

ODSP Denied: Navigating the Social Benefits Tribunal

Speakers:

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Thursday, July 4, 2024

12-1:30 pm

What can you expect today?

90 minutes in total (presentation and Q+A)

This webinar may contain legal information, not legal advice.

The information is current as of today's date July 4, 2024

Recording and slides will be sent out afterward.

ASL Interpretation is available today. Subtitles (closed captioning) have also been enabled.

Land Acknowledgement

CLEO's work takes place across the home and traditional territory of the Mississaugas of the Credit, the Haudenosaunee, and the Wyandot peoples, on land that many of us know as Ontario.

As we provide legal information today, we acknowledge the ongoing impact of colonization and anti-Indigenous racism, built into our laws and legal systems, resulting in deep and harmful inequality for Indigenous Peoples of every generation.

We also recognize the incredible amount of work and leadership that Indigenous Peoples contributed to the Calls to Action in the Truth and Reconciliation Commission report calling for Equity for Indigenous Peoples in the Legal System.

Overview of presentation

Steps to Proving Disability

- Step 1: Applying for ODSP
- Step 2: Challenging Decisions
 - Questions
- Step 3: Preparing for the Hearing
- Step 4: Participating in the Hearing
 - Case Study
 - Questions
 - Abbreviations

Fact Check - True or False?

Only a doctor can complete the Disability Determination Package (DDP)?



The **Health Status Report (HSR)** and **Activities of Daily Living Index (ADLI)** can both be completed by a NP, RN, optometrist, psychologist, psychological associate.

The **ADLI** can also be completed by a RSW, chiropractor, physiotherapist, occupational therapist, audiologist, speech language pathologist.

Reports and letters from these specialists are useful!

Fact Check - True or False?

Once an ODSP application is denied, it is unlikely the decision will be reversed on appeal.



Many ODSP cases are resolved through the appeal process. For example, from January - March 2024, 32% of appeals resolved at the DAU based on additional medical evidence. Of the cases that did proceed to a hearing at the SBT, approximately 58% were successful.

Step 1

Applying for ODSP

Step 1

The Application - Financial

There are 2 components to the application:

- 1) Financial assessment of benefit unit.

Social assistance application

Menu

Apply for Ontario Works or Ontario Disability Support Program

If you need support with money for food and housing and/or if you have a disability and are in financial need you can apply for **Ontario Works** or **Ontario Disability Support Program** through one simple application.

Start a new application



Assessment of Disability

2) Assessment if someone is a “person with a disability” or member of a prescribed class.

Tip: A person does not have to prove they have a disability if they already:

- receive federal CPP-D or Quebec Pension Plan Disability benefits
- are 65 or older but don't qualify for Old Age Security (OAS)
- are eligible for Developmental Services Ontario (DSO)
- live in certain types of institutions, such as a mental health facility or a home for people with developmental disabilities

Definition of Disability

There are four key qualifications under the ODSP legislation for a person to be found to be disabled:

- Medical condition with **substantial** impairments (symptoms)
- These symptoms cause **substantial** restrictions to day-to-day life (with personal care, in the community or at the workplace)
- Expected to last one year or more
- Verified by a medical professional in the approved categories

Applicants must send a Disability Determination Package (DDP) to the Disability Adjudication Unit (DAU) to prove the above qualifications

Supporting Clients to make Strong Applications

A. Connect to Medical Supports

- Support your client to find a health care practitioner
- Attend medical appointments → Request referrals to specialists/imaging, development of treatment plans
- Inform your client about free health care services (OHIP covered physiotherapy, online CBT programs)
- Assist with language and cultural interpretation
- Address medical racism
- LGBTQ Clients - Are they receiving competent care?
- **Remember:** Your clients are experts in their own care.

