

BACKGROUND: SPECIAL DIET ALLOWANCE HUMAN RIGHTS COMPLAINT

What is the issue?

The Ontario Human Rights Commission has just referred 77 individual complaints against the ODSP and OW Special Diet Allowance Program to the Human Rights Tribunal of Ontario.

For the ODSP and OW recipients who lodged the complaints, this is welcome news.

The Tribunal now has the authority to hold a hearing to determine whether changes that limited the scope of the Special Diet Allowance Program violate the *Ontario Human Rights Code*, by discriminating against the complainants on the basis of disability.

The referral is a major step toward reversing a change that left hundreds of individuals without the extra resources necessary to adequately support their health needs.

What is the Special Diet Allowance?

The Special Diet Allowance is a benefit available to people receiving Ontario Disability Support Program (ODSP) and Ontario Works (OW) benefits. It provides additional assistance to people who require a special diet as the result of a medical condition.

To qualify, people on ODSP or OW must have the need for diet prescribed by a qualified medical practitioner.

The OW and ODSP regulations include Special Diet Schedules that determine the scope of what can be prescribed by the practitioner.

What changes were made in 2005?

In November 2005, the provincial government changed the Special Diet Allowance rules, significantly reducing access to benefits for many individuals.

Prior to the changes, a patient's medical practitioner was able to assess the particular dietary needs related to the patient's health condition and select the diet or diets from the Special Diet Allowance Schedule that, in the opinion of the practitioner, were medically indicated. The practitioner also had the discretion to add a diet that was not included on the list.

Since the changes, medical practitioners are no longer allowed to make the same individualized assessment of diet needs. Instead, they are required to select from a list of 43 medical conditions for which there are pre-determined allowance amounts. There is no longer the discretion to select the appropriate diet or combination of diets, based on the practitioner's professional judgement. And there is no discretion to add conditions that are not included in the list.

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Why is this a problem?

Medical conditions and related diets do not follow neat categories, like those suggested by the new Special Diet Allowance Schedule. Two patients with the same condition may have very different dietary needs because of a variety of factors, such as age, gender, other complicating medical conditions, the stage of a degenerative disease, etc. Patients may also suffer from conditions such as weight loss or severe deficiencies for reasons that cannot be diagnosed or which are unusual effects of their diagnosed conditions.

By taking away the medical practitioner's ability to assess and prescribe a patient's dietary needs directly, the new Special Diet Allowance Schedule fails to respond to the actual health needs of recipients.

Many medical conditions, for which special diets had formerly been available, have arbitrarily been excluded from the new Schedule. Examples include multiple sclerosis, lupus, multiple chemical sensitivities, arthritis, irritable bowel syndrome, cerebral palsy, chronic fatigue. In other cases, the allowance amounts attached to medical conditions in the new Schedule are much lower than the diet-based amounts doctors were able to prescribe on the older Schedule.

As a result of these changes, many ODSP and OW recipients who had been getting Special Diet Allowances no longer qualify at all, or their allowances have been severely reduced. Both the loss of ability to purchase prescribed diets and the stress associated with this loss have had adverse effects.

The old and new Special Diet Allowance Schedules are available upon request.

What is Ms Sauvé's particular situation?

Ms Sauvé has special dietary needs resulting from multiple sclerosis. These include the need for a high protein diet, vitamin and mineral supplementation, and particular kinds of juices.

Prior to the changes, she received \$177 per month from the Special Diet Allowance program. After the regulatory changes, her allowance was completely cut off. She now receives no additional funds to accommodate her special dietary needs.

Her health has been seriously affected. She now has balance and walking issues and has recently begun using a cane. Her vision is affected, and she struggles to maintain her weight. She lost a significant amount of weight immediately after losing the allowance.

What is the significance of the Ontario Human Rights Commission referral of these complaints?

Only a fraction of the complaints filed with the Commission are ever referred to the Human Rights Tribunal. Complaints are screened by the Commission through its investigation process and are only referred to the Tribunal if the Commission is satisfied that the evidence warrants a hearing. In 2006, nearly three-quarters of the complaints

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considered by the Commission were dismissed, meaning they were not allowed to proceed to the Tribunal.

What is the Expert Committee that is reviewing the Special Diet Schedule?

In the spring of 2006, in response to widespread concerns about the changes to the Special Diet Allowance Program, the Ministry of Community and Social Services invited submissions to an independent committee of health care professionals that would advise the Ministry on:

- Whether medical conditions should be added to the schedule and,
- What the dietary allowances should be associated with each condition listed on the schedule.

The deadline for submissions was June 8, 2006. The committee was expected to report by September 2006. Although periodic reviews were promised, no report has ever been released from this expert committee.

The Ministry's letter explaining the committee's activities is available upon request.