

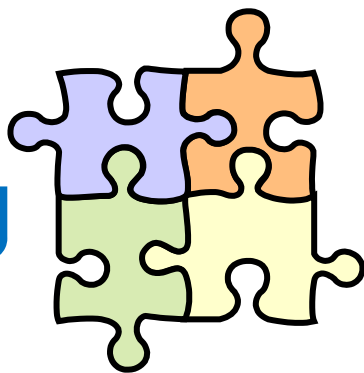
Preparing

for your

ODSP Hearing

What to expect

What to talk about



April 2016



Hamilton Community Legal Clinic
Clinique juridique communautaire de Hamilton



Contents

Part 1 Getting Ready for your Hearing

What do I need to prove?.....	3
Make some notes.....	3
Think about these points.....	4
Questions and Examples.....	5-9

Part 2 Going to your Hearing

Going to your hearing.....	10
If you are late or cannot attend.....	10
What do I bring to the hearing.....	11
Who will be there?.....	11
At the Hearing—The Hearing Room.....	12
Interpreters.....	12
What happens.....	12
Introductions.....	13
Preliminary Matters.....	13
Adjournment Requests.....	13
New Evidence?.....	13
Notice of Appeal Filed Late?.....	14
Presenting your case.....	15
Summarizing your case.....	15
The Decision.....	15

Part 1 Getting Ready for your 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 “person with a disability”. This means that an approved health professional, such as a doctor, confirms that:

- You have a physical or mental health problem that is expected to last one year or more, and
- Your health problem limits your ability to work, look after yourself, or do daily activities at home or in the community.

The law also says that **your health problems must be substantial and must limit your abilities in a substantial way.**

The Social Benefits Tribunal (SBT) will decide whether you have proven your case based on the medical evidence and your testimony (i.e. your telling of your story).

IMPORTANT: The SBT likely has strict rules, such as rules regarding the submission of evidence, and prior notification regarding witnesses for your hearing. Please contact your local community legal clinic for advice regarding those rules.

MAKE SOME NOTES Make note about the things you want to say. Keep them short and in point form, this will help you remember.

- √ Don’t expect to be able to read your notes at the hearing.
- √ This is part presentation and part conversation.
- √ Be honest and give details about your health problems.
- √ Don’t hold back but do not exaggerate. Use 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; This is the **Date of the Director's Decision**:



(write the date here to help you remember)

Focus on how your conditions affect your ability to participate in the **community, workplace and your personal care.**

Think about these points when you are making your notes:

- What were the symptoms? what you are now taking and that you regularly take your medications as prescribed.)
- 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 or Emergency because of them?
- Have you used any assistive devices (for example, a cane, back support, bars in the bathtub, etc.) Did your doctor prescribe them?
- What medications were you taking at the Date of the Director's Decision? (You might bring a printout of 2 years of your medications from your pharmacy to show
- If you stopped taking medication, tell the Member why (for example, if there were bad side effects, etc.)
- What doctors did you see? Any specialists? How often did you see them? Are you being referred to other specialists?
- Describe your worst day at a time around the date of the Director's decision
- Rate your physical well-being on a scale of 1 to 10 with 1 being fine and 10 being the worst

Questions and Examples that may

be important in your case. **You can use the check boxes to mark off what is important to you and use them for your notes.**

REMEMBER to focus on the effects of medical conditions that have been verified by your doctor, as the Social Benefits Tribunal will only consider the effects of those conditions.

Pain – If one of your problems is with pain, give the Member some details such as:

- Where exactly is your pain? Start at your head and work down to your toes.
- How bad is it? Describe the pain (i.e. on a scale from 1 – 10, sharp, shooting, burning....)
- Is it constant? How often do you feel the pain?
- Is it sometimes worse? When?
- Do you wake at night because of the pain?
- Are you ever confined to bed / house because of the pain?
- Has your pain been getting better or worse over time?
- What are your limitations because of your pain?
- Does the weather affect your pain?

Sleep – If your medical conditions cause you to have problems sleeping, describe:

- How well do you sleep?
- How long do you sleep before waking?
- How many times a night do you wake up?
- Why do you wake up?
- How do you feel in the morning? Rested or still tired?

