

July 8th, 2015

VIA E-MAIL

Ms. Patricia Arab, Chair
Standing Committee on Community Services
Legislative Committee Office
2nd Floor, Johnston Bldg.
1672 Granville Street
P.O. Box 2630, Station M
Halifax, NS B3J 3Z8

Dear Ms. Arab:

Re: Special diets under the ESIA Program

I have been asked by Mr. Kendall Worth to assist him with drafting a letter he wishes to submit to the Standing Committee for the Department of Community Services. He has asked that I forward it on his behalf. If possible, he would like an opportunity to speak directly on his experience.

Mr. Worth is a recipient of income assistance. He receives income assistance as a disabled person. He has been diagnosed with depressive mood, impulse control disorder and a learning disorder. He suffers from symptoms of obsessions and compulsions and his intellectual capacity is also affected. He was a patient of Dr. M. Saravana Muthu for several years.

For a period of time he received a special diet for high fibre to relieve constipation, a low sodium diet to prevent the onset of suspected hypertension, and a low fat diet for the management of hypertension to prevent high cholesterol. Due to his compulsive behaviour, a high protein/high calorie diet was also prescribed. For example, Mr. Worth will spend inordinate lengths of time walking and he is unable to limit his activities appropriately. In order to assist him in his prolonged physical activities, it is recommended he have a high protein/high calorie diet. This is a chronic medical condition that has been documented by his psychiatrist since 2011.

Mr. Worth receives all of his special diets except for the high protein/high calorie, which he has not received since 2013.

He appealed the initial decision to terminate his high protein/high calorie diet on April 11th, 2013 and he appealed again in March, 2014. The March, 2014 decision of the Assistance Appeal Board was judicially reviewed. He was unsuccessful with the judicial review because it was concluded the decision of the Appeal Board fell within the range of reasonable outcomes.

There was evidence that Mr. Worth wanted to have submitted and considered by the Court but it was excluded because it didn't meet the civil definition for the test for fresh evidence.

The information he wanted the Court to take into consideration was the impact of the decision to deny his special diet had had upon him physically and mentally. Mr. Worth has suffered anxiety attacks since the diet was removed from his budget and has found it exhausting that he bears all the responsibility and obligation for establishing and proving he is entitled to the special diet.

This included trying to have a referral to a dietician to confirm the need for the high calorie/high protein diet. He was unable to secure that referral and had a letter from MSI confirming that dietician services are covered by MSI if the patient is hospitalized. It does not cover referral to a dietician outside of the hospital. He was also advised by MSI that in many cases, the requirement for a medically necessary dietary supplement can often be handled by the physician, in which case MSI covers the cost of the office visit to prescribe the dietary supplement for the patient. In other words, it is not always necessary to take that next step of seeing a dietician.

Mr. Worth also wanted the Court to understand that the workers calling his psychiatrist and family doctor had negatively impacted the patient-doctor relationship. They were required to write multiple letters on his behalf, providing basically the same information regarding his medical condition and need for a diet. Each time they reached the same conclusion based on their medical opinion, that he needed the diet.

This has negatively impacted Mr. Worth's relationship with his doctors in that he feels that trying to have them advocate further for this diet is unlikely as they cannot devote any more time and resources to this issue. Unfortunately he is not their only client and that is the point he wanted to make known, that he is not the only person on income assistance who faces these challenges in trying to establish their entitlement to a diet they require because they have a medical need.

The *Employment Support and Income Assistance (ESIA) Act* highlights a number of legislative goals. In particular it is to foster the independence and self-sufficiency including economic security for Nova Scotians through opportunities for employment that are fundamental to an acceptable quality of life. It also

recognizes that provision of assistance to and in respect to persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Nova Scotians and that for income assistance to be effective, it needs to be combined with other forms of assistance. From a financial perspective, it needs to be effective, efficient, integrated, coordinated and financially and administratively accountable.

The purpose of the *Act* is to provide assistance to persons in need to facilitate their movement towards independence and self-sufficiency. Assistance is defined as the basic needs including food, clothing, shelter, fuel, utilities and personal requirements, special needs and employment services.

