



A Vast Injustice – Cancer drug funding

In May 2009, the Ombudsman was contacted by an MPP on behalf of a constituent who suffered from metastatic colorectal cancer. The man had been receiving the drug Avastin, but had been told the Ministry of Health and Long-Term Care would no longer pay for it. Media reports detailed the stories of several other patients facing a similar plight – the government was cutting off their funding for Avastin after **16** treatments administered in two-week intervals.

The patients' oncologists recommended that they continue Avastin treatment to fight the progression of their disease. But few could afford to continue this life-prolonging treatment at **\$1,500-2,000** per cycle. Some were forced to give up the drug, some paid for

it out of their savings, and some raised money in the community.

The Ombudsman announced his investigation into the Ministry's decision-making concerning the funding of Avastin for colorectal cancer on June 3, 2009. Within weeks, SORT staff conducted more than **65** interviews with officials from the Ministry, Cancer Care Ontario, oncologists, patients and interest groups.

The Ombudsman's report *A Vast Injustice* was published on September 30, 2009. It found that the Ministry's cap on funding was not supported by any medical evidence. Since late 2005, Ontario oncologists specializing in the treatment of colorectal cancer had been calling for Avastin to be used as a matter of standard patient care, with treatments to continue until the patient's disease progressed. However, an advisory committee recommended in early 2006 that the Ministry reject funding of the drug because it was not cost-effective.

That decision changed in June 2008, when the Ministry negotiated a better price for Avastin, and Ontario became the seventh province to publicly fund the drug for metastatic colorectal cancer patients (there are now eight). But when it announced this public funding on July 2, 2008, few patients or physicians were aware that it was limited to 16 cycles, regardless of the patient's condition. No other province had such an inflexible funding cap.

Ministry officials provided a variety of explanations for the 16-treatment cutoff, but the Ombudsman determined it was essentially a cost containment measure. While he acknowledged that government policy-makers have the right to decide that a drug is simply too expensive to fund, he concluded that once the decision is made to pay for a drug, any move to limit the number of treatments available must take a patient's progress into account. He found that the Ministry had created an arbitrary and artificial barrier to patient access to Avastin, unsupported by medical evidence.

The Ombudsman also noted that the Ministry did not appear to be tracking how many patients were receiving Avastin or how much it had spent, and that its communications about the Avastin funding cap were at times misleading to patients and physicians.

The Ombudsman recommended that the Ministry immediately lift the funding cap for Avastin and that it reimburse those patients who had paid for additional treatments at their own expense. He also recommended that the Ministry ensure that decisions about the funding of new drugs include a summary of the financial and medical considerations relied upon in reaching the decision, and that this information be publicly available. In addition, the Ombudsman recommended that the Ministry centrally monitor the number of patients receiving drugs under its new Drug Funding Program, including duration of treatments and costs.

Two months after the release of the Ombudsman’s report, the newly appointed Minister of Health and Long-Term Care announced that the Ministry would lift the cap and expand access to Avastin for colorectal cancer patients who are responding well to treatment. The new criteria would pay for treatment for up to **24** cycles, with additional treatments available according to the advice of the patient’s physician. The Ombudsman welcomed this decision, noting that it had taken Ontario from being “one of the worst to the first” among provinces funding Avastin for colorectal cancer patients.

The Ministry also acknowledged that a detailed rationale for funding Avastin had not been publicly posted and agreed to do this as soon as possible. It also undertook to discuss the monitoring of drug expenditures, including Avastin, with Cancer Care Ontario, and requested an analysis from the manufacturer. The Ombudsman will monitor the Ministry’s progress as it reports back to the Ombudsman every six months on these issues.

“Kudos to the Ombudsman. Keep up the good fight on behalf of all cancer patients. We have the right to expect nothing but the best, even if we only have six months left.”

– J.D. Sams, comment posted on CBC.ca

“You have done a great service to patients with advanced colorectal cancer in Ontario.”

– A Toronto oncologist, email to Ombudsman, *Email to SORT, November 30, 2009*

Dental implants

A 55-year-old man complained to the Ombudsman that the Ministry of Health and Long-Term Care had refused him funding for four dental implants. The man suffered from squamous cell carcinoma and his treatment, beginning in 2006, had involved extensive surgery to remove cancerous tissue and bone from his face and mouth, including the removal of his upper jaw and palate. He also underwent reconstructive surgeries and skin grafts, followed by chemotherapy and 28 radiation treatments.

By January 2007, the complainant had experienced severe complications that left him unable to speak or eat properly. Because so much bone had been removed from the left side of his face, it began to collapse, and both his physical and psychological condition deteriorated.

The man’s doctors determined that his condition could only be remedied through a procedure that involved a prosthesis and the insertion of four titanium screws or “dental implants” into what remained of his jawbone. He applied for Ontario Health Insurance Plan (OHIP) funding but was turned down on the basis that dental implants are not “insured devices.” His subsequent appeal to the Health Services Appeal and Review Board was turned down because, though acknowledged as medically necessary, the implants were not listed in the Schedule of Benefits for Dental Services.

SORT investigators looked into the potential systemic implications of this issue. OHIP officials explained that dental implants are not insured as they are generally used in cosmetic dentistry. After further discussions, however, Ministry officials reviewed the complainant’s file, acknowledged that his case was exceptional and agreed to fund the implants needed for his surgery in October 2009.

The Ministry also acknowledged that there may be others in such exceptional circumstances, and undertook to address the gap in the system to allow them to access funded dental implants. SORT investigators are monitoring the Ministry’s progress.