Supporting Clients to make Strong Applications

B. Facilitate the completion of the DDP

- Help the client to identify who will complete the application
- Encourage the client to meet with the health care provider to complete the application and to show them the self report
- Encourage the client to share all medical conditions, including mental health, substance use and developmental and learning issues
- Make sure the health care provider has recent consults and test results, ask that they be attached
- Keep a copy of the completed DDP

Supporting Clients to make Strong Applications

C. Support your client with the Self-Report

- Understand the self report is unique to each client
- Empower your client to decide if they will complete the self report and what help they need to complete it
- Be concrete in describing specific impairments and restrictions
- Make sure to clarify/contextualize the medical evidence

Common Hurdles

- Missing verification information (such as duration of one year)
- Incomplete applications leave out key health conditions
- ADLS and IEWS scores that do not reflect functional limitations
- Lack of treatment
 - No physio, no meds, no therapy, etc.
- No specialist reports
 - No imaging, psychiatric reports, blood results, etc.
- Lack of detail to support a finding of substantial impairment

Step 3

Approximate Appeal Numbers 2023-2024

ODSP applications	31,658
DAU <u>granted</u>	17,011
DAU <u>granted</u> at IR	424
SBT appeals	6,352
DAU <u>settled/granted</u>	2,032
SBT <u>granted</u>	2,419

On average, over **two thirds** of appeals are granted.

***DAU** – Disability Adjudication Unit – they review the DDPs and are the Respondent in appeals

****SBT** – Social Benefits Tribunal – Tribunal that hears all ODSP and OW appeals

Step 2

Challenging Decisions

Connecting to your Legal Clinic

- All general service community legal clinics have expertise in ODSP appeals and provide free legal services
- Legal clinics may offer differing level of services depending on their community needs and resources:
 1. Full representation

Legal Rep Role: Attends hearing with the client, may submit written legal arguments
 2. Self-Representation Preparation

Client attends the hearing on their own
 3. Summary Advice

Step 2

Connecting to your Legal Clinic

If a client wants to appeal an ODSP decision, encourage them to seek help right away from the legal clinic!

TIP: Even if the deadline to file an internal review or an appeal has passed, the legal clinic still may be able to request an extension of time and get the case back on track.

Step 2

Internal Reviews



Income Assistance

How to appeal a decision about ODSP

Step 1 • Internal review

- 1 Ask for the decision in writing
- 2 Ask for an internal review (IR) Within 30 days of getting the decision, ask for an IR by **writing a letter to the Ontario Disability Support Program (ODSP)**.
- 3 Contact your local community legal clinic for help Find your local community legal clinic by **entering your postal code**.
- 4 Get the IR decision

Appeals

Step 2 • Appeal and hearing

1

Send your Appeal Form to the Social Benefits Tribunal (SBT)

Contact the SBT to get an **Appeal Form**. You don't have to wait for the decision about your IR to start the appeal.

Deadline to send in your Appeal Form:

- If you get the IR decision within 30 days of asking for an IR, the deadline to send in your Appeal Form is **30 days** after you get the decision.
- If you don't get the IR decision within 30 days of asking for an IR, the deadline to send in your Appeal Form is **60 days** from the date you asked for the IR.

The SBT sends you a **confirmation letter** to say they got your Appeal Form.

QUESTIONS?

Fact Check - True or False?

The people who decide hearings at the Social Benefits Tribunal (SBT) are called Members. Most Members at the SBT have professional medical backgrounds.



Members have a broad range of backgrounds, including lawyers (clinic, private, corporate), social workers, professors, as well as former probation officers and police.

Most do not have medical backgrounds.

Fact Check - True or False?

A client can have both an ODSP application and an appeal open at the same time (so two ODSP applications are active at once).



Sometimes a clinic will recommend that the client start a new application if the appeal is not likely to succeed or if the symptoms and restrictions have gotten significantly worse.

Clients can apply for ODSP as many times as they want. They can reapply immediately after being denied, there is no wait period.

Step 3

Preparing for the Hearing

Key Appeal Activities

1. The client will meet with the legal clinic to review their file.
2. Additional medical evidence requested and submitted to the SBT and DAU.
3. If the case does not settle upon the DAU's review of this evidence, the clinic will typically assist the client to prepare for hearing.
4. The client will attend their hearing with or without a representative. Most hearings are conducted through zoom video or teleconference. In person hearings can be requested as an accommodation.
5. A decision will be issued by the SBT within 60 days.

