

SPONSORED IMMIGRANTS: ISSUES OF ADMISSION AND FEES IN ONTARIO LONG-TERM CARE HOMES¹

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Background²

Our office frequently gets calls regarding admission of sponsored immigrants into long-term care. We may hear from the sponsor or a health care provider wanting to clarify what happens when a sponsored immigrant with no income needs to go into a long-term care home.

In Ontario, long-term care homes are defined as nursing homes, charitable homes for the aged and municipal homes for the aged. Applications for these homes are made through the local Community Care Access Centre, which determines eligibility. The Community Care Access Centre also maintains the waiting lists and makes bed offers for long-term care homes.

Residents of long-term care homes are only required to pay for accommodation. The government pays the cost of providing nursing, personal care and food, as well as programs and support services. Rate reductions are available to residents in basic accommodation but there are no reductions for residents in semi-private or private accommodation. Homes are, however, able to designate private or semi-private accommodation as basic in order to fill the room, at which point the person can apply for a rate reduction.³

In order to be eligible for admission to a long-term care home, the potential resident must have a valid Ontario health card. Certain immigrants on Minister's Permits are not entitled to health care in Canada. If a person's legal status in Ontario is such that they are not eligible for an Ontario health card, they cannot be admitted to long-term care, even if they are unable to return to their country of origin.

¹ This article replaces the paper entitled *Admission of Sponsored Immigrants into Long-Term Care* which was previously available from ACE.

² This article is based upon the present legislation: the *Charitable Institutions Act*, the *Homes for the Aged and Rest Homes Act* and the *Nursing Homes Act*. At the time of publication, the *Long-Term Care Homes Act, 2007*, had been passed but not yet proclaimed. As the draft regulations contain references to sponsored immigrants, the rules regarding admission and payment may change once the new law is in force.

³ There is no rate reduction for someone requesting admission to preferred (semi-private or private) accommodation. Residents can be admitted to preferred accommodation at a basic rate by the home if they wish to designate the room as such. In rare instances, the extra fees for preferred accommodation may be subsidized by the Ministry of Health and Long-Term Care High Intensity Needs Fund Program where this type of care is required for medical or other reasons.

The applicant must also meet other eligibility criteria (e.g., the need for assistance with activities of daily living).⁴

Admission of Sponsored Immigrants to Long -Term Care Homes

Sponsored immigrants may apply to long-term care if they meet the eligibility requirements. There are no financial criteria – income or asset testing is not part of the eligibility process for admission to long-term care.

While lack of income is not a legal bar to the eligibility process, in reality, the potential resident may find that this is a problem. Applicants are often told that they will not be accepted until they can “prove” that they can pay the home’s fees or they have been financially “tested” by the home. In the case of seniors under a sponsorship agreement, the sponsor may be advised that he or she is required to pay the fees. While this is not technically true (the parties to the sponsorship agreement are the sponsor and the federal government, not the home or the province), the sponsor may end up paying because of other financial obligations. This will be discussed further below.

Provincial Support Plans

In the past, sponsored immigrants were not eligible for Ontario Works (OW) or Ontario Disability Support Plan (ODSP) payments unless the sponsor broke the sponsorship agreement. If benefits were granted, OW or ODSP usually reduced the amount of the benefits given to the sponsored immigrant. However, after a number of court challenges, the legislation was amended to allow sponsored immigrants to receive provincial support without penalty.

Presently, sponsored immigrants may apply for OW or ODSP benefits based on their income. If eligible, OW or ODSP payments will be granted in full. The major change is that the *Immigration and Refugee Protection Act* now allows the provincial government to take legal action against the sponsor to recover any government payments made to the sponsored immigrant. Income tax refunds can also be seized to repay these expenditures. Another consequence is that the person will not be able to sponsor anyone else until all the monies owed to the province are repaid.

ACE believes that this legislative change has had, and will continue to have, a drastic effect on long-term care applications for sponsored immigrants.

⁴ The eligibility criteria are not discussed in this paper. More information about the criteria for a nursing home, for example, can be found in s.130 of *Nursing Homes Act*, R.R.O. Reg. 832.

