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GTA

Delays at the Social Benefits Tribunal have tripled, leaving ODSP claimants in extended limbo

By **Brendan Kennedy** Social Justice Reporter

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Chad Waisanen says he feels as if his life is stuck in a demoralizing limbo, each day a little more desperate and hopeless than the last. For more than a year now the 33-year-old, who lives in Thunder Bay, has been trying to convince the provincial government that he qualifies for the Ontario Disability Support Program (ODSP), which would increase his income by \$436 per month.

He's one of a growing number of people enduring agonizing delays as their appeals now take triple the time they did prior to Doug Ford's Progressive Conservatives taking power.

While Waisanen waits, he's living on Ontario Works (OW), which, after his \$625 rent is automatically deducted, leaves him with \$112 for the rest of his monthly expenses.

So an extra \$436 would mean a lot. He figures it could be the difference between getting his life back on track and sinking into a deeper hole.

"It would give me the time to focus on myself instead of having to wonder where I'm going to get food next," he said in a phone interview.

Waisanen has been battling an addiction to alcohol, coupled with depression and anxiety, for most of his life. He has tried various treatments, but nothing has worked in a sustainable way. "I keep trying and trying and trying," he said.

He has a diploma in civil engineering technology, but every time he gets a job he can't hold onto it. In the summer of 2019, after losing a job in highway construction, Waisanen's family doctor convinced him to apply for ODSP. Waisanen says he was reluctant at first — he didn't think people with mental illness qualified — but eventually he agreed that the only way he was going to improve his health was if he focused on it full time.

"It's so hard to get yourself better because you can't just put your whole life on hold to do it, right? I want to work — I really do — but I can't do it if my health isn't in check."

That realization two summers ago marked the beginning of what has become a frustrating saga for Waisanen, whose case is now mired in its longest delay yet.

Although supported by his doctor, Waisanen's application was denied by the province. He then sought help from a legal aid clinic, which filed an appeal on his behalf to the Social Benefits Tribunal, a quasi-judicial body that hears appeals from people who have been denied social assistance.

Waisanen filed his appeal in June of last year. Since then, he hasn't heard anything. His hearing hasn't even been scheduled.

Before Ford's election, Waisanen's experience would have been exceptional. Now it's the norm.

“I have hearings that were filed in 2019 that are scheduled into the spring and summer of 2021,” said Sally Colquhoun, co-ordinator of legal services at Kinna-aweya Legal Clinic in Thunder Bay. “We’re talking about almost two years.”

In 2018, the tribunal routinely notified applicants of their hearings within 30 days, while the hearing itself was typically scheduled within six months. Now, thanks to a steady attrition of adjudicators whose vacancies have gone largely unfilled, wait times for hearings have stretched to 18 months and longer.

Colquhoun, who has been working at the legal clinic for more than 30 years, said none of the appeals the clinic filed in 2020 have hearings scheduled. Other lawyers interviewed for this story said the same thing.

The province says it’s aware of the delays and working to reduce the backlog.

Neither Tribunals Ontario’s Executive Chair, Sean Weir, nor Attorney General Doug Downey (whose portfolio includes tribunals), would be interviewed for this story. But their offices provided written responses to questions.

“We are committed to addressing these issues,” said Janet Deline, a spokesperson for Tribunals Ontario, adding that 13 new adjudicators were appointed in the past year.

There are currently 26 full or part-time adjudicators at the tribunal, down from 38 before Ford’s election. At some points last year there were fewer than half the usual complement of adjudicators.

A similar trend is occurring at other administrative tribunals, as documented by Tribunal Watch, a public interest group that monitors Ontario’s tribunals.

Brian Gray, a spokesperson for the Ministry of the Attorney General, said they are “making significant progress” towards recruiting additional adjudicators for the Social Benefits Tribunal.

“We are regularly working to ensure that tribunals are operating effectively, improving accountability, and serving people as efficiently as possible,” he wrote.