The *ESIA Regulations* provide greater detail about what is a special need and what information is required to establish a special need and what are the amounts that can be provided for special needs.

Section 24 defines what is a special need and 24(1)(a)(iv) states it includes special diet.

Section 24B(1) of the *Regulations* outlines the information that an applicant or recipient has to provide to their caseworker. It is not necessarily an onerous obligation and historically, a doctor's note was often sufficient to meet the requirements of the section with respect to the information needed.

However, Mr. Worth, like many Nova Scotians on income assistance, in the last two to three years, has been advised by his worker that the information on file isn't enough to establish their special diet. Sometimes the diet is removed from their budget without any forewarning or explanation and they have to contact their worker to find out why the special diet was removed. It can then take months for them to have the special diet reinstated. Nothing has changed about their health, nothing has changed about their circumstances, but the decision to remove the diet has a negative impact on their health. It increases their level of stress, it increases their anxiety, it reduces the budget they have to obtain the healthy food they require and it creates further administrative work for the organization as a whole. It impacts in a negative way other resources in the healthcare system, such as the family physicians, specialists, and dieticians.

Section 24B(1) of the *Regulations* states the applicant or recipient has to explain why the special need is required. In Mr. Worth's case, both his family physician and psychiatrist explained the diet was required, because he has obsessions and compulsions that cause him to expend a huge amount of physical activity, which he is not able to regulate or control in order to manage them properly that he needs a high calorie/high protein diet. Section 24B also requires an applicant or recipient to provide documentation from a professional supporting the special need. Mr. Worth

provided medical notes and letters from his doctors outlining his requirement for this particular special diet.

The applicant or recipient is also supposed to describe the resources or alternatives they have investigated with respect to obtaining the special need from other sources and with respect to the diet, all you have is what the dietary requirement is. Mr. Worth did explore with the food banks whether they could provide him with the specific food he requires and he was advised in writing that they don't have sufficient quantities of that type of food that would meet his dietary needs for a high calorie/high protein diet.

Section 25 of the *Regulations* states when the applicant or recipient requests the assistance that pertains to their health or medical requirement, the caseworker may request (note it is not mandatory) advice from a person qualified to provide advice in respect to the appropriateness and assess the effectiveness of the item or special need requested and can take that advice into consideration in determining whether to grant the request.

Mr. Worth takes particular issue with Section 25 in conjunction with section 6.3.3 of the ESIA Policy Manual because it allows the worker to determine whether or not the special diet is granted. Mr. Worth argues it allows the "worker to act like they are the professional" because they can transplant their decision for that of the doctor. A worker can consult with any person qualified to provide that advice so it could be even a specialist within the Department of Community Services around the special diets or any special need, as to whether the diet is appropriate, necessary and effective, without meeting Mr. Worth or having full understanding of his needs. It undermines and challenges the medical opinion of the doctor. It is not even comparing one doctor to another doctor, it could be a doctor to a specialist, a doctor to a dietician, and the person who provides this opinion doesn't meet with the applicant or recipient and does not have access to their full medical file when they give their opinion.

Mr. Worth's view is that this is discriminatory and that in particular this regulation needs to be changed, as it allows for a second opinion to be relied on in formulating the decision based on limited information about the applicant or recipient and it ultimately leaves the decision in the hands of the worker as to whether or not to grant the diet contrary to the specific medical recommendation of the doctor.

It also places the doctor in a difficult position if the worker calls and starts questioning them, they don't have time to review the policy, they don't have time to consider what the worker is asking and they may answer the questions in a way that hurts the client unintentionally. Further, doctors are often upset that their medical opinion is not accepted and that preference may be given to a dietician who

has different training and expertise and whose opinion may not be necessary in a particular case.

Mr. Worth's position is that he is not alone in losing his special diet allowance. He has heard from many people in the community who have also lost their special diets. Some income recipients have received a special diet allowance for years and then lost it without any notice or warning or after providing updated medical information were told there wasn't enough information there to support the diet.

In addition, Mr. Worth felt that he had not only lost his diet but it affected his relationship with his physicians who received phone calls from Community Services questioning why Mr. Worth needed the diet in the first place.