Payment of Fees in Long -Term Care

When a sponsored immigrant requires long-term care, an application will be made by themselves or someone on their behalf. As previously indicated, lack of finances is not a barrier to admission as long-term care is an important component of our health care system. However, there is a requirement that the resident pay an accommodation fee, as set by the Ministry of Health and Long-Term Care.⁵ It is this requirement that becomes a problem for sponsored immigrants and their sponsors.

Applying for a Rate Reduction

Residents in basic accommodation are entitled to apply for a rate reduction, based upon their income.⁶

Many sponsored immigrants receive very little or no pension income from their home country. They will generally not qualify for Old Age Security and Guaranteed Income Supplement benefits until they have been a permanent resident in Canada for ten years.⁷

Sponsored immigrants frequently live with their sponsor, and while the sponsor agreed to care for them, the sponsor usually never considered the possibility of long-term care during the sponsorship. Often, parents are sponsored to come to Canada when they are healthy. The issue of long-term care tends to arise only after they arrive and a catastrophic incident occurs, such as a stroke or a diagnosis of dementia. It is at this point that the sponsor discovers that the fee for long-term care (\$1,614.21 per month for basic accommodation)⁸ is far more than they had ever considered having to pay for their parents' care.

Rate reductions are available in long-term care. However, even with the rate reduction, the lowest possible rate is \$1,050.29.⁹ Only an exceptional circumstances reduction can bring this down any farther and in the case of a sponsored immigrant, they are unlikely to be able to qualify for this additional reduction.

⁵ *Charitable Institutions Act*, s. 9.4, *Homes for the Aged and Rest Homes Act*, s. 30.2 and *Nursing Homes Act*, s. 21.1.

⁶ There is no rate reduction for someone requesting admission to preferred (semi-private or private) accommodation. Residents can be admitted to preferred accommodation at a basic rate by the home if they wish to designate the room as such. In rare instances, the extra fees for preferred accommodation may be subsidized by the Ministry of Health and Long-Term Care where this type of care is required for medical or other reasons.

⁷ Canada has international social security agreements with a number of countries that offer similar pension programs. Social security agreements help people receive the benefits to which they are entitled. People who have lived or worked in another country may be eligible for social security benefits, either from that country or from Canada, even if they have not lived in Canada for ten years.

⁸ *Nursing Homes Act*, R.R.O. 1990, Reg. 832, Table 3.

⁹ Ministry of Health and Long-Term Care, *Application for Reduction in Long-Term Care Home Accommodation Fees – Worksheet*, 2009.

To receive the exceptional circumstances reduction, the resident must have applied for “all benefits, entitlements, supplements, or other financial assistance that may be available, including those available from the Government of Canada, the government of any province or territory in Canada, any municipal government in Canada and any foreign country.”¹⁰ The result is that the person cannot have their rate lowered any more unless they apply for either OW or ODSP benefits. If they apply and are granted these benefits, the rate will be reduced to the amount allowed under ODSP, which is less than \$1,050.29. However, this impacts the sponsor in the following ways:

- The sponsor will be billed for the provincial support and potentially sued in the event of non-payment;
- Income tax refunds will be seized from the sponsor to repay the debt; and
- The sponsor will be unable to sponsor anyone else until the debt is paid in full.

What Happens if the Person Does Not Apply for OW or ODSP

As previously mentioned, once a person is admitted to long-term care, they are required to pay an accommodation fee in accordance with the legislation. If the resident has no income, and their sponsor does not want to pay this fee on their behalf, the only option is to apply to OW or ODSP. Because they are in a long-term care home, they are almost certain to qualify for OW, and eventually ODSP.

Mentally capable individuals can apply for OW or ODSP although nobody can force them to do so. If they refuse to complete the application, and therefore continue to have no income, they will incur a debt to the long-term care home. It is important to note that a person cannot be discharged from the home for non-payment, since the home is part of our health care system and the resident continues to be entitled to receive the health care services offered in the home.

If the resident does not pay the fee, the home can sue them for the debt. Given that the person is unlikely to have any assets or income, this would not be a viable option for the home.

