



ODSP Appeal **HANDBOOK**

How to Prepare for the Social Benefits Tribunal



Waterloo Region
Community Legal Services

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Waterloo Region Community Legal Services acknowledges, with gratitude and great respect, that we are on the traditional territory of the Anishnaabe, Haudenosaunee, and Chonnonton peoples. WRCLS is situated on the Haldimand Tract, the land promised to the Six Nations that includes six miles on each side of the Grand River.

INTRODUCTION

Welcome to the guided Ontario Disability Support Program (ODSP) self-representation program with Waterloo Region Community Legal Services!

This handbook will provide you everything you need to know to prepare for your ODSP hearing at the Social Benefits Tribunal.



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DEFINITIONS

ODSP:

Ontario Disability Support Program

SBT:

Social Benefits Tribunal – The Ontario tribunal that hears appeals from people regarding their social assistance.

Social Benefits Tribunal Member:

The Decision-maker / Adjudicator regarding your application.

DAU:

Disability Adjudication Unit – The DAU is responsible for determining if a person meets the legislative definition of a “person with a disability” under the ODSP Act.

CPO:

Case Presenting Officer – representative of the DAU which has made the decision to deny you benefits.

TIMELINES

After being denied ODSP benefits

Step 1: Internal Review

When you receive the decision that denies you ODSP benefits, you have 30 days to request an Internal Review. Waterloo Region Community Legal Services (WRCLS) will request the Internal Review with your direction and consent.

Step 2: Appeal Process

If you are denied again during the Internal Review stage, you will need to file an appeal to the Social Benefits Tribunal (SBT). You must file the appeal within 30 days. WRCLS will assist in filing your appeal. It may take several months until you are issued a hearing date.

Step 3: Additional Supporting Evidence

You must submit all additional medical records 30 days prior to the hearing date. The Disability Adjudication Unit (DAU) and the Social Benefits Tribunal must both be notified. If you do not file this evidence in time, they may not consider it at your hearing.

Step 4: Witnesses

If you have any witnesses you want at your hearing, you must notify the DAU and the SBT at least 20 days before the hearing.

WHAT IF MY APPEAL WAS FILED LATE?

The SBT does not have to hear your case if you missed the 30-day deadline to submit your appeal, but they may grant an extension if you give good reasons. At the hearing, you will need to ask the SBT member to hear your case even though you filed a late appeal. Tell the SBT you could not submit your appeal on time for reasons “beyond my control,” such as:

- You did not receive the decision letter; or you received the decision letter but it arrived late.
- You received the decision, but you experience difficulty with: a language barrier, reading (literacy), you had difficulty understanding the appeal process.
- You had difficulty for reasons related to your disability. Tell them that you would like a disability accommodation under the Human Rights Code.
- Personal emergency or for compassionate reasons.

Tell the SBT Member you always intended to appeal a negative decision on your ODSP, if this is the case. Submit evidence to support your request for an extension (i.e. proof of hospitalization if you were sick, etc.) Or, if you have memory problems that affected your ability to submit your appeal on time, you may provide a medical note. Submit this evidence prior to the hearing.

The SBT Member will make a decision about whether to grant an extension. If granted, you will proceed to the main part of the hearing.

WHAT DO I NEED TO PROVE?

You need to prove that you were a “person with a disability” on the date of the Director’s decision (the date on the first letter you received from ODSP which denied you ODSP benefits). To get income support from ODSP, you must meet the ODSP definition of a “person with a disability”.

This means that an approved health professional, such as a doctor, confirms that:

- You have a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more, and;
- The direct and cumulative effect of your impairment results in substantial restriction in one or more of the following daily activities: your ability to attend to your personal care, function in the community and function in a workplace

The Social Benefits Tribunal (SBT) is independent from ODSP. The SBT will make their own decision about whether you qualify for ODSP based on the medical evidence provided and your oral testimony during the hearing.



HOW TO PREPARE FOR THE HEARING

Make Some Notes

Notes will help you remember things you might want to say, but keep them short and in point form. You will not be able to rely entirely on notes during your testimony.

Be honest and give details about your health problems.

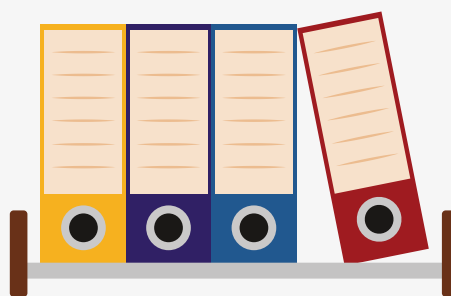
Do not hold back but do not exaggerate. Refer to what your Doctor(s) say on your ODSP application and forms.

Remember:

You will have to talk about your conditions around the time you were denied ODSP benefits (the date of the Director's Decision):

(Record date of director's decision above)

Your testimony must be based on how you were feeling around that time (not how you have been feeling recently). Focus on how your conditions affected your ability to participate in the community, workplace and your personal care.



GENERAL POINTS TO CONSIDER

Remember: you can only discuss your medical conditions that have been verified by your doctor in your application.

