



# halco news

## Spring/Summer 1999

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### Coverage for Food Supplements Cut From the Ontario Drug Benefits Formulary

If you get a drug card through Ontario Works (OW) or the Ontario Disability Support Program (ODSP), or through the Trillium Drug Program, you probably know by now that Nutrition Products like Boost or Ensure are no longer covered unless you are unable to eat any solid food at all. Most people who depend on Nutrition Products as nutritional supplements only discovered this when they went to pick up their products at the pharmacy in January. This change has been part of the Ministry of Health's process of introducing new forms for doctors to use when prescribing drugs that are covered under the Ontario Drug Benefit formulary.

HALCO, AIDS ACTION NOW!, ACT and other AIDS Service Organizations have been involved in attempting to get Minister of Health Elizabeth Witmer to reverse her decision to enforce a policy which had never before been used. To date, Witmer has refused to budge, despite repeated requests and a number of press conferences and demonstrations.

Back in 1993, the NDP government brought in a policy which stated that no one would be eligible for coverage of Nutritional Products unless it was their only source of nutrition. This meant that if you could eat any solid food yourself, you weren't eligible to have the products covered under your social assistance drug card or through the Trillium Drug Program. However, the policy was never enforced. Many people with HIV/AIDS continued to supplement their diets with products like Boost and Ensure, and continued to have them covered through Trillium or their drug card.

There have been a number of excuses floated for the decision not to cover the cost of the supplements. One is that it was an NDP policy, and not one brought in by the current government. The second reason is that other provinces in the country have lower levels of coverage, so we shouldn't complain. The third reason was that the Provincial Auditor, in his Auditor's Report for 1996, noted that there was a difference between what the official policy said, and what the common practice actually was. The Auditor recommended addressing the discrepancy. As a result, the Ministry of Health Drug Programs Branch made the decision to make current practice match a never-used policy, rather than changing the policy to match current practice.

### **So, what do I do now?**

If your doctor has prescribed nutritional supplements and you are on Ontario Works (OW) or the Ontario Disability Support Program (ODSP), you may be able to have the cost of your supplements covered under the Special Diet program offered under both these programs. If you are successful, this means that the cost for the nutritional supplements would be paid by the Ministry of Community and Social Services as opposed to the Ministry of Health. Special Diet allowances under OW or ODSP are capped at a maximum of \$250 per month. The special diet allowance is not available for anyone on the Trillium Drug Program.

If you think you might be eligible for a Special Diet allowance under OW or ODSP, the first step is to tell your worker that you would like to request a Special Diet allowance. At that time, you should be

provided with a **Physician's Report Regarding a Special Diet** (form 1062) to take to your doctor to be completed. Only a doctor registered with the Ontario College of Physicians and Surgeons can complete the form. You will also need a prescription for the nutritional supplements from your doctor. The form and the prescription must be submitted to your worker. This information may then be forwarded to the Disability Adjudication Unit for review and approval. You should receive a written notification of the decision regarding whether or not you will receive an allowance, and the amount of that allowance. Every one who gets a Special Diet allowance must have that allowance reviewed at least once every 12 months, but you might have an earlier review date.

If you are approved for a Special Diet, the approved amount will be added to your monthly cheque.

Special Diet allowances are appealable benefits. If you ask for an allowance and are denied, you can request an internal review of that decision within 10 days. If your denial is confirmed, or if you do not hear anything from the Ministry within 10 days of requesting an internal review, then you have 30 days in which to appeal the denial of the Special Diet allowance to the Social Benefits Tribunal.

To date, HALCO is aware of at least one person being granted the Special Diet allowance to cover the cost of their food supplements. The process, however, took a little over one month to complete.

We are continuing in our efforts to try to reduce this time period.

If you feel strongly about this issue, and wish to let the Ministry of Health know how you feel about their refusal to cover the costs of these supplements, feel free to contact the Ministry of Health, or your local Member of Provincial Parliament (MPP) and let them know what you think! You can find out who your MPP is by calling (416) 321-3000 or 1-800-668-2727.

*For more information on internal reviews and appeals, please see the [article later in this edition](#).*

## Government makes changes to ODSP effective April 1, 1999

Believe it or not, the provincial government has actually done something good lately. Recently it released a package of amendments to the regulations under the Ontario Disability Support

Program Act. The changes are overwhelmingly positive and will apply to anyone who is on ODSP (including anyone who was on FBA and was transferred onto the new program).

