

First steps: recommendations for social assistance reform

**prepared by the Income Security Advocacy Centre and Steering Committee
on Social Assistance**

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Introduction

The new McGuinty government has indicated its intention to review and reform the social assistance system. Indeed, the system is in much need of attention. This document outlines some first steps that might be taken to improve it.

This document has been prepared by the Income Security Advocacy Centre (ISAC) and the Steering Committee on Social Assistance. ISAC is a legal clinic focussed on law reform through test case litigation and campaign work. The Steering Committee on Social Assistance is a provincial committee representing 79 legal clinics across Ontario.

Most social assistance recipients, advocates and front-line workers are likely to agree that the social assistance system in Ontario, including both Ontario Works and the Ontario Disability Support Program, is not providing low-income people with adequate supports. From dangerously low rates, to excessively punitive and ineffective rules, the system is fraught with problems. While it is clear that a thorough examination of the system is necessary and a commitment to fundamental change is urgently required, it is also clear that there are a number of reasonably fast, first steps that can be taken to make the lives of people on social assistance more secure. This paper identifies some of those steps. However, it must be emphasized that even if these recommendations are adopted, the need for fundamental review and change to the social assistance system will remain.

Applications process

a. Ontario Works

People who are applying for social assistance are in dire straits. A clear, simple, fast application process is essential to ensuring that people are able to access desperately needed income support.

However, the existing two-stage application is not only rife with barriers, it is also unjust, ineffective and costly. The Intake Screening Units (ISUs), for example, often provide inaccurate information, dissuade applicants from applying, fail to inform applicants of appeal rights and are limited by computer technology that prevents some applications from being taken or completed. Further, for applicants without phones, for applicants with disabilities and for applicants whose first language is neither English nor French, the ISU is a substantial barrier for them to make an application for income support.

Additionally, ISUs are a poor use of resources because the same information is collected a second time when applicants visit their local offices.

Recommendations:

- All persons have a right to make and complete an application for assistance. Denials should only be made after all relevant information has been received and reviewed.
- Eliminate the ISUs. Applications should be made in-person in local offices.
- Establish a process by which people in remote communities can initiate applications by phone with their local offices.
- Establish a phone line that provides people with information about what is required to apply for social assistance.
- All applicants should be informed of their appeal rights.

b. ODSP application process

The ODSP application process is complex and ultimately, it seems, designed to maximize the number of people who are denied ODSP. As a result, not only are people denied the benefits and supports they need, resources are wasted trying to deal with problems that emerge because people with disabilities are stuck on Ontario Works, a program that has many requirements that are contrary to the needs and capacities of people with disabilities.

Returning to a caseworker model will allow ODSP recipients to build better relationships with their workers. Having a better understanding of and rapport with their clients, workers will be able to better meet their clients' needs.

Recommendations:

- In consultation with advocates, health professionals and persons with disabilities, develop a definition of disability that considers social factors. Encourage Ontario Works workers to assist clients who self-identify as a person with a disability with their applications for ODSP.
- Encourage ODSP workers to assist people who have self-referred to ODSP.
- Currently the Ontario Municipal Social Services Association is reviewing a document drafted by a working group of the representatives of the Ministry of Community and Social Services, municipal representatives and members of the Ontario Disability Support Programme Action Coalition. The document is designed to help frontline workers assist their clients who are applying for ODSP. Once completed, this document should be made available to all frontline workers and should be accompanied by suitable training. Training should include sensitivity training regarding disability, culture and poverty.
- Eliminate second meeting in which people who are moving from OW to ODSP have to re-establish their financial eligibility.
- Return to caseworker model in which clients have a single caseworker.
- Provide education to OW and ODSP caseworkers regarding categorical eligibility, as many people who are categorically eligible are not currently being informed of their ODSP eligibility.

- Provide caseworker training on disability sensitivity and other disability-related issues.
- Continue to work with the ODSP Action Coalition to improve the accessibility and fairness of ODSP.
- Implement the recommendations made in *Denial by Design* by the Income Security Advocacy Centre.

