



Community Advocacy & Legal Centre

# APPEALING TO THE SOCIAL BENEFITS TRIBUNAL

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## **How can I appeal a decision to the Social Benefits Tribunal?**

You must first object to the decision by sending a "request for internal review" to the decision-maker. If you are still denied on the Internal Review, you can then appeal to the Social Benefits Tribunal. To find out more about objecting to a decision, visit the [Internal Review FAQ page](#) and the [Appeal FAQ page](#) of the [Social Benefits Tribunal](#) website or go to CLEO legal education website and view a copy of their pamphlet, "[Appeals and Internal Reviews](#)."

You can get a copy of the [Appeal Form](#) from the Social Benefits Tribunal or from the legal clinic. We have attached a copy of a blank appeal form to this document.

## **What do all these names mean?**

**Appellant:** You are called the Appellant as you are the one filing the appeal.

**Respondent:** The Respondent will either be the Social Services Department (if you are appealing an Ontario Works decision) or the Ministry of Community and Social Services (if you are appealing the decision of the Disability Adjudication Unit (DAU) or the Ontario Disability Support Program (ODSP) office).

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Your community legal clinic

**Case Presenting Officer (CPO):** The person who represents the Respondent is called the CPO. Sometimes there will be a CPO at the hearing and sometimes not. S/he is responsible for responding to your case and may ask questions of you or your witnesses.

**Social Benefits Tribunal (SBT):** This is a government agency that is separate from the Social Services Department and the DAU or ODSP. Your Client Services Representative works for the SBT. The Tribunal member who hears your appeal also works for the SBT but is appointed by the government.

**Client Services Representative (CSR):** This is the person assigned to your appeal once it is filed with the SBT. You should contact this person if you need interim assistance, if your interim assistance has expired and needs to be renewed, or you may have problems with the scheduled hearing date.

**Interim Assistance:** This is financial support you can request pending your appeal being heard or decided. You usually ask for it on the original Appeal Form. If you lose your appeal, you will have to pay this money back.

**Tribunal Member:** This is the person who hears your appeal and makes the final decision in your case.

### What happens after I file my appeal?

Within a month, you should receive a letter from the SBT saying they have received your appeal. The letter will include the name of your Client Services Representative (CSR) and a telephone number where s/he can be reached.

If you don't get this letter, you should call the SBT to make sure they did get your Appeal Form.

If you requested interim assistance, you should receive an Order for Interim Assistance in the mail. You then call the office you are dealing with (Social Services Department or Ministry) to ask when you can expect to receive the money. They should have received their own copy of the Order from the SBT.

Take special note of how long the Interim Assistance Order is for. You will have to renew it at least two weeks before it expires if your hearing has not yet been held or there has been no decision in your appeal. Contact your CSR to renew it.

### What if the SBT refuses to order Interim Assistance?

You can contact your CSR to ask to have the decision reviewed. Or you can contact the legal clinic.

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What if the Social Services Department or the Ministry won't pay me the Interim Assistance?

You should contact your CSR to ask for help, or your Member of Provincial Parliament's (MPP) constituency office or the legal clinic.

### **What happens next?**

In all cases, you should get a package of materials from the Respondent. It is usually called the "Submission to the Tribunal". This package will include the reason for the decision under appeal, supporting documents and, usually, the legal position of the Respondent.

If you are appealing a decision of the Disability Adjudication Unit that you are not entitled to benefits as a disabled person the package will come from them. It is a good idea to have this Submission reviewed by a lawyer or the legal clinic, even if you are not being represented by them on your appeal. They can explain what all the documents mean, and advise you on what other evidence you should gather to make your case.

### **When will my case be heard?**

Several months after filing your appeal, you should get a Notice of Hearing. This is very important! It sets out the date, time and place of your appeal hearing. If you have a lawyer or the legal clinic representing you, you should call immediately to make sure your representative has also received a copy.

### **Do I need a lawyer at the hearing?**

You do not need to have an advocate or lawyer at your hearing. However, if your case is complicated or you do not feel you have the skills or understanding to represent yourself, representation by another person is a good idea.

**Please contact the legal clinic for help. If we can't help you, we can provide you with referrals to other places where you might be able to get help. At the very least, we can sit down with you and explain how to do your own hearing.**

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## **Is there anything else I should do to get ready for a hearing?**

It is often a good idea to get a copy of your file with the Respondent especially if you have an appeal on an issue like an "overpayment" or "failure to provide information". To request a copy of your file from the Respondent, [click here](#) for an example of a letter you could send. A small fee may apply of not more than \$5.00.

If you have trouble getting a copy of your file, you can complain to the [Information and Privacy Commissioner](#).

Depending on the type of legal problem, sometimes you will find information of interest in the file, particularly in the caseworker's notes.

## **How can I get evidence in before the SBT?**

Any documents that you want to file as evidence before your hearing have to be sent to your CSR at the SBT and to the Respondent's office. For medical evidence, it must be filed 30 days before the hearing. For other evidence, 20 days before the hearing is all that is required. If you do not do this, the SBT may refuse to accept your documents at the hearing. If the SBT member refuses to accept it, you should ask for an adjournment.

## **The Social Benefits Tribunal Hearing - Important things to know**

You should make sure you arrive a little early for your hearing. If you are late, the SBT could dismiss your appeal. If you are sick or the weather has prevented you from attending, you should make sure you have called your CSR.