Questions and Examples

Continued

Mobility If you have any problems with mobility, describe:

- Walking (How far? Then what happens?)
- Standing (How long? Then what happens?)
- Sitting (How long? Then what happens?)
- Getting out of a sitting position, or sitting down (What happens?)
- Bending (How far? Then what happens?)
- Climbing or going down stairs (How many steps? What happens?)
- Extending arms over head or in front of you
- Kneeling

Personal Care

If you have problems with personal care, describe:

- Eating
- Hygiene and toileting (brushing hair, teeth, washing hands, etc.)
- Dressing
- Bathing and showering
- Cooking

House-chores

If you have problems doing house-chores, describe:

- House cleaning (washing dishes, vacuuming, scrubbing floors, cleaning the bathroom, mopping, making beds, etc.)
- Laundry
- Preparing meals

Children – If you have children, describe:

- Do you need help with looking after them?
- Taking them to school and picking them up
- Are you able to Help them with homework, etc.

Other – If you have problems with any of the following, describe:

- Use of your hands or fingers (to write; pick up small items, etc.)
- Carrying things
- Driving or taking public transport
- Pushing / pulling (for example, grocery cart)
- Going shopping
- Handling personal finances
- Vision
- Hearing
- Speaking
- Memory
- Concentration & attention
- Comprehension/ Understanding
- Problem Solving
- Dealing with stress
- Balance, Dizziness
- Breathing
- Confusion

Intellectual / Emotional Health – If you have difficulties with your mental health, describe:

- Feelings of sadness (Do you cry often?)
- Feelings of stress / anxiety
- Depressed mood
- Impact of feelings on your social life, ability to work
- Loss of interest in activities

Questions and Examples

Intellectual / Emotional Health

Continued – If you have difficulties with your mental health, describe:

- Does it affect relationships with family? Do you have friends?
- Do you feel uncomfortable going places by yourself?
- Do you spend most of your time alone and at home?
- Do you have anxiety meeting people? Do you avoid social interactions?
- How do you feel about yourself?
- How do you feel about your health and medical conditions?
- Thoughts of suicide / self-harm
- Forgetfulness / Lack of attention span (Give examples)
- Impact of feelings on appetite, ability to sleep (insomnia, awake for long hours)
- Any medications you are taking (for example, anti-depressants or sleeping pills) and whether your dosage has increased
- Obsessive thinking like worrying a lot or thinking too much about problem(s)
- Do you experience sensory problems (for example, hearing voices, hallucinations, delusions, etc.)
- Panic attacks
- Difficulty focusing or organizing information
- Poor impulse control, doing things without thinking
- Poor attention span
- Difficulty with learning / processing information

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

- Do you have any hobbies or activities that you used to do that you have had to stop?
- Have there been changes in your social life or relationships in your community because of your medical conditions?
- Do you go 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 treatments have you undergone? Were they effective?
- Did you go for physiotherapy? How long? How frequently? Did it help?
- Are there any treatments that were suggested but that you could not afford to pay for?
- Do you have addictions? Are you dependent on substances such as drugs or alcohol? (Addictions are to be considered in the same manner as other conditions)
- Do you have problems playing with your children or going to places like the park?

NOTES: _____

Part 2

Going to your Hearing

The Hearing Date



It is important that you go to your hearing.

The date and time is on your Notice of

Hearing that was sent to you in the mail. 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 a reasonable explanation, you may lose your appeal, and you may not be able to file an appeal to the Social Benefits Tribunal (SBT) for 2 years. Under special situations, you may submit a request for a delay/postponement/adjournment of your hearing.

On the date of your hearing, you should arrive a little early. Be prepared to wait for the SBT Member to call you for your hearing. If you are late, the SBT could dismiss your appeal. You **must** attend your hearing in person at the Social Benefits Tribunal (SBT).

Important

If you are going to be late or cannot get to your hearing due to special situations, you **MUST** phone the SBT right away. They may be able to make other arrangements for you. The Social Benefits Tribunal toll free phone number is:

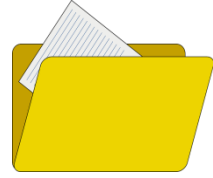
1-888-256-6758

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.

What do I bring to the hearing?

It is very important to bring **ALL** of your paper work to the hearing. Please keep your papers together provided by the legal clinic.



Please bring:

- Notice of Hearing
- All medical documents, reports and lab reports submitted to the Social Benefits Tribunal (SBT) and the Disability Adjudication Unit at ODSP (sometimes referred to as the DAU) before your hearing. Bring your prescription printout and your current medications in their bottles.
- The Submissions of the Director of the Ontario Disability Support Program.
- Your notes of what you want to remember to tell the Social Benefits Tribunal Member.

If your appeal was submitted late, please bring any supporting evidence that explains why you could not file your appeal on time (*Please see section “Preliminary Matters” on page 13 for more information*).

Who will be there?