Working with Legal Clinics

- Attend legal appointments
 - Fill in gaps in history
 - Assist with language and cultural interpretation
 - Request accommodations (clinic and Tribunal)
 - Support a trauma-informed process
 - Indigenous clients - are they eligible for a Gladue Brief? Are they using traditional medicine?
 - Developmental Disabilities - Did they attend special education classes?
- Assist with case management of legal file
- Write a letter of support relevant to the date of decision.
- Assist with hearing

Step 3

Useful Content in Letters

1. Your role, the length of involvement with the client and support/treatment provided
2. Your observations of the client's health status and restrictions at the time of the Director's Decision
3. Any contextual factors to explain the client's particular situation (barriers to treatment, impact of poverty, personal factors and history)
4. Sign and date the letter and put it on agency letterhead

Step 4

Participating in the Hearing

Step 4

During the Hearing

Witness: You provide evidence that can contribute to legitimacy, medical context/timelines, whole person

- Registered social workers can speak to restrictions on ADLs
- *Risks:* Contradicting what the client says and bringing their credibility into question

Support Person: You are in the room with the client, but cannot speak during hearing.

Host hearing at your office: Set up client on phone/Zoom

Step 4

After the Hearing

- Provide trauma-informed support - hearings are emotional
- Help your client understand next steps:
 - New ODSP application
 - Transfer to ODSP

Step 4

Case Study - Ramone

You have been Ramone's caseworker for 5 months and you see him weekly. He received an ODSP denial letter two months ago.

You helped him request an internal review and he was denied again this week. In the application, the doctor verified his addiction to opiates and confirmed that he is taking methadone, with carries two days a week.

He also experiences depression, anxiety and back pain, but the doctor did not talk about this. Also, there are no referrals for a psychiatrist or imaging. His legal clinic is 1.5 hours by transit.

How do you help him?

Case Study – Possible Supports

Medical:

- ✓ Ask doctor to make referrals for imaging and specialists: pain clinic (be mindful of substance use), imaging, psych assessment
- ✓ Assist with requesting medical records from family doctor, methadone office, pharmacy

Case Study – Possible Supports

Legal:

- ✓ Refer to legal clinic for assistance with appeal
- ✓ Offer/ensure appropriate accommodations
- ✓ Help fill in medical history with clinic
- ✓ Write letter of support
- ✓ Offer to host hearing in your office, if client needs private space

QUESTIONS?

Common Abbreviations

- **DDP** – Disability Determination Package – The ODSP application completed to assess for disability (does not include financial assessment)
- **DAU** – Disability Adjudication Unit – they review the DDPs and are the Respondent in appeals
- **SBT** – Social Benefits Tribunal – Tribunal that hears all ODSP and OW appeals
- **CPO** – Case Presenting Officer – representative for ODSP
- **Date of Director's Decision** - the date of the initial DAU denial decision

Steps to Justice Legal Information

Income Assistance

- [Ontario Disability Support Program \(ODSP\)](#)
- [Appealing a Decision about ODSP](#)
- [What happens at a Social Benefits Tribunal ODSP Appeal?](#)
- [How do I prepare for an ODSP hearing at the Social Benefits Tribunal?](#)
- [I gave my ODSP appeal for to the Social Benefits Tribunal. Now what?](#)

CLEO Tools and Resources

- [How to appeal a decision about ODSP – FACTSHEET](#)
- [How to appeal a decision about ODSP - flowchart](#)
- [Write a letter to ask ODSP for an internal review - letter-writing tool](#)
If you don't agree with a decision from the Ontario Disability Support Program (ODSP) and want them to change it, you must ask ODSP for an "internal review". This tool creates a letter you can send to ODSP to ask for an internal review.
- Steps to Justice has [more information about internal reviews](#)