If you do not attend your hearing, it will be dismissed. If your appeal is dismissed because you did not show up for your hearing you may not be able to appeal a similar decision for two years. Be sure you get legal advice if this has happened to you, as you may be able to ask for a "reconsideration" if there was a good reason why you missed the hearing.

The hearing will probably last between 1 and 1 ½ hours.

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## Who will be there?

Usually, the SBT sends one Tribunal member to hear your case and make the decision. The Respondent may send a CPO to your hearing to represent it.

You can also bring any witnesses who can give evidence to the SBT. It is a good idea to tell any potential witnesses about the issues for the hearing and make sure that the witness will tell the SBT important facts that will be helpful for your appeal. At the beginning of the hearing, all witnesses will be asked to leave the hearing room until they are called in to give evidence.

Also, the Tribunal member usually allows you to have a family member or friend at the hearing for your moral support. If the Tribunal member lets you have a friend or family member stay with you throughout the hearing, the friend or family member is not permitted to speak or give evidence to the Tribunal member.

## What is the hearing room like?

A hearing takes place in the room written on your Notice of Hearing. It should be in your local community. There is a table in the room and everyone sits at the table with the Tribunal member at the head of the table. It is not as formal as a courtroom and there is not a court reporter. It is a private hearing.

Hearings are held in community service agencies, municipal buildings, hotel meeting rooms or other suitable places. If you cannot afford to travel to your hearing, you can ask the SBT for financial assistance. If you are too ill to leave your home, a hearing can also be held in your home, in very special circumstances.

## What Happens at a Hearing?

### *Introductions*

At the beginning of the hearing, the Tribunal member will introduce him or herself and ask for the names of all the people at the hearing. The member will confirm the mailing address where s/he will send the decision about your appeal.

Next, the Tribunal member may give you a brief description of the SBT's role and that it is separate from the ODSP office. Usually, the SBT member will then make sure that s/he has all of the documents sent to the SBT by you and by the ODSP office.

Next, the Tribunal member will ask you to swear an oath to tell the truth or affirm.

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## *Preliminary Matters*

Next, the Tribunal member will deal with any "preliminary matters". For example, if you are asking for an adjournment, do this now.

If you have additional documents that you were unable to submit 20 days before the hearing, tell the Tribunal member now.

## **How do I present my case?**

After the preliminary matters are over, the Tribunal member will want to hear from you and your witnesses.

## **What do I have to prove? How do I prove my case?**

You must prove that the decision of the Director affecting your benefits was wrong.

The main part of the hearing will involve you giving evidence about why you believe that the decision of the Director was wrong. You can refer to the documents you sent to the SBT and Director and explain how they show the decision was wrong. You can give testimony about what really happened.

Before the hearing it is a good idea to prepare a brief written outline of the things you want to talk about during your hearing. This will help you make sure you don't miss any important facts because you were nervous. Long written notes that you simply read out at the hearing is not a good idea. Also the Tribunal member may not let you read your notes as evidence and your evidence may not be very convincing if simply read. It is best to keep your notes very short and in point form. You can even check them off once you have covered them.

After you are finished giving your evidence, the Tribunal member may ask you some questions. As well, if there is a CPO at the hearing, s/he may ask you some questions. If you do not understand the question being asked, tell the Tribunal member this. Hopefully then the Tribunal member will rephrase the question so it is easier to understand. Don't worry if it takes you a moment to think about the answer to a question. If you do not know the answer to a question, tell the Tribunal member that you do not know the answer.

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## **What do I do with my witnesses?**

If you have a friend or family member who can give evidence about why the Director's decision is wrong, s/he may be called as a witness. As said before, it is a good idea that your witness knows what the issues are for the hearing and make sure you know what evidence s/he is to provide to the Tribunal. It is a good idea to ask any potential witnesses what they would say at a hearing and decide if that evidence is really needed for your appeal.

## **The Director's Case**

After you are finished presenting your case, the CPO will have a chance to tell the SBT why the Director's decision was correct. Usually the CPO will refer to the Submission filed with the SBT by the Director. The CPO can call witnesses but this does not happen very often.

The Director may not send a CPO to the hearing. In that case, the Tribunal member will refer to the Director's Submission in considering whether the Director's decision was wrong.

## **Summarizing Your Case**

Before the hearing ends, you will have a chance to summarize your case and to briefly tell the Tribunal member why you think the Director's decision was wrong. It is helpful to have made up notes beforehand of your important points.

When you are done with your summary, the CPO (if there is one) will also have a chance to summarize and say why the Director's decision was correct.

## **When will the decision be made?**

Usually the Tribunal member does not give you a decision at your hearing. Instead, s/he has 60 days to write the decision which will be sent to you by mail. Sometimes it takes even longer than this. If it does, you might wish to complain to your Member of Provincial Parliament (M.P.P.) who can look into it. Or you may wish to complain to the provincial [Ombudsman's office](#).

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## What if I disagree with the decision?

You can ask for a "reconsideration" or appeal your case to the Divisional Court. You will need to get legal advice for this step. Time limitations apply so make sure you contact the clinic quickly! All "reconsideration" or appeal papers have to be filed within 30 days.

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**REMEMBER – YOU ARE YOUR OWN BEST ADVOCATE!!**  
***GOOD LUCK!!***

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\*(This tip sheet was adapted from materials originally created by the Grey-Bruce and Mississauga Legal Clinics. It has been revised and updated to November 2005.)

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