

REGULATION CHANGES TO ONTARIO DISABILITY SUPPORT PROGRAM AND ONTARIO WORKS

INCOME SECURITY ADVOCACY CENTRE

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On December 15th, 2004, the government introduced changes to the Ontario Works and Ontario Disability Support Program regulations.

The following is only intended to provide a summary of the changes and is not intended to be relied on for legal advice. Anyone who may be affected by the changes should contact your local legal clinic for more information.

**FOR A COMPLETE TEXT OF THE REGULATIONS, CONSULT THE ONTARIO GAZETTE OF JANUARY 1, 2005, AT THE FOLLOWING
WEB ADDRESS:**

[http://www.ontariogazette.gov.on.ca/mbs/Gazette/Gazette.nsf/Main/4026EE333CB4047D85256F7B005CA330/\\$FILE/138-01.pdf](http://www.ontariogazette.gov.on.ca/mbs/Gazette/Gazette.nsf/Main/4026EE333CB4047D85256F7B005CA330/$FILE/138-01.pdf)

For the ODSP policies, consult:

<http://www.cfcs.gov.on.ca/CFCS/en/programs/IES/OntarioDisabilitySupportProgram/Publications/odspisdir.htm>

For the OW policies, consult:

<http://www.cfcs.gov.on.ca/CFCS/en/programs/IES/OntarioWorks/Publications/ow-policydirectives.htm>

AFFECTED REGULATION	PROGRAM	PREVIOUS	CHANGE	REGULATION REFERENCE
Drug card for recipient/participant suspended due to non-compliance with participation requirements	ODSP/OW	No drug card provided during period of suspension	OW/ODSP - A drug card can be issued to an adult who has a serious illness or health condition and who would otherwise be financially ineligible for income support because of non-compliance with employment assistance programs.	ODSP – 24; 44(6), (7) OW – 33(1), (2), (3); 55(4)
Liens – principal residence (Ontario Works) and second, non-exempt properties (ODSP)	ODSP/OW	Consent to a lien required as condition of eligibility.	OW – eliminated the requirement to consent to a lien on the principle residence (home) as a condition of eligibility. Liens that are in place will be discharged. No compensation in cases where liens have already been discharged. ODSP - No new liens are to be registered against second properties. Recipients must still make reasonable efforts to sell a second property unless it is considered necessary for the health or well being of a member of the benefit unit. Note: No details about discharging liens. A written request may be required.	ODSP – 28(1)17; 55 OW - 66
Personal loans, grants or awards for education purposes	ODSP/OW	Treated as income and assets	ODSP/OW – the portion of a personal loan, student or trainee grant or award approved by social services (the Director) for education costs is exempt as income and assets, so long as the person is attending the program or training for which the loan was taken or the payment was intended. Education costs include tuition, other compulsory fees, books, instructional supplies and equipment, transportation disability-	ODSP – 28(1)12; 43(1)2.1 OW – 39(1)10; 54(1)2.1

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			<p>related expenses. Applicants and recipients are required to verify the amount of the loan, grant or award. Verification of the education costs paid from the loan, grant, or award will also be required.</p> <p>This amendment does not extend to personal loans (including that portion of OSAP that is for living purposes) that are not designated for or used for educational purposes. These monies are still treated as income and assets.</p>	
Earnings of dependent children	ODSP/OW	Exempt as income; if saved, treated as assets	ODSP/OW – If dependent children save their earnings they are now not considered assets when determining the benefit unit’s allowable asset level. If these savings earn money (e.g., interest), the earned money is also not an asset.	ODSP – 28(1)32 OW – 39(1)14
Ontario Disaster Relief Assistance Program (ODRAP) and insurance payments for loss or damage due to natural disaster, flood, fire, theft, etc.	ODSP/OW	Treated as income and assets	ODSP/OW – Exempt any payments made under ODRAP as income and assets, other than payments for loss of income as long as those payments are used for the purpose intended by ODRAP. Insurance payments made for temporary living expenses in situations where the recipient has moved out of his/her home because of damage (e.g., fire or flood) are exempt. Insurance payments made to replace or repair damaged or destroyed assets that are either exempt assets (e.g., principal residence) or within allowable asset limits are also exempt. However, insurance payments for loss of income are not exempt.	ODSP – 28(1)33, 34; 43(1)20, 21 OW – 39(1)26, 27; 54(1)15, 16