- What were your symptoms?
- When did they start?
- How often did you have them?
- How bad were they?
- How long did they last?
- Do you still have them?
- Have you gone to the hospital because of them?
- Were you using any assistive devices (cane, walker, shower seat, braces etc.)?
- What medications were you taking?
- How often were you taking medication?
- How well did the medication work?
- How long did the relief last?
- Have there been any changes to your medication?
- What doctors did you see? How often did you see them?
- Have you seen any specialists?
- What was a typical day like for you around the time you were denied ODSP?
- Rate your physical well-being on a scale from 1-10, with 1 being no pain and 10 being the worst



POINTS TO CONSIDER: PAIN

If one of your medical conditions involves pain, give the member details such as:

- Where exactly were you experiencing pain?
- How bad was it?
- Describe what the pain felt like (sharp, shooting, burning, etc.)
- Describe your pain level on a scale from 1 – 10.
- How often were you experiencing the pain?
- Did you wake up at night because of the pain?
- Were you ever confined to the bed or house because of the pain?
- Has your pain been getting better or worse over time?
- What were your limitations and restrictions from your pain?
- Does the weather affect your pain?

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POINTS TO CONSIDER: MOBILITY

If you had any problems with mobility, describe:

- How far could you walk before needing to take a break?
- How long could you stand for? Then what happens?
- How long could you sit for? Then what happens?
- How did you manage changing from position from sitting to standing?
- How far could you bend over? Then what happens?
- Could you climb the stairs? How did you manage?
- Could you kneel?
- Could you extend your arms over your head or in front of you?
- Could you push or pull anything?
- What was lifting like for you?

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POINTS TO CONSIDER: SLEEP

If one of your medical conditions caused you have problems with sleeping, describe:

- How well were you sleeping?
- How long could you sleep before waking?
- How many times a night would you wake up?
- What was the problem with sleeping?
- How did you feel in the morning? Rested or still tired?
- How often were you having a bad sleep?
- Approximately how many hours of sleep did you get each night?

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POINTS TO CONSIDER: INTELLECTUAL / EMOTIONAL HEALTH

If you were having difficulties with your mental health, describe:

- Feelings of sadness
- Feelings of stress and anxiety
- What was your mood like?
- Impact of your feelings on your social life and ability to work
- Loss of interest in activities
- Did it affect your relationships with family and friends?
- Did you feel uncomfortable going places alone?
- Were you spending most of your time alone at home?
- Were you avoiding social interactions?
- How did you feel about yourself?
- How were you feeling about your health conditions?
- Concentration / attention
- Comprehension / understanding
- Thoughts of suicide or self-harm
- Forgetfulness/lack of attention span? Any examples?
- Impact of your feelings on your appetite – eating more or less?
- Obsessive thinking and worrying?
- Impulse control – were you doing things without thinking?
- What was your attention span like?
- What was your ability to learn like?
- Were you able to follow instructions?
- Were you experiencing any sensory problems (hearing voices, hallucinations, etc.)?
- Were you experiencing panic attacks?
- How organized were you?
- What was your memory like?
- How well were you coping with stress?

POINTS TO CONSIDER: OTHER

In addition, you may want to talk about any problems you were having with the following:

- Driving or taking public transit
- Handling of personal finances
- Vision / Hearing / Speaking
- Problem solving
- Balance / dizziness
- Breathing
- Do you have any hobbies or activities that you used to do that you can no longer do because of your conditions?
- Have there been any changes in your social life or relationships in your community because of your medical conditions?
- Were you going to church/temple/synagogue/mosque as often as you used to prior to the deterioration in your health? If less, explain why.
- How have your medical conditions affected you emotionally?
- Do you have any side effects or other problems because of your medications?
- What treatment have you undergone? Were they effective?
- Did you go to physiotherapy? How long? How frequently? Did it help?
- Do you face any treatment barriers (cost, transportation, language, etc.)?



POINTS TO CONSIDER: PERSONAL CARE

If you were having problems with your personal care, describe:

- Were you able to cook? What types of meals would you cook/eat?
- How did you manage your personal hygiene (brushing hair/teeth/bathing, etc.)?
- How did you manage changing your clothes?

POINTS TO CONSIDER: HOUSEHOLD CHORES

If you were having problems doing household chores, describe:

- How were you managing your household chores?
- What types of chores were you unable to do?
- Examples of daily chores: washing dishes, vacuuming, mopping, cleaning the bathroom, making beds, laundry, etc.
- Were you going grocery shopping alone? How often?

POINTS TO CONSIDER: CHILDREN

If you had children, describe:

- Did you need help looking after them?
- Were you taking them to school and picking them up?
- Were you able to play with them?
- Were you able to help them with homework?

GOING TO YOUR HEARING

The Hearing Date

It is important that you attend your hearing. The date and time is on your Notice of Hearing that was sent to you by mail from the Social Benefits Tribunal. If you do not go to the hearing, the hearing may go ahead as planned and you will not have a chance to present your case (tell your story). If you fail to appear and do not have reasonable explanation, you may lose your appeal and you may not be able to file an appeal to the SBT for 2 years. Under special situations, you may submit a request for a delay/postponement/adjournment of your hearing.

