

# Submission to the OHRC Consultation on Poverty and Systemic Discrimination in Housing and Mental Health and Addiction Disabilities

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## Introduction

The Income Security Advocacy Centre (ISAC) is a specialty legal clinic that is funded by Legal Aid Ontario to advance the rights, interests, and systemic concerns of low-income people with respect to income security programs and employment law. ISAC is the only legal clinic in Ontario wholly devoted to systemic advocacy on income security issues. It has unique expertise in income security, including the effects of the law on low-income people, the impact that government benefits have on the livelihoods of low-income Ontarians, and the harms that arise when such benefits are denied to marginalized groups.

ISAC is pleased to contribute to the OHRC's consultation on poverty and systemic discrimination in the areas of accessible, adequate, and affordable housing, mental health, and addiction disabilities. ISAC's submissions will focus on systemic discrimination that people living with mental health and addiction disabilities who are precariously housed face when attempting to access and remain within the social safety net. Specifically, within the broader social safety net, the focus of these submissions will be on provincial social assistance income supports and federal employment insurance.

## Social Assistance (OW & ODSP)

Many people living with mental health and addiction disabilities receive last resort benefits such as Ontario Works (OW) and the Ontario Disability Support Program (ODSP).<sup>1</sup> Together, OW and ODSP are known as social assistance. Living on social assistance in Ontario is living in deep poverty.<sup>2</sup> The social assistance system entrenches systemic discrimination that restricts the rights and opportunities for people with mental health and addiction disabilities to afford, access, and maintain housing. The system undermines self-worth and perpetuates negative stereotypes and barriers to affordable and adequate housing. Numerous factors together serve as barriers to securing stable housing, including the design of social assistance's "shelter allowance", stringent identification requirements, a punitive document request system, and inadequate benefit rates.

These submissions will outline the effects that the shelter allowance, stringent identification requirements, and punitive system place on two classes of people engaging with Ontario's social assistance programs: (1) those individuals applying for social assistance who are trying to **secure** access to income supports; and (2) those individuals already on social assistance who are trying to **maintain** their access to income supports.

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<sup>1</sup> 45% of people who are homeless are disabled or mentally ill, see Isaac Coplan, "Infographic Wednesday - Myths of Homelessness" (Homeless Hub: 15 January 2014).

<<https://homelesshub.ca/blog/infographic-wednesday-myths-homelessness>>.

<sup>2</sup> Jennefer Laidley and Mohy Tabbara, "Welfare in Canada, 2020." (Maytree: December 2021).

<[https://maytree.com/wp-content/uploads/Welfare\\_in\\_Canada\\_2020.pdf](https://maytree.com/wp-content/uploads/Welfare_in_Canada_2020.pdf)>.

## Shelter

### Securing: Barriers to Obtaining the Inadequate Shelter Allowance

Generally, social assistance benefits are intended to cover basic needs and shelter.<sup>3</sup> The basic needs allowance is meant to pay for food, clothing, internet, cell phone data, hygiene products, winter boots, over the counter medication, transportation, and other necessities. The amount payable is a flat amount depending on the size and makeup of the benefit unit. For example, a single OW claimant receives \$343 monthly for their basic needs<sup>4</sup>; a single ODSP claimant, \$706.<sup>5</sup>

The shelter allowance is meant to pay for the cost of housing. Shelter has a wide meaning in the legislation, and includes rent, mortgages/loans, taxes, home insurance, utilities, and heating costs.<sup>6</sup> The amount payable is based on family size and housing costs, up to a legislated maximum. For example, a single OW claimant receives a maximum of \$390 monthly for shelter<sup>7</sup>; a single ODSP claimant, \$522. The current rate sheets can be found [here](#).

Many people living with mental health and addictions live on the streets, in shelters, temporarily with family or friends or in places not appropriate for human habitation because the shelter allowance is inadequate.