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Exemption of gifts and voluntary payments	ODSP	Exempt up to \$4,000 from any source in a 12-month period for each member of a benefit unit	The exemption for gifts or voluntary payments from any source has been increased from \$4,000 to \$5,000 in a 12-month period for each member of the benefit unit.	ODSP – 43(1)13
Registered Education Savings Plans	ODSP/OW	<p>Assets - only if derived from Learning, Earning and Parenting (LEAP) incentive payment</p> <p>Income - treated as income if withdrawn from RESP for post-secondary school-related expenses</p>	<p>ODSP/OW – RESPs held by any member of the benefit unit for persons related to them by blood, marriage or adoption are exempt as assets. Gifts and voluntary payments received and paid into such RESPs are exempt as income. Amounts contributed to an RESP through the Canada Education Savings Grant (federal government matches a certain percentage of a person’s contributions to an RESP) are exempt. Payments from an RESP, intended and used for education costs, received by a recipient or any other member of a benefit unit are exempt as income. For this purpose, education costs consist of tuition fees, other compulsory fees, books, instructional supplies and equipment, transportation, and disability-related expenses. Verification will be required of RESP payments that are used for education costs. Funds withdrawn from an RESP, in any form, and not used for education costs are subject to income and asset rules. In a family type RESP, the beneficiary can be changed from one child to another child (e.g. from a daughter to a son). These RESPs continue to be exempt as long as they are intended for and will be used for education costs.</p>	<p>ODSP – 28(1)25, 26, 27; 42(11); 43(1)15</p> <p>OW – 39(1)20, 21, 22; 53(13); 54(1)11</p>

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Discretionary benefit to cover energy conservation measures	ODSP/OW	<p>ODSP – no discretionary benefit</p> <p>OW – discretionary benefit exists but not for cost of energy conservation measures</p>	<p>ODSP – Social services (the Director) now has authority to issue discretionary benefits to pay for pre-approved, low-cost energy conservation measures, such as caulking, sealing or weatherstripping around doors and windows, insulating hot water pipes and hot water tanks, and installing flow restrictors in showerhead pipes.</p> <p>OW – Policy directive has been clarified that social services (the Director) has authority to issue discretionary benefits to cover cost of energy conservation measures.</p>	ODSP – 45.2
Rules that affect sponsored immigrants	ODSP/OW	Minimum \$100 sponsorship deduction if sponsored immigrant living apart from sponsor; no shelter allowance if living with sponsor (or in property owned or controlled by the sponsor)	ODSP/OW – The \$100 minimum sponsorship deduction has been eliminated for sponsored immigrants who are not living with their sponsors. A shelter allowance may be paid to a sponsored immigrant who is living with his or her sponsor or in accommodation owned or controlled by the sponsor only if the recipient has a legal obligation to pay shelter costs or where social services (the Director) is satisfied that the recipient must pay shelter costs in order to remain in the residence.	ODSP – 8(1); 40(2), (3) OW – 51(2), (3)
Verification of disability	ODSP	Required that health professionals verify that an impairment was “substantial”	The word substantial has been deleted. Health professionals verify existence of impairment. Social services [Disability Adjudication Unit (DAU)] determines whether the impairment and impact are substantial when determining whether an applicant meets the ODSP definition of disability.	ODSP – 46(1), (2)

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Shelter allowance for women in interval and transition homes	ODSP/OW	\$112 issued for recipient plus \$112 for each additional dependent	<p>ODSP/OW - Where a woman is temporarily residing in a shelter for abused women, but is maintaining her right to return home (still paying for the home):</p> <ol style="list-style-type: none"> 1. She will receive basic needs and shelter benefits for the first three months. 2. After three months, social services (the Director) has discretionary authority to continue the basic needs and shelter benefits. This discretion will depend on the actual cost of maintaining the home as well as the expected length of stay of the woman in the shelter. 3. If social services (the Director) chooses not to extend the basic needs and shelter benefit beyond the three months then she and each of her children will receive a personal needs allowance of \$116 each per month (which includes the 3% increase). <p>If a woman is temporarily residing in a shelter for abused women and does not maintain her right to return home then she and each of her children will receive a personal needs allowance of \$116 each per month (which includes the 3% increase).</p>	ODSP – 33.1(1) OW – 43(1); 44.1
Exemption of awards up to \$25,000 (OW) and \$100,000 (ODSP)	ODSP/OW	<i>Family Law Act (FLA)</i> awards for loss of care, guidance, and companionship and	ODSP – FLA awards and WSIB NEL awards are exempt as income and assets, in conjunction with awards for pain and suffering, up to \$100,000 per member of the benefit unit.	ODSP – 28(1)14.1, 14.2; 28(2); 41; 43(1)4.1; 43(2)

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		Workplace Safety and Insurance Board (WSIB) Non-Economic Loss (NEL) awards not exempt as income or assets	<p>OW – FLA awards and WSIB NEL awards are exempt as income and assets, in conjunction with awards for pain and suffering, up to \$25,000 per member of the benefit unit.</p> <p>ODSP/OW – If the FLA award, WSIB NEL award, and pain and suffering award are from the same incident then the maximum amount will be applied to all sources, i.e., either \$100,000 for ODSP or \$25,000 for OW. On the other hand if a recipient receives separate awards for different incidents, then the maximum applies to each incident. Interest on the awards is considered income.</p>	OW – 39(1)12; 39(3); 52(8.1); 54(1)4.1; 54(2)
Additional medical information	ODSP	Only information submitted along with the original application could be reviewed at internal review; additional information had to be submitted to the Social Benefits Tribunal (SBT) 20 days prior to the hearing	Social services (the DAU) must consider additional medical information during the internal review if it relates to conditions that existed at the time of the original application. Applicants must now submit any new medical information about an existing condition to social services (the DAU) and SBT at least 30 days before the appeal hearing.	ODSP – 59(3); 64(1)(b)
Professionals who can complete the “activities of daily living” index	ODSP	ADL can be completed by a physician, psychologist,	Expanded to include registered nurses, speech language pathologists, and social workers.	ODSP – 46(2)