Internal reviews

In both Ontario Works and the Ontario Disability Support Program, internal reviews are, in the vast majority of cases, ineffective and often unjust. To begin with, the requirement that an internal review be requested within ten days is unfair because some recipients may have limited comprehension, limited literacy skills and/or limited English or French. As a result, they fail to understand requirements regarding requesting an internal review. The majority of internal reviews result in appeals. Because the outcomes of internal reviews are so predictable, many legal clinic workers file for an appeal at the same time as they are filing for an internal review. Internal reviews, largely, are a waste of resources.

Recommendations:

- Eliminate mandatory internal reviews.

Appeals

The right to appeal is crucial. However, the rule that requires appellants to file medical information and/or documentary evidence at least twenty days before a Social Benefits Tribunal hearing is unjust and ineffective because it leads to the postponement of hearings or to the appellant's inability to present all of the relevant facts. It is rare that an appellant's failure to provide information in advance of the hearing prejudices either party to the proceeding.

Additionally, the backlog of cases at the SBT is extraordinarily long. Presently, in most jurisdictions, hearings before the SBT are being set for more than one year from the date an appeal is filed. Not only do such delays have implications for people's access to justice, they have huge impacts on people's income security, in part because interim assistance is recoverable.

The issue of interim assistance is of further concern because many local administrators fail to provide the assistance, despite orders from the Social Benefits Tribunal. Without interim assistance people are put in grave danger.

Finally, the levels of service in French are inadequate. (See below. "French Language Service.")

Recommendations:

- Maintain the right to an appeal.
- Eliminate the rule that requires evidence to be filed prior to the hearing.
- Initiate a process to develop disclosure rules in consultation with recipients, advocates and other stakeholders.
- Ensure people have a hearing within six months of filing their appeal.
- Establish a penalty for local administrators who fail to provide interim assistance where it has been ordered by the Tribunal.
- Make interim assistance non-recoverable.
- Increase the number of Francophone members at Social Benefits Tribunal.
- Increase the number of qualified Francophone staff in the offices of the Social Benefits Tribunal.
- Train Francophone members to write their own decisions in French, or failing that, increase the number of qualified translators.
- Increase the number of qualified translators capable of translating into French evidence submitted to the Tribunal in other languages.

Disability Adjudication Unit

Disability Determination appeals represent the bulk of casework for legal clinics, as well as the bulk of appeals dealt with by the Social Benefits Tribunal. In 2002-03, 74% of appeals received by the SBT were regarding disability status. The costs associated with the huge volume of appeals is substantial to both the legal clinic system and the government. Legal clinics have had a high level of success in representing clients in disability appeals, indicating a flawed primary adjudication process and a negative culture.¹ Indeed, DAU summaries suggest members are looking for ways to deny people.

Debbie Moretta, Director, ODSP Branch, has instructed the DAU to accept additional medical information and information pertaining to new medical conditions at any stage of the ODSP application and appeal processes². However, the DAU frequently does not accept new medical evidence. Furthermore, section 59 (3) of the regulation, which speaks to this issue, remains unchanged. In explaining her policy memo, Ms. Moretta indicated the new policy would improve decision-making by the DAU; avoid appeals where a review of the additional/new information results in a decision of eligibility by the DAU; reduce the number of multiple reapplications, shorten the length of time it takes for an applicant to be found eligible; and provide the applicant with an opportunity to convey changes in medical status before the appeal is heard.

Finally, the current requirement of a complete re-application for an ODSP client whose eligibility is being reviewed is a tremendous waste of time and resources

¹ In 2002-03, 49% of the DAU's original decisions were rescinded. Of those rescinded decisions, 86% had legal representation.

² The policy change was reinforced in a memo from Debbie Moretta, Director, ODSP to Marilyn Sharma, Chair, SBT dated July 18, 2003.

for ODSP offices, health professionals, legal clinic workers, the DAU, the SBT and Ministry of Health.