- Usually the SBT sends one Tribunal Member to make the decision in your case.
- The Disability Adjudication Unit at ODSP may also send someone to your hearing to argue that you should not qualify for ODSP benefits.
- The Member will usually allow you to have a family member, friend or support person at your hearing for moral support. If the SBT member lets you have a friend or relative stay with you throughout the hearing, that person is not permitted to speak or give evidence to the SBT. **If you want someone to give evidence, be a witness**, you will need to follow the SBT rules (see page 3 of this guide and contact the legal clinic). Your witness will have to wait outside of the hearing room until it is time to give evidence. **11**

AT THE HEARING

The Hearing Room

A hearing at the Social Benefits Tribunal (SBT) takes place in the room written on your Notice of Hearing. In the hearing room, there is a table and everyone sits around it. The hearing room is not as formal as a courtroom. It looks like an office boardroom. The hearing is private. If there is an interpreter present that person is required to keep everything said at the hearing confidential and private.

Interpreters

Hearings before the SBT are conducted in English and French. If you do not speak and understand English or French, you must have an interpreter at the hearing. When you filed your appeal you should have requested an interpreter for the language you speak, then the SBT will arrange interpreter services for you.

What Happens

You will talk about and be asked questions about the medical conditions your doctor listed as important. The questions will ask you to explain how they affect your daily life.

The Tribunal (SBT) is able to change the decision to deny you ODSP benefits. The Tribunal has to answer the question: Did this person qualify for ODSP on the date the Ministry said “no.”

The questions are asked by the Member of the Social Benefits Tribunal who will decide whether you met the legal test to get ODSP benefits when the Ministry said you did not. You do *not* need to show that you could not function at all. The legal test is “substantial” not “severe.” The Tribunal Member wants to hear about your problems with activities of daily living: ***personal care, participation in the community and workplace.***

Introductions

At the beginning of the hearing, the SBT member will introduce him or herself and ask for the names of all the people at the hearing. The SBT member briefly explains how the hearing will proceed. The SBT member will confirm the mailing address where they will send the decision about your appeal.

Next, the SBT Member may give you a brief description of the SBT's role and that it is separate from ODSP. The SBT Member will make sure that they have all the documents sent to the SBT by you and by ODSP.

Preliminary Matters

Next 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. (Contact our office if you require further advice on requesting an adjournment). 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.

New Evidence?

If you have **medical documents** that you were unable to submit 30 days before the hearing, you should get legal advice before submitting those documents. If you were advised to do so, you should bring two extra copies of the documents with you, for the Tribunal and the DAU/ODSP, if present. The Member will then decide if they will consider the additional medical evidence.

Explain why you could not get the medical reports sooner.

AT THE HEARING

Continued

Notice of Appeal 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. You are asking the SBT to hear your case even though you have a **late appeal** (after the 30-day deadline in your Internal Review decision letter).

Tell the SBT Member 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: language barrier, reading (literacy), you had difficulty understanding the appeal process.
- You had difficulty for reasons related to your disability. You would like 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. Bring evidence to support your request for an extension (for example, proof of hospitalization if you were sick when the decision was mailed). Or if you have memory problems that affected your ability to submit your appeal on time, you may provide a medical note.

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.

Presenting Your Case

After the preliminary matters are over, the SBT Member will want to hear from you and your witnesses. 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 affect you on a daily basis. This is your chance to talk about each of your medical conditions, how serious (or substantial) they are, and the impact of your conditions on your daily activities.

After you are finished giving your evidence, you may be asked more questions. If a Case Presenting Officer is there from the Disability Adjudication Unit (DAU/ODSP), they may also ask 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.

Summarizing Your Case at the End of the Hearing

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. If you are with the 'Guided Self Help Assistance Program' at Hamilton Community Legal Clinic, you will have received an "Appellant's Submission" that you can either refer to as you summarize or simply ask the SBT Member to read it later instead. When you are done with your summary (or if you choose not to make a summary), the representative from the DAU (ODSP) (if there is one) will also have a chance to summarize and say why the DAU (ODSP) thinks you are not a person with a disability.

The Decision

The Social Benefits Tribunal does not give its decision at the hearing. The Tribunal Member reviews the evidence after the hearing and issues a written decision. A copy of the decision will be mailed to you, usually within 60 days.

Please contact our office when you get your decision 15

This booklet is intended to be used as part of Hamilton Community Legal Clinic’s Guided Self-Help ODSP process and in combination with the video “Getting Ready for the Social Benefits Tribunal”.

**The video
“Getting Ready for the Social Benefits Tribunal”
is available at**

www.hamiltonjustice.ca

(Go to “Our Legal Services”, then “Ontario Disability Support Program”) or contact:

Hamilton Community Legal Clinic

**This booklet is available in other languages.
Please contact Hamilton Community Legal Clinic
for a list of those languages.**



Cet outil est également disponible en français

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