

TRIBUNAL WATCH ONTARIO

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December 1, 2020

Concern for the Future of the Social Benefits Tribunal

Tribunal Watch Ontario is deeply concerned about the rights of applicants for disability benefits to a fair and timely hearing, and the threat to the future of the Social Benefits Tribunal. The Ontario government's approach to appointments has caused turmoil and serious delays at the SBT. There are signals that indicate the government's imminent intention to eliminate or severely curtail the role of the Social Benefits Tribunal.

In May 2020 Tribunal Watch reported that the Social Benefits Tribunal was down to 21 full or part-time members from the 38 who were in place on April 30, 2018. Experienced members had not been re-appointed, including the respected Associate Chair. This trend has continued since May reducing the number of adjudicators even further.

This reduction in capacity has led to unacceptable delays in scheduling a hearing. The target prior to 2018 was 6 months from filing an appeal to hearing. That target was regularly met until the numbers of adjudicators began to fall. Under this government, even before the pandemic the wait time increased to up to 18 months. Currently, appeals filed in 2020 have yet to receive a notice of hearing.

What does the Social Benefits Tribunal Do?

The Social Benefits Tribunal hears appeals from people who have been denied benefits under Ontario Works or the Ontario Disability Support Program (ODSP). Appellants before the SBT are among the poorest and most vulnerable in Ontario. The vast majority of appeals are for denials of ODSP, and these appeals are critical to ensuring that people with disabilities can receive the benefits to which they are entitled.

The initial decisions for disability benefits are made by the Disability Adjudication Unit (DAU), a department within the Ministry of Community and Social Services. It handles a large volume of applications and decisions are based entirely on the application forms submitted by applicants for benefits.

That application form is outdated and does not request all the information required by DAU decision makers. It is typically completed by family doctors, and many of the questions are not consistent with language used by the medical profession. Though the form suggests that diagnostic reports be included, they are often not.

Anonymous claim adjudicators are often making decisions without comprehensive medical evidence, leading to incorrect denials. Although the DAU decision-makers have the authority to seek out more information, they rarely do. In stark terms, many people who would qualify if all relevant information were included in their application are denied. Despite the barriers that many applicants with severe disabilities face, they are expected to navigate this process on their own as the program does not provide any supports.

The appeal process before the SBT is essential to remedy a seriously flawed application process. Appellants frequently obtain assistance from community legal clinics to gather and provide additional medical evidence to the SBT, providing a fuller picture of their claim. It's also an opportunity for the applicant to tell their story on how their disability affects their daily lives.

Under this kind of system, it's not surprising that the SBT overturns a high percentage of decisions made by the DAU. The SBT's process is essential to ensure that the program meets its statutory objectives to provide effective support to persons with disabilities.

The Current Concern

Despite the real crisis occurring at the Social Benefits Tribunal, those who rely on it hesitate to raise concerns about the backlog for fear that government will use it as an excuse to change the hearing model. They fear the loss of appeal rights that are essential for a fair determination of eligibility for Ontario Works and ODSP benefits in Ontario.

In its 2019 report, the provincial Auditor General criticized the “lack of consistency of disability decisions between the Ministry and the Social Benefits Tribunal” – in other words, there was a high percentage of cases that are overturned. It has made that criticism in previous reports. It also criticizes the Ministry for an increase in the number of applicants to whom it granted disability benefits when it began to comply with SBT jurisprudence in 2017.

The Auditor General made the recommendation that the Ministry:

assess the suitability for ODSP of models for appeals in other jurisdictions and propose alternatives to the Ontario government for an appeals framework that enhances the consistency of disability decisions between the Ministry and the appeals body with the ODSP Act.

The model that is cited positively is the BC model that results in only 5% of decisions being reversed on appeal, compared to 60% in Ontario. That model has a much narrower jurisdiction than the SBT.

The Auditor General is wrong in their misunderstanding of the role of the first level decision makers and the appellate tribunal. Tribunals assess the evidence and apply the law, as interpreted by the courts, and the initial decision makers should follow the guidance from the Tribunal's decisions. If they do not, then it is not surprising that those decisions would be appealed and overturned.

Fixing the flawed application process would reduce the number of appeals. But even the best initial decision-making process requires a robust appeal process to ensure that programs are implemented according to the laws that govern them.

Instead of clarifying this to the Auditor General in its response to the recommendation, the Ontario government agreed with it. It committed to review appeal frameworks in other jurisdictions, and to have proposals by March 2021. There is very real concern that this government will point to the growing backlog and dysfunction at the SBT to justify the commitment it has already made to the Auditor General, and then replace the SBT with something less than a full and fair hearing on denial of benefits.

In the meantime, most appellants are left to languish on Ontario Works while they wait for their hearing, receiving \$707 in benefits per month instead of the \$1,169 ODSP benefit that they may be entitled to, leaving them in very deep poverty.

For more information, please see our previous Statements of Concern at:
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