This systemic failing cannot be overemphasized. The shelter allowance does not cover the average market rent, let alone home insurance, utilities, repair, and heating costs. According to the Canada Mortgage and Housing Corporation, the provincial average rental cost of a one-bedroom apartment in October 2021 was \$1,395 per month.<sup>8</sup> That was \$873 more than the maximum monthly shelter allowance for a single person on ODSP and \$1,005 above the maximum monthly shelter allowance for OW. As of December 2020, municipalities cumulatively reported that there are 211,419 households waiting for social housing in Ontario.<sup>9</sup>

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<sup>3</sup> *Ontario Works Act, 1997*, S.O. 1997, c. 25, Sched. A (“[OWA](#)”), ss. 2, 7; *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B (“[ODSPA](#)”), ss. 2, 11; Ontario Works (“OW”) [Policy Directive 6.1](#).

<sup>4</sup> [OWA](#), ss. 2, 7; [O. Reg. 134/98](#), ss. 40-41; OW [Policy Directive 6.2](#).

<sup>5</sup> [ODSPA](#), s. 11; [O. Reg. 222/98](#), s. 30; Ontario Disability Support Program (“ODSP”) [Policy Directive 6.1](#).

<sup>6</sup> [O. Reg. 134/98](#), s. 42(1); [O. Reg. 222/98](#), s.31(1).

<sup>7</sup> [O. Reg. 134/98](#), ss. 40-42.

<sup>8</sup> Ontario — Rental Market Statistics Summary by Metropolitan Areas, Census Agglomerations and Cities <<https://www03.cmhc-schl.gc.ca/hmip-pimh/en/TableMapChart/Table?TableId=2.1.31.2&GeographyId=35&GeographyTypeId=2&DisplayAs=Table&GeographyName=Ontario>>.

<sup>9</sup> Office of the Auditor General of Ontario, “Value-for-Money Audit: Homelessness” (2021) <[https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR\\_Homelessness\\_en21.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR_Homelessness_en21.pdf)>.

## *You Need Shelter to Get a Shelter Allowance*

Under the social assistance system, people without shelter do not receive a shelter allowance.<sup>10</sup> The shelter allowance is paid based on actual expenses, up to the inadequate maximum allowable amount. This means that a person who does not have housing or has lost their housing and is temporarily staying with friends or at a shelter to get back on their feet is unable to save their shelter allowance to find permanent housing. It is a Catch-22: without the shelter allowance, these individuals cannot secure housing.<sup>11</sup> But without housing, they cannot access the shelter allowance. This is a systemic barrier that perpetuates homelessness and poverty for many individuals.

The inquest into the tragic death of Grant Faulkner highlighted the connection between social assistance systemic barriers and the ability to afford, access, and maintain housing. Mr. Faulkner became homeless after losing his job at an automotive parts manufacturer. He died of smoke inhalation on January 13, 2015, when his scrap wooden shelter caught fire. Prior to his death, Mr. Faulkner slept in tents, make-shift shelters, and sometimes with friends while trying to live on about \$220 per month in social assistance payments.<sup>12</sup>

The Jury recommended that the Province increase social assistance rates to reflect the real cost of shelter and basic needs. The Jury further recommended that the Province make available a shelter allowance for individuals who live outside, to help them secure housing, which could include banking the funds for later use towards housing.<sup>13</sup>

## **Maintaining: Losing Your Housing Means Losing Your Essential Possessions**

There is a reason we often see those living on the street carrying multiple bags or pushing carts. Under the social assistance scheme, when people with mental health and addiction disabilities lose their housing, they may also lose their possessions. This is because there are few funds available and places to store essential possessions. Unfortunately, the Social Benefits Tribunal's narrow interpretation of "shelter" does not include the cost of storing possessions while homeless. Instead, disabled recipients are required to choose between losing their worldly possessions or paying storage costs out of the minimal amount they receive for food, transportation, and other basic needs, so that when they do find a home, it will be habitable. This narrow interpretation of "shelter" perpetuates the

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<sup>10</sup> *Kimaev v. Social Services Department (City of Toronto)*, [2020 ONSC 1281](#).

<sup>11</sup> The Housing Stabilization Fund is intended to support OW/ODSP residents who are homeless or at risk of homelessness achieve housing stability, and includes last month rent, moving costs, rent and utility arrears, and other emergency items. However, applicants must demonstrate the ability to maintain future shelter expenses. The Fund is discretionary, delayed, and requires another application process, see for example, <<https://www.toronto.ca/community-people/employment-social-support/support-for-people-in-financial-need/assistance-through-ontario-works/policies-and-procedures/housing-stabilization-fund/>>.