Recommendations:

- Using resources such as ARCH, a Legal Resource Centre for Persons with Disabilities, and the ODSP Action Coalition, provide training to DAU adjudicators in areas including adjudication, disability, and disability sensitivity.
- In consultation with recipients and advocates, develop a process to create a 'culture change' from one that is insensitive, poorly informed and largely focussed on finding ways to deny people ODSP to one that is fair, informed, sensitive and committed to ensuring people with disabilities have income support.
- In consultation with recipients and advocates, establish a quality assurance process that includes a form of evaluation from recipients, advocates and health professionals.
- Implement the recommendations in *Denial by Design* by the Income Security Advocacy Centre.
- Amend section 64(1) of the *Ontario Disability Support Program Regulation 222/98* to allow the SBT and the DAU to consider any medical reports relating to the applicant/appellant's condition.
- To review the eligibility of an ODSP recipient, eliminate the required re-application process. A medical update letter from the individual's doctor should be considered sufficient.

Eligibility

There are numerous unjust obstacles currently preventing or prolonging people from being eligible for social assistance that require immediate attention.

The Ontario Court of Appeal, in *Falkiner et al. v. Director, Income Maintenance Branch*, found that the provision made in 1995 (under the former *Family Benefits Act* and the *General Welfare Assistance Act*) cutting off single persons who were living with a person of the opposite sex to be unconstitutional. The Ontario Court of Appeal found that single persons living with a person of the opposite sex should not be treated as spouses similar to couples who had familial commitments or obligations living in a marriage like situation.

Pilot drug and alcohol projects are taking place in communities including Thunder Bay, Algoma, Lennox-Addington, Parry Sound and Muskoka. Testing is also being done in Brant, Haldimand and Norfolk. The scope of the pilot projects is not clear, nor is it clear if and/or how these pilots have been or will be evaluated. Certainly, there are reports of social assistance recipients being forced into rehabilitation programs.

Literacy testing is occurring across the province. Tests are given to those who self-identify as having literacy problems as well as to those who have not completed grade twelve.

Mandatory testing is an intolerable invasion of privacy. Further, it based on the unfounded assumption that addictions or low literacy skills are primary barrier to employment. While both addiction and low literacy skills can be a barrier, they often intersect with other barriers. Mandatory testing and treatment should be eliminated altogether. Additionally, to adequately support people on assistance with addictions, alcohol and drug addiction needs to be recognized as a disability, as the *Ontario Human Rights Code* does. Further, literacy and addictions programmes should be adequately funded and made available for recipients to *voluntarily* participate in.

People seeking social assistance are in dire straights. Measures need to be taken to ensure people are found eligible as quickly as possible and eligibility dates are reflective of the required assistance.

Further, people need to be able to rely on their assistance. Currently, benefits are regularly suspended because of administrative issues. One of the most common reasons benefits are suspended is alleged failure to provide information. The demands for this information, both narrative and documentary, are often difficult to meet, and in some cases, objectionable. Such demands include bank statements that can only be obtained through payment of fees, proofs of sale, years of income tax returns and proof of child's attendance at school. For women who have fled abusive situations and for others who have had to move often, it is often impossible to produce documents from previous years. Additionally, the lives of many low-income people are quite hectic, as they engage in daily struggles to figure out how to make ends meet. Repeated demands for excessive amounts of information are not only degrading and unnecessary, but also challenging. The suspension of benefits that results from failing to provide the requested information can cause a loss of housing and other basic needs, as well as enormous stress. Suspensions are used too liberally and too punitively without regard to the significant impact on the well-being of the recipient.

Recommendations:

- Drop the appeal currently before the Supreme Court.
- Return to the social assistance definition of spouse in effect from 1987-1995 that was consistent with family law.
- Make ODSP eligibility dates the beginning of the first full month after a completed application is received.
- Amend OW regulation 134/98, s. 40 (2) to allow OW benefits to be paid from the date at which contact with the OW office is made, rather from the date

that the application is completed, as is allowed by OW policy, as outlined in a memo from Ms. McMullin³.

- Develop a clear and reasonable process to review relevant information that prevents repeated demands to produce the same information and unreasonable invasion into people's lives.