For example, it used to be that if you borrowed money from anyone, or took out a loan, that was income and you were supposed to report it and ODSP deducted it from your cheque dollar for dollar. Now, if you get a loan or borrow money from a friend in order to pay first or last month's rent on a new place, that loan will be exempt. If you use a loan to purchase an exempt asset, like a car, or as a down payment on a home for yourself, that will now be exempt. Loans used to purchase necessary "household goods" will also be exempt if approved by ODSP. Money received from Employment Insurance to take a training course will be exempt as will the new Hepatitis C money.

If you enter a residential treatment facility you can now continue to receive your full entitlement while living in the facility for three months.

Most of these changes have come about because individual Ministry offices have had clients caught by the old regulations in situations which the Ministry did not intend. This means that there is some hope that where the regulations create an unfairness, it might be possible to actually get the Ministry to change the law! Go figure.

The ABCs of Appealing your ODSP:  
know your rights and use them!

As most of you know, on June 1, 1998, the Ontario Disability Support Program (ODSP) took effect, replacing both the Family Benefits Act (FBA) and the Vocational Rehabilitation Services Act (VRS). In previous issues of halco news we have explained some of the changes which have come out of the change in legislation. Among these is a significant change to the way that people on ODSP can appeal decisions about their ODSP.

The first thing to know about is what kinds of decisions can be appealed. In general terms, you can appeal decisions relating to:

- whether or not you are eligible for ODSP
- the amount of benefits you get
- overpayments

- the appointment of trustees (in some cases).

What this means is that you can appeal decisions if you disagree with the amount you are getting in benefits, or if you apply for benefits and you are denied because they claim you do not meet the definition of disability or you are not financially eligible for benefits. **Always remember that you cannot appeal a denial of benefits if you have not made an application. You have an absolute right to make an application for ODSP benefits.**

Some potential applicants are turned away by workers or offices who tell them there is no way they would qualify. If you insist, the ODSP must take an application for benefits from you.

The next really important thing to know is that the appeals process now has two stages. You cannot appeal to the Social Benefits Tribunal unless and until you have made a request for an **Internal Review** of a decision regarding eligibility for benefits, the amount of your benefits, or the declaration of an overpayment.

### **How do I request an Internal Review?**

An Internal Review must be requested, **in writing**, within **10 days** of receiving **written** notice of a Director's decision. You are deemed to have received written notice of a Director's decision on the day it is handed to you in person. If the decision is mailed to you, you are deemed to have received it on the third day after it was mailed to you, whether you actually received it on that day or not. The request for Internal Review should be dated and contain your name and date of birth. The letter should clearly state that you are requesting an internal review of the decision affecting your entitlement, or your eligibility for benefits. You may wish to also include reasons as to why you disagree with the decision and want it reviewed.

Sometimes, providing reasons makes it easier for the problem you are having to be solved at the Internal Review stage. **Always make sure your request is in writing. A phone call to your worker, or even the supervisor is not enough to qualify as a request for internal review.** If it has been longer than 10 days since you received written notice of the Director's decision, you should still request the review. In your letter, indicate that you are seeking an extension of the 10 day time limit for requesting the review, and provide a reason for being past the time limit (e.g. you didn't receive the Notice until the 10 days had already passed, you were in hospital and didn't receive the notice, etc.).

### **Where do I send my request for Internal Review?**

As a basic rule, send your request for internal review to the office which sent you the Notice of Decision. Sometimes this will be the Disability Adjudication Unit (DAU), and sometimes it will be your local ODSP office. If the decision has to do with whether or not you are medically eligible for benefits, your request should go to the DAU. If the decision has to do with any financial information, or things like failing to report income from work, your request should go to the supervisor at your local ODSP office.

You can mail, fax or drop off your request in person. Remember if you are mailing your request in, it will also be deemed to have arrived three days after it was mailed. **Always** keep a copy of the letter yourself. If you are dropping it off in person, have the receptionist date-stamp the letter you are dropping off, **as well as the copy you are keeping for yourself.**

### **What happens next?**

The Ministry has **10 days** from **receipt** of your request for internal review to conduct the review and either confirm, vary or reverse the original decision it made. You cannot appeal a decision if you have not made a request for internal review. The Ministry is supposed to notify you in writing of the result of the internal review. If you do not hear anything from the Ministry within 14 days of making your request for internal review, you can file an appeal with the Social Benefits Tribunal. There are special forms for filing an appeal. You can get these forms from your ODSP office, your local community legal clinic, or by calling the Social Benefits Tribunal directly at (416) 326-0978 or 1-800-753-3895. The appeal form will ask you to provide information about your Internal Review. The deadline for filing an appeal is **30 days** from when you receive notice of the result of your internal review, or **30 days** from the day after the Ministry's 10 days time limit for conducting the internal review has expired. Sound confusing? It's not that bad. As a general rule, you can count two weeks ahead from the day that you make your request for internal review, and you will be at the beginning of your 30 day time limit for filing an appeal.