<sup>12</sup> Registered Nurses' Association of Ontario, "Grant Faulkner inquest: Putting a stop to homeless deaths" (20 June 2018) <<https://rnao.ca/news/grant-faulkner-inquest-putting-stop-homeless-deaths>>.

<sup>13</sup> Office of the Chief Coroner, "Re Inquest into the death of Grant Faulkner" (June 2018), at pp. 3-4 (Verdict of Coroner's Jury Recommendation #7) <<https://www.toronto.ca/legdocs/mmis/2018/mm/bgrd/backgroundfile-117800.pdf>>.

recipients' poverty and erects systemic barriers to temporarily homeless recipients in becoming re-housed.<sup>14</sup>

## *Identification*

### **Securing: Without Identification You Cannot Access Social Assistance**

Individuals experiencing mental health and addiction disabilities while living in homelessness are far more likely to not have government-issued identification. Government-issued identification is critical to social and economic inclusion. Without required identification, individuals are denied access to essential government services, income support programs, employment, housing, banking, and other commercial services.<sup>15</sup>

Under both OW and ODSP, to qualify for income assistance, an applicant must provide various documentation to the respective government office, including:

1. The person's social insurance number.
2. The person's health number under the *Health Insurance Act*.
3. Proof of the person's identity and of his or her birth date.
4. Information with respect to the person's income and assets.
5. A report of an approved health professional relevant to a determination respecting assistance.
6. Information with respect to the benefit unit's budgetary requirements.
7. Information with respect to the person's attendance and progress in an education or training program.
8. Information with respect to the person's employment and proposed employment assistance activities.
9. Information with respect to the person's status in Canada.<sup>16</sup>

While the Administrator has the discretionary power to forgo some of these requirements, for instance by granting emergency assistance, this is a discretionary power left up to the whim of government officials and is capped at 48 days.<sup>17</sup> For homeless community members with mental health and addiction disabilities, securing one of these pieces of documentation, let alone all nine, is a challenging endeavour.

The lack of government-issued identification leaves financially vulnerable people unable to access essential income supports and housing. The social and economic exclusion caused by this identification divide has far reaching adverse impacts. People living with mental health and addiction disabilities face barriers to obtaining or possessing required

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<sup>14</sup> See 1911-08805 (Re), [2020 ONSBT 1837](#); 1411-13054 (Re), [2016 ONSBT 3644](#); 1906-04503 (Re), [2021 ONSBT 2357](#).

<sup>15</sup> Megan Marrelli, "What it means to be a Canadian living without ID" (This Magazine: 31 March 2017) <<https://this.org/2017/03/31/what-it-means-to-be-a-canadian-living-without-id/>>.

<sup>16</sup> OWA, s. 7(3); ODSPA, s. 5(1); O. Reg. 134/98, s. 17(2); O. Reg. 222/98, s. 14(2).

<sup>17</sup> O. Reg. 134/98, s. 56.

identification, including: the cost of identification; the lack of foundational identification required to obtain other pieces of government-issued identification; and the challenges of receiving identification by mail, or loss of identification, due to precarious housing or incarceration.<sup>18</sup>

Applying an intersectional lens to the homeless population, demonstrates even further barriers. Immigrants and refugee claimants encounter language barriers as well as difficulties finding a guarantor who has known them for an extended period of time to vouch for their identity. The disproportionately high number of Indigenous community members who lack identification is attributable, in part, to the removal of Indigenous children from their families. Forced enrollment in residential schools and the sixties-to-eighties scoop means that many Indigenous community members are disconnected from their family histories and do not have ready access to the information required to fill out identification applications.<sup>19</sup>

Additionally, the pandemic has accelerated the shift towards service delivery through online and virtual channels by the government agencies responsible for the provision of identification. This results in reduced access to identification for homeless populations that do not have the required technology.

Abject poverty, in itself, is a barrier. Acquiring the necessities of life on a daily basis must take priority over everything else.

### **Maintaining: Lacking Updated Identification Can Cancel Your Social Assistance**

For the precariously housed who are able to overcome the identification barriers and receive income support, difficulties still arise with maintaining their ongoing eligibility for income support. When a person lives on the streets or in the shelter system, their belongings, including their identification, may be stolen or lost. Replacing this identification to provide updated copies to ODSP or OW when their identification expires, or when updated banking or asset information is requested, brings multiple challenges.