Recipient service/ Human rights model

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice, as guaranteed by the *Canadian Charter of Rights and Freedoms*. Further, everyone has the right to an adequate standard of living, as guaranteed by the *International Covenant on Economic, Social and Cultural Rights*.

The primary role of OW and ODSP caseworkers must be to ensure their clients' right to security of person and an adequate standard of living are met. Currently, however, the primary role of caseworkers seems to be to survey and constantly monitor their clients with the intent of finding them ineligible.

Recommendations:

- In consultation with recipients and advocates, develop a 'client-centred' service model.
- Ensure OW and ODSP caseworkers act as advocates for their clients, assist them in accessing appropriate services and provide support.
- In consultation with recipients and advocates, establish more effective and clear communication between workers and recipients.
- Current initiatives in the ODSP Branch to review and revise computer generated correspondence should be extended to Ontario Works.

French language service

Current levels of service in French are inadequate and not in keeping with the intent of the *French Language Services Act*, R.S.O. 1990, c. F.32. Using French-language translators or teleconferences is not sufficient to meet the FLSA requirements. However, there are only three Francophone members on the SBT, and the term of one of these expires in April 2004. There are significant delays in obtaining hearings in French (sometimes six months longer than for English hearings), and in some cases appellants must travel considerable distances in order to exercise their right to a French-language hearing. In other cases, appellants' requests for a French-language hearing have been ignored, and adjournments to obtain such a hearing have been denied. Decisions are written

³ The memo, "Determining Budgetary Requirements for Month of Application: Revised" was sent from C. McMullin to OW Administrators, Regional Directors, Municipal Services Managers and Municipal Program Supervisors on Feb. 28, 2003.

in English, even after a Francophone hearing, and then are translated back to French, which can lead to inaccuracies, and most certainly leads to considerable delays in obtaining the French version of a decision (in a recent situation a clinic advised that it would take two months longer to receive the decision in French). Finally, it is not always possible for Francophone appellants to find SBT staff who can communicate in French, and the SBT is inconsistent in its translation services regarding documents to be used in hearings.

Recommendations:

- Increase the number of qualified Francophone staff in local offices in designated areas of the province.
- Increase the number of Francophone adjudicators at the Disability Adjudication Unit.
- Increase the number of Francophone members at Social Benefits Tribunal.
- Increase the number of qualified Francophone staff in the offices of the Social Benefits Tribunal.
- Train Francophone members to write their own decisions in French, or failing that, increase the number of qualified translators.
- Increase the number of qualified translators capable of translating into French evidence submitted to the Tribunal in other languages.

Fraud Control

While anti-poverty groups are very pleased that the McGuinty government has kept its promise to eliminate the life-time ban from receiving social assistance for those found guilty of so-called fraud, concern remains regarding the emphasis on fraud control.

The *2001-02 Welfare Fraud Control Report* indicates that 393 people were convicted of fraud. This represents 0.1% of the caseload. Clearly, fraud is not nearly as rampant as the public was led to believe by the previous government.

The current government has established a clear zero tolerance policy for “fraud” and has passed regulations directing all cases of suspected fraud be referred to the police. Earlier regulations allowed for discretion.

The pro-prosecution, pro-criminalization culture in the social assistance programs is not consistent with fraud policies in other income assistance programs such as Employment Insurance and Worker’s Compensation. In most other regimes criminalization is reserved for only the clearest and most serious fraud.

Currently, tremendous resources are needlessly spent on the Consolidated Verification Process, eligibility review and various other surveillance and anti-fraud measures.

The Coroner's Jury that examined the death of Kimberly Rogers recommended alternatives be found to referral for prosecution (Recommendation #7). Accordingly, the *Ontario Municipal Social Services Association Fraud Referral Task Force Resource Document* was created to ensure suspected fraud is dealt with in a manner that is fair, constructive and reasonable.

Recommendations:

- Amend Ontario Works Policy Directive 45.0 and Ontario Disability Support Program 12.1 to reinstate discretion in determining whether a case of suspected fraud should be referred to the police.
- Adopt the *OMSSA Fraud Referral Task Force Resource Document*.
- Develop and implement a public education campaign, in consultation with recipients and advocates, to challenge the widely held perceptions that social assistance is rife with fraud.
- Eliminate the Consolidated Verification Process.