### **What if I've been cut off benefits in the meantime?**

You can request "interim assistance" when you file your appeal to the Social Benefits Tribunal. The appeal form contains a section with allows you to request the interim assistance. This is the same as under the old Family Benefits system, with one very important difference: **if you lose your appeal, you may be required to pay back the interim assistance you received.**

## The New Legal Aid Services Act

On December 18, 1998, Bill 68 received Royal Assent and Legal Aid Ontario was born. The *Legal Aid Services Act* dramatically restructures legal aid but will have little impact on HALCO's services. But it does contain some good things. Primarily, we are now guaranteed funding for three years.

Basically the *Legal Aid Services Act* changes the administration of legal aid. It used to be that the Ontario Legal Aid Plan was controlled and run by a committee of the Law Society of Upper Canada. The Attorney General's office had the ability to appoint people to the legal aid committee and the clinic funding committee but essentially, legal aid was run by lawyers. Under the old legislation there were two sides to the plan: the certificate side which handled criminal and family matters and the clinic side which handled "poverty law" matters. "Poverty law" has traditionally meant whatever areas of the law were demanded by the impoverished communities individual clinics served. Now, the two halves of the plan have been merged and a new independent corporation has been created called Legal Aid Ontario. Legal Aid Ontario now administers that portion of our funding that we used to get from the Legal Aid Plan.

The merging of the two sides of the plan has meant good things for clinics across the province. The clinic system has always been a small part of the plan financially and our budgets have been capped for some time. Salaries in the legal clinic system have been capped since 1992. Now that the two halves are merged, more money can be allocated to clinics in order to treat workers in the two halves of the plan more equitably. This has meant that HALCO received three brand new computers free of charge. The new computers are all individually hooked up to the internet and networked with the rest of the clinics across the province. It should also mean salary increases for staff for the first time in seven years.

At the present time, Legal Aid Ontario is working on policies and procedures for the administrators of the new system. One of those policies will hopefully be about how understaffed offices like HALCO can apply for additional positions. Additional positions would mean we could do more casework, possibly even some important test cases that the community wants us to take on. With our current complement of one lawyer, that has been virtually impossible for us to date.

So if you want to help us out, write to the Chair of the new Legal Aid Ontario, Mr. Justice Sidney Linden, and tell him what you think should be funding priorities for the new legal aid system in Ontario.

The address is:

**Legal Aid Ontario**  
**375 University Avenue, 4th Floor**  
**Toronto, ON**  
**M5G 2G1**

## Where to Get Help

As many of you will know, HALCO makes every effort to provide services to as many PHAs in Ontario as possible. However, because of our limited resources we are far from being able to meet all the requests for services we receive. Over the first quarter of 1999, for example, we have been providing summary advice services to almost 200 people each month.

Because of the way that community legal clinics are structured, we are not able to provide services or advice on matters relating to Criminal Law. In addition, because we only have one lawyer on staff, we are limited as to the types of issues we can provide service in. For this reason, we are listing below a number of resources which we routinely refer callers and walk-in clients to if and when we are unable to help them here at HALCO. For your information, HALCO is currently unable to provide legal services in the area of Family Law (separation, divorce, custody) and Immigration Law. We can provide advice in the areas of social assistance (ODSP, OW, CPP), some private insurance issues, housing (Tenant Protection Act), Human Rights complaints, Criminal Injuries Compensation Board, complaints to professional colleges (nurses, doctors, dentists).

The following provides some resources for getting help if your legal problem falls outside of our areas of practice.

For Criminal Law matters you have several options available to you:

**1)** You can call the Lawyer Referral Service (LRS) of the Law Society of Upper Canada. In Toronto they can be reached at (416) 947-3330. Outside of Toronto, call toll free at 1-800-268-8326. When you call them, you will be asked what kind of lawyer you need, and where you are calling from. You will be provided with the name and contact information for a lawyer in your area, as well as



a file number. When you contact that lawyer, you provide them with the file number and you will receive up to one half hour of legal advice free of charge.

**2)** If you are in urgent need of criminal law advice, and have an upcoming court appearance, you can ask to speak with Duty Counsel at the court house. Duty Counsel can assist with guilty pleas, bail hearings, request adjournments on your behalf, offer advice, and do referrals to Legal Aid, but they cannot represent you in a case if you plead not-guilty.

**3)** If you would like to hire a lawyer to represent you, you may be eligible for financial assistance through Legal Aid. You can qualify for a legal aid certificate based on income and need. If you are eligible for a certificate, you may take that certificate to hire a lawyer of your choice, provided that lawyer accepts Legal Aid certificates. The number for Legal Aid should be listed in the blue pages of your telephone book under the Government of Ontario section. The listing is usually found under the heading of the Ministry of the Attorney General.