But lawyers who regularly appear at the tribunal and anti-poverty advocates are concerned that the Social Benefits Tribunal is being intentionally undermined by a government intent on reducing the costs of social assistance and the number of people who receive it.

The unfilled adjudicator vacancies are “not something that happens by accident,” Colquhoun said. “It’s either intentional or it’s due to incompetence.”

There are also growing fears the province is planning to eliminate the tribunal altogether and use the backlog as a pretext to justify its decision.

Advocates for the tribunal are worried the government’s embrace of the 2019 Auditor General’s report — which highlighted the fact that the tribunal overturns 60 per cent of ODSP decisions — signalled their intention to overhaul the appeal system.

Tribunal Watch and lawyers interviewed for this story say the reason so many decisions are overturned by the tribunal is because the ODSP application is flawed and qualified applicants are often incorrectly denied by civil servants. An independent review is essential to ensure a fair process, they argue.

“It’s very scary what’s going on right now with the tribunals,” said Dr. Gary Bloch, a family doctor at St. Michael’s Hospital and associate professor at the University of Toronto.

Bloch has helped many of his patients apply for ODSP and he teaches other doctors how to fill out the complicated forms.

He said a hearing at the tribunal, in which the person applying for disability benefits can tell their story and the adjudicator has the opportunity to ask questions and test the evidence, allows for a more accurate and complete picture of the person’s life to emerge.

“It takes someone’s story out of a very restrictive application form and allows it to exist in its true complexity,” he said. “So it doesn’t surprise me that someone is turned down three times and then accepted because I know that it often takes me years to understand really what someone’s health story and life story is. To think that you can just put that down in 20 pages of an application form without having a back-and-forth conversation about it is ludicrous — truly.”

Bloch said he has seen first hand how receiving ODSP can be “life-changing” for someone in poor health and living in poverty.

“I would never want to put forward the idea that \$1,169 is enough to live on in our society, but when I see people go from \$733 to \$1,169, just the realm of possibilities for how they can live their lives expands dramatically.”

(The rates for both OW and ODSP fall well below the poverty line. OW is 40 per cent of the Market Basket Measure, the official poverty measure, while ODSP is 62 per cent, according to the Maytree Foundation.)

Aside from getting people stable housing, Bloch said, access to ODSP is “the most powerful social intervention I’m routinely involved in.” An increase in income, Bloch said, has a far greater effect on improving his patients’ mental health than any

antidepressant he could prescribe. “This is not hyperbole. This is what I see actually play out in my office.”

Ed Belitski, a 50-year-old peer support worker with schizophrenia, was denied ODSP three times before winning his appeal at the Social Benefits Tribunal four years ago.

“If it wasn’t for ODSP I’d probably be homeless again,” he said, adding that the extra health benefits he now receives mean his medications are “99 per cent” covered. Belitski said he had 17 psychiatric hospitalizations before getting on ODSP. Since then he hasn’t made one ER visit. He’s also able to work part time and doesn’t worry about having enough money for food or rent. “I’ve been able to survive.”

In [her 2019 report](#), Auditor General Bonnie Lysyk recommended that the Ministry of Children, Community and Social Services — which doles out social assistance but does not control the tribunals — should explore different models for its appeal process, citing the Social Benefits Tribunal’s high rate of overturned decisions. The ministry agreed with the recommendation and said it would propose “enhancements to the appeal framework” by next month. Advocates for the tribunal will be watching closely.

Meanwhile, Waisanen is just trying to make it through each day. Staying sober has been even more challenging during the pandemic, he said, with many of the usual supports unavailable. He believes he’ll be successful whenever he eventually gets his hearing at the tribunal. He just hopes he can get by until then.

“Every day’s not a bad day, but each day that goes by that I don’t do what I’m supposed to do to focus on my health, it’s only worse.”



Brendan Kennedy is a Toronto-based social justice reporter for the Star. Follow him on Twitter: [@BKennedyStar](#)

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