CLEO Connect
Training and tools for community workers

CLEO Webinars on ODSP

- [Navigating the Ontario Disability Support Program \(ODSP\): Part 1: Income and Reporting Obligations](#)
- [Navigating the Ontario Disability Support Program \(ODSP\) Part 2: Eligibility and the Application Process*](#)

*Please note there is an updated application process: you can now apply online for OW or ODSP. [Apply for OW or ODSP through this online application.](#)

Community Resources

- [Tips for Requesting a Change in Hearing Format at the Social Benefits Tribunal](#)
Income Security Advocacy Clinic. The information in this tip sheet is for individuals who have a hearing date with the Social Benefits Tribunal, and who want to change the format of their hearing.
- Prosper Canada: [ODSP Appeal Graphic](#)
- [Disability Justice Network Ontario](#)
- [Disability Justice 101: Educational Series](#) The Disability Justice 101 Organizing Series is an educational program designed by the Youth Action Council. The series consists of different educational topics that are centred around disability justice.

Community and Legal Resources

- [Find your community legal clinic](#) – 1-800-668-8258
- [ARCH Disability Law Centre](#) (Specialises in disability rights law)
- [Income Security Advocacy Centre](#): a specialty legal clinic dedicated to meeting the needs of low-income Ontarians for legal services to address systemic issues in respect of income security programs.
- **Legal Aid Ontario** [How do I apply for Legal Aid?](#) Call Monday to Friday, 8 a.m. to 5 p.m.
 1. [416-979-1446](#) (Greater Toronto Area)
 2. [1-800-668-8258](#) (toll-free)
- [Justice Net](#) is a not-for-profit service helping people in need of legal expertise, whose income is too high to access legal aid and too low to afford standard legal fees.

Community and Legal Resources

Specialty Legal Clinics:

- [Aboriginal Legal Services \(GTA\)](#)
- [BLAC](#) is a clinic that combats individual and systemic anti-Black racism by conducting research, engaging in structural transformation, and providing legal services to members of Ontario's Black communities.
- [The 519 Legal Advice Clinic](#) - for 2SLGBTQ+ communities offers one-time free legal advice consultations by a roster of pro-bono volunteer lawyers. Consultations are by phone or video conferencing.

Government Resources

- [Tribunals Ontario: The Social Benefits Tribunal](#)
- [Social Benefits Tribunal: Videos and FAQ's](#)
- [Social Benefits Tribunal: Appeals and Hearings Process](#)
- See this updated application process: you can now apply online for OW or ODSP. [Apply for OW or ODSP through this online application.](#)
- [Find your MPP here.](#) Call or write your MPP for support with an ODSP issue.
- [Tribunals Watch Ontario](#)

Campaigns for Change

- [Raise the Rates Campaign](#): Too many people have been legislated into poverty. We have the ability to provide everyone in this province with enough to live with dignity. Raise the Rates is a grassroots anti-poverty campaign to mobilise a movement and pressure the government to live up to that promise. Join us!
- [ODSP Action Coalition](#): Advocacy group led by people with lived experience of ODSP advocating for improvements to the income and supports available to people with disabilities.
- [Tribunals Watch Ontario](#) Tribunal Watch Ontario is a public interest organization with a mission to monitor Ontario's judicial tribunal system, advocate for adjudicative independence, and promote access to justice.

Indigenous Education and Resources

Calls to action: Truth and Reconciliation

- [Truth and Reconciliation Commission of Canada: Calls to Action](#)
- [Income Security: A roadmap for change \(October 2017\)](#)
- [Settlers Take Action](#)

Support

- [Survivors Secretariat – recovery, reclamation and revitalization](#)

Education

- [Indigenous Canada - Free Course](#)
- [Whose Land?](#)

Learn about where you are situated, information for land acknowledgements and learn about the treaties and agreements signed across Canada (Turtle Island).

Thank you for joining us!

Subscribe to [CLEO Connect](#) for updates on new legal information and upcoming webinars.

Steps to Justice – [Steps to Justice](#)

Contact me! Karen Dick at CLEO
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