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(ADL)		optometrist, ophthalmologist, occupational therapist, physiotherapist, registered nurse in the extended class, chiropractor or audiologist		
Exempt payments for disability-related items and services	ODSP	Regulation does not specify source of income when exempting for disability-related items and services (allows for a broad interpretation contrary to the policy intent)	Regulation amended to clarify that the ODSP income exemption for payments applied to approved disability-related items and services applies to: 1) payments from a trust or life insurance policy; 2) gifts or other voluntary payments, and 3) payments that are made pursuant to a court order or government-funded program that are specifically made for the purpose of, and are applied to expenses for, approved disability- related items or services. The exemption cannot be applied to income from income replacement programs/sources such as CPP or child/spousal support paid for basic maintenance.	ODSP – 43(1)9
Residential Rehabilitation Assistance Program (RRAP) and Home and Vehicle Modification Program (HVMP) grants and loans	ODSP/OW	No exemption for grants and loans from RRAP and HVMP	ODSP/OW - Clear income exemption for a loan or grant from the RRAP and the HMVP	ODSP – 42(13); 43(1)19 OW – 54(1)14

AFFECTED REGULATION	PROGRAM	PREVIOUS	CHANGE	REGULATION REFERENCE
Community Start-up and Maintenance Benefit (CSUMB) (formerly CSUB)	ODSP/OW	No specific authority to allow CSUB to be issued to prevent eviction or pay utility arrears/re-connections; payment frequency allowed once in a 12-month period	<p>ODSP/OW - The regulation now provides clear authority to issue CSUMB upon discharge from an institution, for moves due to family violence, eviction or for health reasons, to prevent eviction, and for the payment of utility arrears/re-connections. The payment frequency for the maximum benefit is once in a 24-month period. A cumulative total of \$799 for a single person or \$1,500 for a family in a 24-month period. More frequent payments can be made only in exceptional circumstances, such as moves required to address disability-related needs (e.g., move to accessible housing), abuse, flood, or fire. Review done on a case-by-case basis.</p> <p>Note: MCSS has said that the clock for the 24-month period does <u>not</u> begin ticking from Dec. 2004. MCSS will look back, past Dec. 2004, to determine if a recipient has received a CSUB/CSUMB within 24 months of the application for the benefit.</p>	<p>ODSP – 44(1)4; 44(1.1)</p> <p>OW – 55(1)(4); 55(3)</p>
Winter clothing and back-to-school allowances	ODSP/OW	Payments can only be made in the specified months	<p>ODSP – Winter Clothing Allowances can be paid in November and December, as well as October, for eligible dependents who come on the program in those months. Back-to-School Allowances can be paid between August and December, as well as July, for eligible dependents who come on the program in those months.</p> <p>OW – Winter Clothing Allowances can be paid in</p>	<p>ODSP - 44(1)2; 44(1)3; 44(1.0.1)</p> <p>OW – 55(1)2, 3; 55(1.0.1)</p>

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			December, as well as November, for eligible dependents who come on the program in those months. Back-to-School Allowances can be paid between August and December, not just August, for eligible dependents who come on the program in those months.	
Extended health benefits (EHB)	OW	No EHB provision under OW	<p>Participants can receive extended health benefits, even if they are no longer entitled to financial assistance (basic needs and shelter allowance), provided they have high health costs and were in receipt of assistance in the month immediately before the month in which they became eligible for EHB. Extended health benefits include drugs, dental and vision care for children, and diabetic supplies</p> <p>High health costs means the health costs must exceed the difference between what a recipient has as monthly income and what social assistance deems is the recipient's monthly budgetary requirements. The health costs must be verified prior to the extended health benefits being issue.</p> <p>Also to qualify for EHB, recipients must have been in receipt of assistance in the month immediately before the month they became eligible for EHB. Receiving assistance means receiving any benefit from social assistance not just basic needs and shelter allowance. Therefore, being in receipt of EHB, in and of itself,</p>	OW – 57.1; 58

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			constitutes being in receipt of assistance. If recipients continue to have high health costs, as the term is defined by MCSS, each month then EHB can continue until the point is reached where the recipient no longer has monthly high health costs.	
Effective date of eligibility	OW	Eligibility commenced effective the date the second stage of the two-stage application process was completed	Eligibility commences effective the date of completion of the first stage, i.e., the preliminary assessment, of the two-stage application process. Note: The Ministry announced it was moving from a two-stage to a one step application process that would take place in local communities.	OW – 20.7.1; 40(2)
Definition of self-employment	OW	Dependent contractors and commissioned sales persons not defined as self-employed	Definition of self-employment is removed. Dependent contractors, such as taxi drivers, truck drivers, and real estate agents, and commissioned sales persons are considered self-employed and can deduct from their income approved business expenses related to self-employment.	OW – 1(1)