



THE SOCIAL BENEFITS TRIBUNAL HEARING

What to expect
What to talk about

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Introduction

You should make sure you arrive a little early for your hearing. If you are late, the Social Benefits Tribunal (SBT) could dismiss your appeal. If your appeal is dismissed because you did not show up for your hearing you may not be able to appeal another denial for ODSP benefits for two years. It is therefore very important that you attend your hearing on time.

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

Any evidence (such as medical documents) must be submitted at least 30 days before your hearing. At this time, you should also tell the SBT if you want to call any witnesses. If you want to submit evidence after 30 days, you should submit it as soon as you have it. The SBT will decide whether they will allow it.

Who will be there?

Usually, the SBT sends one Tribunal member to make the decision in your case (also referred to in this document as the adjudicator or SBT member).

The DAU/Director can also send someone to your hearing to represent ODSP.

You can bring someone to represent you at the hearing. Your representative does not have to be a lawyer.

You can also bring any witnesses who can give evidence about your disability. 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 Tribunal important facts that will be helpful for your appeal. Just **remember that the best witness for any hearing is you, the Appellant, as you are the one person who can best describe your disability** to the Tribunal. 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 SBT members usually allow you to have a family member or friend at the hearing for your moral support. If the SBT 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 SBT member.

In Person Hearing: The Hearing Room

A hearing at the SBT takes place in the room written on your Notice of Hearing. There is a table in the room and everyone sits at the table with the SBT member

at the head of the table. It is not as formal as a courtroom and there is no court reporter. It is a private hearing.

Video Hearing: The Hearing “Room”

A video hearing at the SBT takes place entirely by videoconference. You should make sure that you are in a quiet and private location, where you will not be interrupted during the hearing.

If you are using a computer or tablet, make sure that you have a video camera on your device, that you have a good internet connection, and that your computer or tablet is fully charged. Make sure that you also have a charger and electrical outlet available nearby, as the hearing can be long, and your batteries may run low.

On your hearing date, 10 minutes before the hearing start time, you will click the link that was sent to the email address you provided to the Social Benefits Tribunal. You will be let into the hearing room. Ensure that you have your microphone on, and video function on, so that the parties in the hearing can hear you, and can see you (unless the adjudicator instructs you to turn off your video).

If your video technology malfunctions or does not work, you can also dial in to the hearing using a phone, by calling the telephone number provided with the hearing link. Once you dial the phone number, the automated system will ask you to input your phone conference ID or passcode, followed by the pound sign (#). The phone conference ID or pass code is also listed underneath the hearing link. Once you have inputted your pass code, you will either be connected to the hearing line or the automated system will put you on hold to wait for the adjudicator.

When you are connected by videoconference or by phone, remember that everyone on the call (usually you, the adjudicator, and ODSP’s representative) can hear you. It is best to wait quietly unless the adjudicator asks you a question.

Like in-person hearings at the SBT, videoconference hearings are not as formal as a courtroom and there is no court reporter. It is a private hearing. Because it can be difficult to hear people talking over each other, it is best to follow the adjudicator’s directions about when to talk. Remember to answer any questions clearly, as it may be difficult to see you, when using this technology.

What Do I Do If The Videoconference Does Not Work, and the Phone Option Also Does Not Work?

First, if the videoconference link does not work, try again. This is why it is important to ensure everything is downloaded and properly set up on your

computer or tablet ahead of time. It is also a good idea to join the meeting earlier than the actual hearing time.

If you try by phone, and the phone number or pass code also don't work, try calling in again. It's easy to accidentally input the wrong number. Next, try calling both the local or toll free number. If you have tried a couple times and it is still not working, call the main Social Benefits Tribunal number at 416-326-0978 (located near the very top on your Notice of Hearing). Make sure to tell the operator that you have a telephone hearing, and the time that the hearing started, so they understand the urgency of your call.

The Beginning of the Hearing

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 will confirm the mailing address where he or she 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 the DAU/Director. Usually, the SBT member will make sure that he or she has all of the documents sent to the SBT by you and by the DAU/Director.

Preliminary Matters

Next, the SBT member will deal with any "preliminary matters". For example, if you are asking for an adjournment for a different hearing date, do this at the beginning of the hearing, while the SBT member is dealing with preliminary matters. If you have additional documents that you were unable to submit 30 days before the hearing, tell the SBT member now. Be ready to explain why you did not submit the documents 30 days before and why you think they are important.

Presenting Your Case

What do I have to prove?

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

The SBT member must decide, based on all the medical evidence and the evidence at the hearing given by you and any other witnesses, whether you are a "person with a disability".

In order to be found a “person with a disability”, you must show:

1. that you have a substantial physical or mental impairment
2. which is continuous or recurrent, and
3. is expected to last for one year or more.

You also must show that your impairment results in a substantial restriction in your abilities in one or more of the following:

- Attend to your personal care
- Participate in the community
- Participate in a workplace

All of the above information must be verified by your doctor, psychiatrist, etc.

It is not enough to show that you are disabled now. You must show that you were a person with a disability at the time you applied for benefits, at the time you were denied benefits, and since that time.

How do I prove my case?