If the person is mentally incapable to make the application, another person will have to apply on their behalf. In many cases, the sponsor will be reluctant, and may even refuse, to make the application due to the potential negative consequences.

Instead, a representative of the long-term care home (e.g., social worker) may contact OW or ODSP on behalf of the resident to have an application completed. A representative of OW or ODSP will then attend at the home to collect the necessary information about the resident. In most cases, the application is granted and the benefits are directed to the home to pay for the accommodation of the resident. The rate is based upon the quantity received from OW or ODSP, with some money allocated for

¹⁰ Ministry of Health and Long-Term Care, *Application for Reduction in Long-Term Care Home Accommodation Fees – Exceptional Circumstances*.

the “comfort allowance” (a small amount intended to pay for the resident’s incidental or personal expenses).

Discussion

There are a number of issues which arise when sponsored immigrants with no income consider moving into long-term care. Some of these issues are discussed below.

a) Sponsors as Decision-Makers

If the sponsored immigrant is incapable of making decisions about placement to a long-term care home, it is very common for the sponsor to be their substitute decision-maker. This can put the sponsor in a conflict of interest position. As the substitute decision-maker, it is their responsibility to make the decision about placement. However, the sponsor may be worried about the consequences of placement on themselves personally, with little or no regard for the sponsored immigrant. We have seen many situations where the sponsor has decided against placement because they do not want to, or are unable to pay the fees, and do not want to become indebted if the sponsored immigrant is granted benefits from OW or ODSP.

If older adults who need long-term care are not being admitted to long-term care homes, it may result in dangerous situations. For example, seniors may be locked indoors to prevent them from wandering or left alone with little or no assistance. In other instances, older adults may receive inadequate care because the type of support required from the caregiver is too much for that person to handle. The fact that individuals are eligible for long-term care means that they can no longer be cared for at home in the community. It is clear that substitute decision-makers are obligated to make decisions in the best interests of the senior, not themselves. Placement decisions are governed by the *Health Care Consent Act*, which prescribes the following principles for giving or refusing consent to placement:

42(1) A person who gives or refuses consent on an incapable person’s behalf to his or her admission to a care facility shall do so in accordance with the following principles:

1. If the person knows of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, the person shall give or refuse consent in accordance with the wish.
2. If the person does not know of a wish applicable to the circumstances that the incapable person expressed while capable and after attaining 16 years of age, or if it is impossible to comply with the wish, the person shall act in the incapable person’s best interests.

(2) In deciding what the incapable person’s best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable and believes he or she would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to admission to a care facility that are not required to be followed under paragraph 1 of subsection (1); and
- (c) the following factors:
 - 1. Whether admission to the care facility is likely to,
 - i. improve the quality of the incapable person's life,
 - ii. prevent the quality of the incapable person's life from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the quality of the incapable person's life is likely to deteriorate.
 - 2. Whether the quality of the incapable person's life is likely to improve, remain the same or deteriorate without admission to the care facility.
 - 3. Whether the benefit the incapable person is expected to obtain from admission to the care facility outweighs the risk of negative consequences to him or her.
 - 4. Whether a course of action that is less restrictive than admission to the care facility is available and is appropriate in the circumstances.

If the substitute decision-maker decides not to consent to placement due to monetary concerns, they are not complying with their legal requirements. At this point, the Community Care Access Centre should make an application to the Consent and Capacity Board under section 54 of the *Health Care Consent Act* (usually referred to as a "Form G" application) to determine whether or not the substitute decision-maker is making placement decisions in compliance with the law. If, for example, the substitute decision-maker is refusing placement because they will become indebted to ODSP for payments, the Board will likely order them to consent to the placement as it is in the best interests of the person. If the substitute decision-maker does not consent, the Public Guardian and Trustee will become the new substitute decision-maker and consent to the placement.

To summarize, while the senior would eventually receive the care they require, the sponsor may end up having to pay the fee at the long-term care home or become indebted to the government because of the senior's reliance on public assistance. This could eventually result in sponsors refusing to seek any assistance from the health system. For instance, they may not bring their family member to a health care professional or obtain services from the Community Care Access Centre for fear that an application will be made for long-term care with the above-noted results. Obviously, this type of response could result in serious harm to the senior, as well as others. For example, if a person with severe dementia was left home alone during the day, they could inadvertently set fire to the house, walk into traffic or fall in the home. The possibilities are endless.

b) Application for OW or ODSP

As discussed, a person cannot be forced to apply for OW or ODSP benefits if they are mentally capable.

