andrew Bolter, Susan Campbell, Kier Munn, Nora Simpson, and Colleen Sym.

A case management conference has been set for April 13 to discuss how the remaining complaints will be handled.

People with complaints at the Human Rights Tribunal that were adjourned awaiting this decision have four months to provide the Tribunal and other parties with an outline of how their complaint falls within the guidelines in the decision. To help with that process, page 60 of the decision lists four questions for complainants to answer.

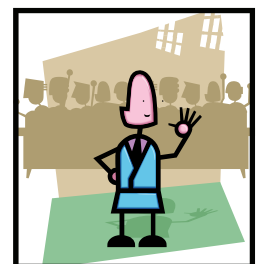
ISAC will continue to assist clinics that are representing clients with complaints before the Tribunal.

On a related note, rumours have been circulating that government is looking to eliminate the Special Diet Program in the upcoming budget. The 25 in 5 Network for Poverty Reduction and the ODSP Action Coalition are working to lobby government to maintain and enhance the Program.



"I have been on ODSP since 2000. I have Hep C and when the doctor filled out the form for Special Diet, all ODSP gave me was an increase of \$10 per month. How is \$10 a month supposed to help me get the proper food and vitamins to help save my health?"

John, one of many people on OW and ODSP who tell their stories at www.sareview.ca



ISAC Priorities for Budget 2010

ISAC made a submission to the provincial government making recommendations for the upcoming Budget 2010, to be presented on March 25. To see our submission, go to: <http://www.incomesecurity.org> and follow the link under What's New.



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ISAC's Vision: To work with the community to advocate for and seek legal remedies to address systemic issues and improve income security for people in Ontario.

ISAC was established in 2001 by the Ontario Social Safety Network and the Steering Committee on Social Assistance, a provincial inter-clinic network, and funded by Legal Aid Ontario to serve low income Ontarians by conducting test case and appellate litigation relating to provincial and federal income security programs. These programs include Ontario Works (OW), the Ontario Disability Support Program (ODSP), Employment Insurance (EI), and the Canada Pension Plan (CPP).

ISAC's legal work takes place in the broader context of law reform, public legal education and community development.

In our litigation, law reform and community development activities, we work closely with community legal clinics across Ontario, grass-roots anti-poverty and social justice organizations, private bar lawyers, academics and researchers, and individual activists.

New Advisory Council to Make Recommendations to Minister on Social Assistance Review

The long-awaited review of social assistance got a push forward in December.

Ontario's poverty reduction strategy, announced in 2008, promised that government would undertake a review of social assistance "with the goal of removing barriers and increasing opportunity". The following year passed, however, with very little movement from government to meet this commitment.

But on the eve of the first anniversary of the poverty reduction strategy, the province announced the formation of the Social As-

sistance Review Advisory Council made up of advocates and policy experts - including ISAC's Director of Advocacy and Legal Services, Mary Marrone.

The mandate of the Advisory Council (SARAC) is to make recommendations to the Minister of Community and Social Services, Madeleine Meilleur, on the scope and terms of reference for the promised Social Assistance Review. SARAC is also mandated to advise on short-term changes that could improve OW and ODSP immediately.

Advice on short-term

changes to what have become known as "stupid rules" has already been presented to Minister Meilleur based on previous submissions and discussions with constituent groups, including community legal clinics.

Recommendations on the scope and mandate for the broader Review are to be given to the Minister in April.

More information about the makeup and mandate of the Council, including a Question and Answer section and biographies of the ten Council appointees, is available on the Ministry's

website at www.mcass.gov.on.ca/mcass/sacouncil/index.aspx.

In addition, the website has a place for members of the public to give their input to SARAC on the scope and terms of reference.

Legal clinic caseworkers from around the province and their clients on OW and ODSP are especially encouraged to provide their input.

SARAC's recommendations will be made public. The final decision on how the Review will proceed will rest with the Minister.