Income and adequacy of rates

Social assistance rates are horrendously inadequate and there is urgent need for the rates to be raised to reflect the real cost of living, as was recommended by the Coroner's Jury that examined the deaths of Kimberly Rogers and Gillian Hadley. Related to increasing the rates, there are a number of other steps that can be taken to increase the income security of low-income people.

Firstly, the party now forming the government has promised to end the clawback of the National Child Benefit Supplement. This income is urgently needed by low-income parents on social assistance.

Finally, the benefit level of pregnant women does not increase until the child is born. There are a number of costs involved in preparing for a newborn and ensuring her/his well-being. One of the most significant is finding appropriate housing. If pregnant women were able to have increased benefits levels in their eighth month, they would be better able to secure appropriate housing and make the necessary arrangements. Further, intervention by the Children's Aid Society and the duration of hospital stays would likely be diminished.

Recommendations:

- End the clawback of the NCBS from social assistance recipients.
- Give pregnant women the increased benefit level in their eighth month.
- Raise the social assistance rates to reflect the real cost of living. (The Rogers Inquest and Hadley Inquest both recommended that social assistance rates be reviewed to ensure they reflect the real cost of living.)
- Loans and credit card advances should not be considered income.
- Gifts of food, clothing and furniture should not be considered income.

- Allow the receipt of both Ontario Works and loans from the Ontario Student Assistance Plan.

Asset Levels

Asset levels are tremendously low and further undermine the economic security of social assistance recipients. Forcing people to completely impoverish themselves before they are able to be eligible for assistance only ensures their impoverishment will be long-lived and the likelihood of their children being poor is increased.

Similarly, placing liens on the homes of social assistance recipients is not only contrary to the notion of a publicly-funded social safety net, it furthers the economic insecurity of the recipients. Forcing people to consent to liens in order to receive social assistance essentially forces people to bankroll their benefits and to ensure their future is also characterized by economic insecurity.

Approximately 2% of Ontario Works cases are homeowners. Many of these homeowners are single mothers. Approximately 7% of ODSP cases are homeowners.⁴ However, liens are not registered against the homes of ODSP recipients. The distinction drawn between OW and ODSP recipients in regard to liens against homes reinforces notions of 'deserving' and 'undeserving' poor and disguises the root causes of poverty and economic insecurity. The small number of homeowners on social assistance are largely in rural areas living in modest homes. Many are living in communities in which there is a scarcity of rental housing. Further, it must be noted that many of the homeowners on social assistance are single mothers who are in possession of the home they once shared with a partner.

Some people, especially in the North, own a second property which is neither marketable nor of significant value. Discretion should be allowed to ensure persons in need of social assistance who are unable to sell a second property may still be eligible for income support.

Recommendations:

- Eliminate liens against the homes of OW recipients.
- For people receiving OW, the liquid asset level should be set to reflect half the value of the pre-tax Low Income Cut-Off (LICO).
- For people receiving ODSP, the liquid asset level should reflect half the value of the pre-tax Low Income Cut-Off (LICO).
- Allow discretion to ensure persons in need of social assistance who are unable to sell a second property may still be eligible for income support.

⁴ As reported by the Ontario Ministry of Community and Social Services in a Freedom on Information and Protection of Privacy Act request (Request file no ODSP-03-03. These numbers are dated June 2003.

- Registered Education Savings Plans, Registered Retirement Savings Plan, personal vehicles of any reasonable value and tools should not be counted as assets.

Program Review

Social assistance is a crucial program to ensuring the health, safety and well-being of all people in Ontario. It is vital that the program is regularly evaluated and review is ongoing. However, neither formal, comprehensive evaluation nor meaningful review of this essential program currently exist. Further, it is important that the public has an accurate understanding of the program and those who rely on it.

Recommendations:

- Establish a public, independent review that includes social assistance recipients and advocates.
- Establish a formal process for receiving ongoing stakeholder review of policy and procedure.
- Establish a comprehensive program evaluation.