Through our work, an outreach worker highlights the lived experience for individuals stuck in this scenario:

In order to get a bank account these individuals need two forms of identification, which ends up being a birth certificate and another piece of photo identification. You can't get photo identification without a birth certificate. None of these individuals have driver's licenses. It takes at least a month to get a birth certificate.

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<sup>18</sup> Chris Sanders *et al*, "You Need ID to Get ID": A Scoping Review of Personal Identification as a Barrier to and Facilitator of the Social Determinants of Health in North America" (International Journal of Environmental Research and Public Health: 13 June 2020) <<https://www.mdpi.com/1660-4601/17/12/4227/htm>>.

<sup>19</sup> Ellen Smirl, "Access to Identification for Low-Income Manitobans" (Canadian Centre for Policy Alternatives: October 2017) <[https://policyalternatives.ca/sites/default/files/uploads/publications/Manitoba%20Office/2017/10/Access\\_to\\_ID\\_Low\\_income\\_Manitobans.pdf](https://policyalternatives.ca/sites/default/files/uploads/publications/Manitoba%20Office/2017/10/Access_to_ID_Low_income_Manitobans.pdf)>.

Then you need that birth certificate to get photo identification, which takes another two to three weeks to come in the mail. By the time this happens the birth certificate might be lost. Shelters won't hold on to birth certificates for liability reasons, and when clients take them from the storage cabinet they don't always bring them back as other things may come up. I worked with three individuals where due to the stresses of homelessness, coordinating all of these things and getting to a bank is next to impossible.<sup>20</sup>

Replacing documents is very difficult for homeless people because they lack permanent addresses, transportation, email addresses, and telephone services. Mental health, addiction issues, cognitive difficulties, and memory challenges prevent them from providing the information needed to replace documents. This lack of documents also makes proving their case to remain on income support before the Social Benefits Tribunal challenging due to the corresponding lack of evidence supporting their testimony.<sup>21</sup> This harmful consequence kicks vulnerable people off social assistance entirely and perpetuates homelessness.

## *Punitive System*

### **Securing: The Social Assistance System Fails to Consider Lived Experience**

Many homeless people with disabilities cannot navigate the overall social assistance process on their own. Mental health, cognitive, and addiction disabilities cloud participants' abilities to express themselves, attend appointments, and follow through on tasks. The social assistance application system requires multiple steps and self-reliance where the individual is responsible for all steps in the process. The system also gives the government wide latitude to inquire into the personal circumstances of an individual applicant.<sup>22</sup> This process lacks the understanding of homeless people with mental health and addiction disabilities' lived experience, enforcing barriers to equity.

The social assistance system is not designed to capture Ontario's most vulnerable and most in need, but rather to exclude them from accessing these supports. Individuals living in homelessness with mental health and addiction disabilities face a host of challenges not envisioned by Ontario's social assistance program, including: no access or limited access to alarm clocks, calendars, transportation, cell phones, computers, and email addresses; no mailing addresses or post office boxes; low literacy levels or illiteracy; higher risks of substance dependence; and a history of negative experiences in interacting with the state. The current system makes no exceptions for this lived

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<sup>20</sup> Please note that this is not a direct quote, we are paraphrasing multiple emails exchanged with this outreach worker.

<sup>21</sup> See 1705-04432 (Re), [2018 ONSBT 87](#), where the OW recipient's social assistance was cancelled because she failed to provide documentary evidence. She missed relevant appointments and lost all her documents because she had been homeless.

<sup>22</sup> [O. Reg. 134/98](#), s. 22.

experience, instead imposing the need to meet arbitrary time deadlines, thus punishing the least fortunate and most in need of social assistance.<sup>23</sup>

ODSP's focus on medical verification for disability also adds further barriers for those living in homelessness with disabilities. These individuals have a history of trauma in engaging with the medical community that includes an expectation of biased treatment, post-traumatic stress disorder, and a deep-seated fear of the hospital system. In our work, one community member offered the following reflection: "I'd rather die in a ditch, or on the sidewalk, than go to the hospital. I just can't walk into a place that I know is going to see me as a piece of garbage."