This raises the essential concern Mr. Worth has that the decision to grant the special diet is left to the caseworker or casework supervisor when they don't have any medical training or background to decide against the recommendations of the doctor. In fact, it allows them to supplant their opinion for that of the medical physician as to whether the applicant or recipient has a special need that requires a special diet.

It is Mr. Worth's understanding that when it comes to approving special diets, his ESIA worker has to follow those parts of the policy and regulations and that the policy and regulations are unfair. He is angry at the system and how he feels the system has abused him. He feels as well that his human rights have been violated by the ESIA system.

He believes if a caseworker calls a doctor and instead of asking their doctor for medical information or for further clarification of what it is they are recommending for the client, but instead read the policy to them and make the doctor feel they are being harassed by the caseworker, it may discourage doctors from writing any further notes or supporting their client in that way. The client's real total health needs are not being addressed. In particular, Mr. Worth wants the Committee to take note of the following:

1. He had three different doctors prescribe the same special diet. Despite the recommendations of all three doctors, the Department of Community Services did not provide him with the special diet.
2. The medical documentation should have been considered sufficient for establishing the medical basis for his special diet. In fact, the process of approving his diet for two years and then finding him ineligible based on the same information is unfair and inconsistent. Nothing in Mr. Worth's life changed except the change in the policy of the Department and as a result his health has been negatively impacted.

Even though Mr. Worth would like to put this behind him it has left a scar that he will deal with for the rest of his life. He is a client who has limited ability to live independently of the ESIA system. He will most likely always be dependent on the system, therefore decisions that impact his health in such a dramatic way, as the special diet, have long-term consequences for Mr. Worth. He is one of the individuals for whom income assistance is part of the social safety net.

He is concerned the Department of Community Services does not have a clear understanding of how the health of different people is affected and is deteriorating by the change in policy they have implemented and the fact that more and more people are losing their special diet, losing their transportation, losing their phone and losing other special needs they should be entitled to receive.

One of the challenges when a special diet is not approved is there is no clear guidelines as to what is required in a letter by the doctor to establish the diet. You can refer to the policy and have all those elements incorporated into the letter yet the worker tell the client it is insufficient. This becomes very challenging for the client and the doctor, who is trying to advocate on behalf of the client. They are at a loss to know what else they can put into the letter to provide any greater clarity as to why the client needs the diet than what they have already said. It is not consistent from one diet to the next. It becomes more troubling in cases where the diet might be prescribed for any number of reasons and conditions such as when a high protein/high calorie diet may be needed. Mr. Worth's case is probably a more unusual case and not one that normally would be perceived by the Department as a typical high protein/high calorie case. Nonetheless he has provided documentation about how a high protein/high calorie diet can be used to treat his medical conditions.

In 2013 Food ARC published "Can Nova Scotians Afford to Eat Healthy", a report on 2012 food costing. That report identified the amount of income required for a basic nutritious diet. People on income assistance, whether it is a single person, single-headed household with dependent children, or a two-parent household with dependent children have far less income than what is required to ensure they have a basic nutritious food basket. In their report, a single male on income assistance faces a deficit of \$691.51 to purchase a basic nutritious diet.

Some may suggest if you raised the rates that would encourage more people to apply for assistance and lessen the incentive for people to remove themselves from assistance. The reality is that it ignores the reality that if a person does not have enough money to maintain housing, to provide the necessities of life, to provide sufficient food so that they are not hungry and their health is not exacerbated or worsened by the lack of healthy food, that they will be unable to achieve the level of independence and self-sufficiency which were the goals of the legislation to begin

with. It does not acknowledge there is a certain percentage of the population that will not be able to work and will require assistance. Mr. Worth's part is that if you don't provide adequate income, then they cannot ensure their needs are met. There is a significant cost long-term to the healthcare system, to the criminal justice system, to the very fabric of our communities.

Mr. Worth appreciates this opportunity to put forward his concerns and experiences as a recipient of income assistance.

Yours truly,



Charlene Moore
Barrister & Solicitor

CM/rr

cc. Kendall Worth