Important

If you are going to be late or cannot attend your hearing due to special situations, you **MUST** phone the SBT right away. They may be able to make other arrangements for you.

The SBT toll free phone number is: 1-800-753-3895.

Time

Hearings are scheduled for 1 to 1.5 hours, longer in some cases. It could be as short as 30 to 45 minutes. It will likely take longer if you have an interpreter to translate.



GOING TO YOUR HEARING

Hearing Format

Tribunals Ontario have shifted to an entirely virtual hearing model. Hearings are held only by videoconference, telephone or in writing. Videoconference is the most common hearing method. If you need access to a computer, you can use one at your our office.

In special circumstances, you may request accommodation to have your hearing in person. This will only be considered if it is a Human Rights Code related need, such as a disability, or that an electronic hearing will likely cause you significant prejudice and result in an unfair hearing.

Who will be at the hearing?

- Usually, the SBT sends one Tribunal member to make the decision in your case.
- The Disability Adjudication Unit (DAU) at ODSP may send a representative to your hearing to argue that you should not qualify for ODSP benefits. This representative is a called a Case Presenting Officer (CPO).
- The SBT Member may allow you to have a support person with you during your hearing for moral support. If the SBT Member allows this, that person is not permitted to speak or give evidence to the SBT. If your support person speaks during the hearing, they may be asked to leave.
- If required, an interpreter (this should be requested when you file your appeal).

GOING TO YOUR HEARING

What happens at the hearing?

You will talk about and be asked questions about the medical conditions your doctor verified in your ODSP application. You will need to answer questions about how your conditions affected your daily life around the time of the Director's Decision. The "points to consider" (**pages 7-13**) section of this handbook will help you prepare for this.

The SBT is able to change the decision to deny you ODSP benefits. The Tribunal has the answer this question:
"Did this person qualify for ODSP on the date the DAU said 'no'?"

The SBT Member will decide whether you met the legal test to get ODSP benefits. You do not need to show that you could not function at all. The legal test is "substantial" not "severe". The Tribunal Member will want to hear about your activities of daily living: personal care, participation in the community and workplace.

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GOING TO YOUR HEARING

Hearing Introductions

At the beginning of the hearing, the SBT Member will introduce themselves and ask for the names of all the people at the hearing. They will then explain how the hearing will proceed. They will also confirm your mailing address because they send their decision by mail.

Next, the SBT Member may give a brief overview of the SBT's role and explain that they are separate from ODSP. The SBT will make sure that they have all the documents sent to them by you and by ODSP. You should have a copy of these documents in front of you as well.

Preliminary Matters

After the introduction, the SBT Member will deal with any "preliminary matters" before hearing your case. Some examples of preliminary matters are: requests for adjournments, new evidence, late filing of the Notice of Appeal, or ODSP objections to medical evidence.

Adjournment Requests

Most adjournment requests can be made before the hearing date. You may only ask for an adjournment if you have a very good reason why you cannot make the hearing date. Adjournments are only given under certain circumstances. Hearings will not be rescheduled because of delays in seeking legal assistance, or to obtain further medical reports. If the adjournment is denied, the hearing will go ahead.

GOING TO YOUR HEARING

Presenting your case

After the preliminary matters are over, the SBT Member will want to hear from you and your witnesses (if any). You will be asked to promise to tell the truth.

The main part of the hearing will involve you giving testimony/evidence about your medical conditions and impairments (symptoms) and how they affected you on a daily basis. This is your chance to talk about each of your verified medical conditions, how serious (or substantial) they are, and the impact of your conditions on your daily activities. Your treatment will also be discussed.

After you are finished giving your evidence, you may be asked more questions. If a CPO is in attendance from the DAU, they may also ask you some questions.

If you do not understand a question, tell the SBT Member who will try to help you understand. If you do not know the answer, tell the SBT Member that you do not know. Don't worry if it takes you a moment to think about your answer.



GOING TO YOUR HEARING

Summarizing your case

Before the hearing ends, you will have a chance to summarize your case and to briefly tell the SBT Member why you think you are a person with a disability.

When you are done with your summary (or if you choose not to make a summary), the CPO from the DAU (if there is one) will also have a chance to summarize and say why the DAU thinks you are not a person with a disability.

This will conclude the hearing.

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THE DECISION

The Social Benefits Tribunal does not give its decision at the hearing.

The Tribunal Member will consider the medical evidence provided as well as your oral testimony and will issue a written decision.

A copy of the decision will be mailed to you within 60 days.

Please contact our office when you receive your decision.

What happens if I win my appeal?

If you win your appeal and you are found "to be a person with a disability", your local ODSP office will contact you within a few weeks to open your file.

You will receive retroactive benefits dating back to the date you were originally denied ODSP.

What happens if I lose my appeal?

You will not be eligible for ODSP benefits and you can reapply at anytime.



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