Even if a disabled homeless applicant is assisted in completing an ODSP application and has gathered the relevant medical verification, ODSP may still reject their application. ODSP may refuse to accept the statements or diagnoses of the applicant's primary care provider. This directly contributes to a higher rate of application denials for those able to overcome the stringent application requirements. This denial is traumatic given the repeated rejections the disabled homeless community endures in their daily lives and an assertion by the Province that their claims to disability are illegitimate. This disappointment can prevent rejected applicants from proceeding with an appeal to the Social Benefits Tribunal. This is because an appeal will require them to recount their personal history repeatedly, which is triggering and re-traumatizing for those with a history of abuse, trauma, or incarceration.<sup>24</sup>

### **Maintaining: Stringent Compliance Requirements Entrench Inequality**

Social assistance's requirements for maintaining benefits are punitive for those living on the street, in shelters, and other precarious housing systems. To maintain eligibility for social assistance, disabled recipients must comply with onerous legislative obligations to provide documents, attend in person or phone meetings, justify amounts paid, report any changes in circumstances, and stay in touch with their caseworker.<sup>25</sup> If they fail to comply, their livelihood can be cancelled, reduced, or suspended.<sup>26</sup>

The eligibility review process is not meant for the realities of precarious housing and homelessness.<sup>27</sup> Caseworkers have the discretion to determine if a complete file review

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<sup>23</sup> For one example, see [O. Reg. 222/98](#), s. 16(5), where ODSP requires its application form to be filled out in 90 days. If the 90-day period has passed, ODSP considers incomplete applications to be withdrawn or abandoned without confirmation from the applicant. Rather than attempting to follow-up with applicants to fill in the missing pieces, ODSP instead dismisses incomplete applications without considering them.

<sup>24</sup> For an example of this process, see *2110-04449 (Re)*, [2022 ONSBT 1238](#), where ODSP denied an applicant who lived with fibromyalgia, depression, social anxiety, and PTSD. The applicant lost his home when his landlord sold the building, causing him to live on the streets and bounce from one shelter to another. This further exacerbated his mental illnesses. At the Social Benefits Tribunal, the applicant had to testify to this lived experience to demonstrate that he was disabled. The Tribunal overturned ODSP's denial and granted him social assistance, setting a medical review date of two years.

<sup>25</sup> [OWA](#), s. 7(3)(c); [ODSPA](#), s. 5(1)(d); [O. Reg. 134/98](#), s. 14(1); [O. Reg. 222/98](#), s. 12(1).

<sup>26</sup> [OWA](#), s. 14; [ODSPA](#), s. 9(1); [O. Reg. 134/98](#), s. 14; [O. Reg. 222/98](#), s. 12.

<sup>27</sup> OW [Policy Directive 9.1](#); ODSP [Policy Directive 3.1](#).

is necessary that includes third party checks, mandatory signed consents, monthly forms, and in-person or phone interviews.

But without a permanent address, reliable phone or internet access, or access to personal documents, staying in touch is difficult. Pre-recorded messages, a “digital first” strategy, and general form requests for information are challenging to navigate. Many living with mental health and addiction disabilities may be unable to articulate answers to their caseworker’s questions, may be late or miss meetings, or find meetings with caseworkers too intimidating. Cognitive and mental health challenges, stigma, and power differences between social assistance workers and recipients play a role in a recipients’ ability to maintain eligibility.

For example, an OW worker cancelled a First Nations youth’s income assistance because he began an in-residence rehabilitation program that is a specialized program for youth addiction, claiming he was no longer “technically” a Thunder Bay resident. The youth was brought to the City by air ambulance and resided in the local hospital where he was treated for neurotoxicity due to solvent abuse. After two years and multiple steps, his case was resolved.<sup>28</sup>

When a disabled ODSP recipient is approved for benefits, they may face a disability review.<sup>29</sup> During the review, the recipient is required to provide new medical information to justify their disability. This new information must be provided within 90 days, unless an extension is granted for “extenuating circumstances”, or the recipient will be found to be ineligible.<sup>30</sup> Even if the recipient receives the medical review request without having a permanent address, they may have difficulty accessing an approved health care professional to complete the documents within the 90-day timeline. They may lack sufficient evidence such as verification from a mental health specialist or proof of ongoing treatment to satisfy the medical review.