If the person is not mentally capable, it is not as clear. Presently, the home will contact OW or ODSP to arrange for a worker to take the application if the substitute decision-maker who is the sponsor refuses to make the application. This raises the following issues and questions:

1. Is the act of contacting OW or ODSP a breach of the *Personal Health Information Protection Act*? The long-term care home is a health information custodian and, as such, can only provide information about a resident in accordance with this law. There is no exemption in the legislation for the provision of information to OW or ODSP without consent. This is not an “emergency” situation as there is no risk of harm to the person as the home must provide food, shelter and care to the person, no matter whether they are paid or not. Thus, it is possible that contacting and providing information to OW or ODSP is a breach of the privacy legislation.
2. What if the sponsor is the also the attorney for an incapable person in a power of attorney for property? If so, can they cancel OW or ODSP payments? Can the sponsor withdraw an application made on behalf of the resident?
3. OW or ODSP have the ability to make payments directly to a landlord where the recipient has identified and demonstrated an inability to do so. This is called “pay direct.” Can the pay direct option be used to pay the long-term care fees of incapable sponsored immigrants? It would seem that the long-term care home, who would have initiated the application, is in a conflict of interest by asking for the pay direct option. We are aware of many cases where fees in long-term care are disputed for various reasons, including the calculation of deductions, extra fees and interest charges. If the pay direct option is utilized for an incapable person, who monitors the payments?
4. Can the long-term care home become a trustee for the benefits being paid? Both OW and ODSP allow for third parties to become trustees of the monies received by these programs. But, is it appropriate for the long-term care home to be the trustee? As the home is also the party which is claiming the debt, is this not a conflict of interest? Who monitors the trustee? Does the person meet the requirements for needing a trustee, given that they are at no risk of losing their home or running out of food? The ODSP policy directives regarding trustees states as follows:

After reviewing the situation, if ODSP staff are satisfied that the essential needs of the recipient and/or other members of the benefit unit are likely to go unmet without intervention, ODSP should discuss

with the applicant/ recipient the possibility of appointing a trustee to assist in managing the income support.¹¹ It can be argued the recipient will not have any unmet essential needs if the trustee is not appointed.

5. What is the role of the Public Guardian and Trustee? It is unlikely that Public Guardian and Trustee will become involved if they are contacted by the long-term care home because of a failure of a resident to pay. However, if there is no attorney for property, a capacity assessment could be conducted pursuant to the *Substitute Decisions Act*. If the person is found to be incapable, the Public Guardian and Trustee would automatically become the statutory guardian after receiving the certificate of incapacity. They would then seek out all types of income support, which could include both applications for OW or ODSP, as well as commencing a legal action against the sponsor themselves (where appropriate) for support payments. As the trustee of any monies, they would be obligated to manage the money in an appropriate manner.

CONCLUSION

Issues pertaining to admission to long-term care and the payment of fees for sponsored immigrants are complex and rife with potential consequences. It is important to bear in mind that sponsored immigrants requiring long-term care are entitled to this care. As a result, sponsors may sometimes become indebted for OW or ODSP payments or non-payment of long-term care fees. Ultimately, the paramount consideration must be that the person is well cared for and safe.

Finally, ACE believes that part of the problem surrounding sponsored immigrants and long-term care is the ignorance of some sponsors to the realities of their responsibilities. When sponsoring aging parents, sponsors rarely consider what will happen if their healthy parents become ill and require care. This information should be provided to prospective sponsors and their parents at the time of application so they are more aware of the possible repercussions. Armed with this information, sponsors and their parents can make informed choices about their future.

¹¹ ODSP Income Support Directives, Directive 10.2, Trustees at http://www.mcscs.gov.on.ca/NR/MCFCS/ODSP/ISDIR/en/10_2.pdf.