**4)** If you are in Toronto, you may be able to access free legal services through Downtown Legal Services, a community legal clinic at the University of Toronto. Please be aware that this clinic is unable to provide any services during exam periods at the University of Toronto.

**5)** If you have access to the Internet, you may access the Law Society of Upper Canada's web site at <http://www.lsuc.on.ca> and click on Public Legal Education. This service used to be accessible by telephone and pre-recorded information, but the telephone service was discontinued in January of 1998.

For advice in other areas of law which we are unable to cover, we would suggest you contact the Lawyer Referral Service mentioned above and ask to speak to a lawyer who specializes in the area of law affecting you.

Please note that a lot of these resources are constantly inundated with calls for assistance. Be patient - they all work on a first come-first serve basis.

## On the Lighter Side

For all those of you who may think that the new definitions of

disability contained in Canadian legislation like the Ontario Disability Support Program and the Canada Pension Plan are restrictive, just be glad that you're not an Israeli housewife.

A segment in the latest instalment of Chuck Shepard's News of the World <http://www.nine.org/notw> contains a description of a report from the Associated Press of the test which must be passed in order for Israeli housewives to access disability benefits. The tests were apparently designed by the Israeli government.

In order to successfully pass the test, married female housewives must "step into a simulated home and, in front of three officials, show that they cannot wash or iron laundry, mop the floor, or slice bread, among other tasks".

Can the simulated community setting, workplace and personal care activities be that far away?

(From Chuck Shepherd, News of the World, April 9, 1999, at <http://www.nine.org/notw/latest> downloaded May 4, 1999, page 2 of 4)

## Spring/Summer Holiday Hours

Please be advised that the HIV & AIDS Legal Clinic will be closed on the following designated statutory holidays:

May 24, 1999 - Victoria Day  
July 1, 1999 - Canada Day  
Aug. 2, 1999 - Civic Holiday

## You Asked Us

This is the first in a series of articles answering frequently asked questions.

**Question:** I am calling from an AIDS Service Organization where I work as a counsellor. I have a client who has no one to act as his attorney under a power of attorney and he has asked me. We have no policy about this. Is there anything wrong with me being his POA?

**Answer:** You cannot be his attorney for personal care but you can for property. The Substitute Decisions Act says that if you are paid to deliver support services to a person, you cannot act as that

person's attorney for personal care. However, there is no similar prohibition for powers of attorney for property. The legislature probably did this because they were afraid that care givers might be tempted to put their interests about what care you should receive over your interests or your prior express wishes.

## 1999 HALCO AGM - First Announcement

HALCO's AGM will take place on **Tuesday September 14th**, 1999 at the 519 Community Centre from 7 to 9 p.m. The 519 Church Street Community Centre is located, oddly enough, at 519 Church Street in Toronto. Mark your calendars. This is a date not to be missed.

Planning is already underway. We are still in the process of planning a guest speaker for the AGM. If you have any suggestions for speakers, or topics, please let us know. Any suggestions should be directed to Matthew Perry, Community Legal Worker at HALCO. You can reach me by phone at (416) 340-7790 or toll free at 1-888-705-8889. You can also reach me by email at [perrym@olap.org](mailto:perrym@olap.org) See you at the AGM!

## Hello! Goodbye!

As we all know, nothing lasts forever and change is certainly a part of life here at HALCO as well. In September, 1998, at HALCO's Annual General Meeting, Joan Anderson was appointed to our board as one of the AIDS Committee of Toronto (ACT)'s two appointed positions. Joan at that time was the Director of Advocacy at ACT and brought with her to our board a wealth of knowledge and experience in the areas of HIV/AIDS and community activism and advocacy. Sadly, for us, Joan stepped down in her capacity as an appointed Board member at the end of February 1999. Joan is moving on after working at ACT for over 5 years and is setting out into the wonderful world of freelance consulting. We wish Joan all the best in her new ventures.

So, you may ask, who has replaced Joan as the ACT representative on our Board? Well, who better than Lee Zaslofsky who has been hired at ACT to replace Joan. Lee comes to ACT as Advocacy and Media Relations Coordinator. Prior to his arrival at ACT, Lee was a Community Health Worker at the Queen West Community Health Centre. Lee has also served on the former City of Toronto Board of Health, and was most recently appointed to the Board of Health for

the new MegaCity. We welcome Lee to our Board and look forward to his contributions.

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**halco news** is published quarterly by the HIV & AIDS Legal Clinic (Ontario) and distributed free to its membership and other members of the HIV/AIDS community in Ontario. Written by: Ruth Carey, Rick Lobodzinski, Matthew Perry.