For example, ODSP refused to grant an extension of time and suspended benefits to a long-time homeless ODSP recipient with severe mental health difficulties because she did not provide medical review documentation. Although she told ODSP at the time that she was using her father’s address for mailing purposes, ODSP sent the document request to a different address. The recipient did not attend the hearing on two occasions due to poor mental health. Her representatives explained that the recipient had generally failed to attend her scheduled clinic appointments. On those occasions where she had attended, she would break down and be unable to remain. The hearing proceeded without her, and a further extension of time to provide documents was awarded.<sup>31</sup>

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<sup>28</sup> 1604-02711 (Re), [2018 ONSBT 1007](#).

<sup>29</sup> [O. Reg. 222/98](#), s. 5.

<sup>30</sup> [O. Reg. 222/98](#), ss. 5, 47; ODSP [Policy Directive 2.9](#).

<sup>31</sup> 1410-11152 (Re), [2015 ONSBT 4920](#).

## Employment Insurance

Workers with mental health and addiction disabilities face discrimination in the workplace, including failures to accommodate and discriminatory terminations. When these workers must stop working because they need to go on sick leave or have been fired, they require income support. Adequate income support during sick leave is crucial for low-wage workers, who disproportionately work in short-term, part time, and/or precarious work.<sup>32</sup> These workers rarely have access to the disability insurance usually afforded to those working in full time, permanent, and stable employment.

Employment Insurance (EI) sickness benefits (for workers on sick leave) and regular benefits (for workers who are terminated and looking for a new job) are meant to help fill this gap. However, EI eligibility rules discriminate against people with mental health and addiction disabilities. For example:

- Workers who are forced to quit their jobs for reasons such as illness are not entitled to receive any EI.
- Individuals who qualify for EI sickness benefits can access them only up to a maximum of 15 weeks.<sup>33</sup> This duration of time fails to adequately support many workers who may require extended time for the management, treatment, and recovery of an illness.
- Workers with mental health and addiction disabilities are often fired for reasons relating to their disabilities, but become disentitled to EI regular benefits because their employer alleges they engaged in misconduct. Where this occurs, the burden falls on the worker to prove they did not engage in misconduct. This task is unfeasible for many workers already struggling with mental health and addiction challenges, and other potential barriers such as language, literacy, and technological barriers.
- Workers who receive EI regular benefits have an ongoing obligation to search for full time work. Although EI rules recognize that some workers may have disability-related limits on their job search<sup>34</sup>, such as the time of day and number of hours they can work, in practice many of these workers become disentitled to EI because they have failed to search for full time employment.

The result is that many low-wage workers with mental health and/or addiction disabilities are left financially struggling without the EI benefits they have paid into for years, and to which they are entitled. Their only other option for financial support is social assistance – but many low-wage workers earn just enough not to qualify for it. Without any income replacement to fall back on, these workers may fall further into poverty, and some ultimately lose their homes. In short, an income insurance system meant to support workers creates and deepens poverty for vulnerable workers with disabilities in Ontario.

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<sup>32</sup> Ricardo Tranjan, “Towards an Inclusive Economy: Syncing EI to the Reality of Low Wage Work” (Canadian Centre for Policy Alternatives: June 2019) at 5  
<<https://policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2019/06/Towards%20an%20Inclusive%20Economy.pdf>>.

<sup>33</sup> *Employment Insurance Act*, S.C. 1996, c. 23, s. 12(3)(c).

<sup>34</sup> *Employment Insurance Regulations*, SOR/96-332, s. 9.002(1)(a).

The EI system is currently undergoing a reform process by the federal government, but it remains to be seen whether and how any reforms will address EI's systemic discrimination against low-wage and vulnerable workers.

## Conclusion

Individuals struggling with mental health and addiction disabilities must often turn to the social safety net for support. But two key pieces of that safety net - provincial social assistance and the federal Employment Insurance regime - routinely fail to support those who need it most. Both benefit schemes contain structural barriers that discriminate against individuals with mental health and addiction disabilities, undermining their ability to access and maintain vital benefits. The result is the deepening of poverty and inequality for some of the most vulnerable members of our communities.