The main part of the hearing will involve you giving evidence about your medical conditions and how they affect you on a daily basis. This is your chance to tell the SBT member about each of your medical conditions, how serious (or substantial) they are, and the impact of your conditions on your daily activities. Keep in mind the definition of a “person with a disability” when thinking about what you’d like to say at your hearing.

You can make brief notes about the things you want to talk about during your hearing. Do not bring long notes to read at your hearing as the SBT member may not let you read your notes as evidence and your evidence may not be very convincing if simply read to the SBT member. It is best to keep your notes very short and in point form. For example, if you have problems walking and you are afraid you will forget to tell the SBT member about it, then just write “walking” on your notes to remind you to talk about it - don’t write exactly what your problems are with walking or you’ll end up reading the whole thing at your hearing.

Make sure you tell the SBT member about each medical condition you have. Describe the condition:

- What are the symptoms (and how often you have them, and how bad they are, how long do they last)
- Whether you have ever been hospitalized because of it
- Whether you use any assistive devices (such as a cane, back support, bars in the bathtub, etc.)
- What medications you are taking (bring your medication with you if you have many or a printout from your pharmacy)

- What other treatments you are getting for the condition, if any, and how they are helping or not helping (such as physiotherapy, etc.)

There are many things you may want to tell the SBT member about. The following pages have examples of areas that may be important in your case. If one area is not important in your case, then skip to the next one. You may also have things that you want to talk about that are not on this list.

1. Pain – If one of your problems is with pain, you should give the SBT member some details about the nature of your pain such as:

- Where exactly is your pain? Start from your head and work down to your toes and tell the Tribunal exactly where it hurts
- How bad is it? Describe the pain (i.e. sharp, shooting, burning,...)
- Is it constant? How often do you feel pain?
- Is it sometimes worse than others? When?
- Are you ever confined to bed or to the house because of the pain? If so, how often?
- Has your pain been getting better or worse over time or has it been the same?
- What are your limitations because of your pain?

2. Sleep – If your medical conditions cause you to have problems sleeping, you should describe and explain the problems:

- How well do you sleep?
- How long do you sleep before waking? How many times a night to you awaken?
- How do you feel in the morning?

3. Mobility – If you have any problems with mobility because of your medical conditions, you should describe and explain them to the SBT member:

- Walking (How far? Then what happens?)
- Standing (How long? Then what happens?)
- Sitting (How long? Then what happens?)
- Getting up out of a sitting position or sitting down
- Extending arms over head or in front of you

4. Personal Care – If you have any problems with your personal care because of your medical conditions, you should describe and explain them:

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

5. Homemaking – If you have any problems with homemaking because of your medical conditions, you should describe and explain them:

- Housecleaning (washing dishes, vacuuming, mopping, making beds, cleaning bathrooms, etc.)
- Laundry
- Preparing meals

6. Other – If you have problems with any of the following, you should also describe and explain:

- Use of hands or fingers (to write, pick up small items, etc.)
- Carrying things
- Driving or taking public transport
- Pushing/pulling (ex. Grocery cart, vacuum cleaner)
- Going shopping
- Handling finances
- Vision
- Hearing
- Speaking
- Memory
- Concentration and attention
- Comprehension
- Problem solving
- Dealing with stress or responding emotionally to situations
- Balance
- Breathing
- Feeling of anxiety or sadness

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?
- How have your medical conditions affected you emotionally?
- Do you have any side effects or other problems because of your medications?
- What treatments you have undergone and what was their effectiveness?

Finally, you may also want to tell the SBT member about the following:

- Whether you are receiving any other benefits because of your medical conditions such as Workers Compensation benefits or Long Term Disability benefits from insurance
- What is your education level, including any vocational training, upgrading, or apprenticeships and any problems you may have reading and writing
- What is your job experience:

- Are you working now? How many hours? Do you have any problems performing your job because of your medical conditions?
- If you are not working now, when was the last time you worked? What were you doing? Did you stop working because of your medical conditions?
- What were your previous jobs and experience?
- If you think you would have problems working, explain what you think your problems would be and why.

What Happens Next

After you are finished giving your evidence, the SBT member may ask you some questions. If someone is there from ODSP, he or she may ask you some questions. Don't try to guess the answer to a question. If you do not understand the question being asked, tell the SBT member that you do not understand the question and the SBT member will try to help you understand. If you do not know the answer to a question, tell the SBT member that you do not know the answer. Don't worry if it takes you a moment to think about the answer to a question.

Other Witnesses

If you have a friend or family member who lives with you or helps you, he or she can give evidence and tell the SBT member about her or his observations about your medical conditions and how they affect you. As said before, make sure that your witness knows what the issues are for the hearing and make sure you know what evidence they are 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 needed for your appeal.

Medical Reports

The Tribunal member will also look at the medical reports in your file to help her/him decide if you are a person with a disability.

At your hearing, go over your medical reports and the forms that your doctor completed when you applied and draw the Tribunal member's attention to what you think is important. The Tribunal member will have received these forms.

The Health Status Report (HSR) is designed to get information on whether you have a substantial impairment, and it also contains a section for your doctor to

say whether it is continuous/recurrent, and expected to last for more than one year.

The Activities of Daily Living Report (ADL) is intended to get information from your doctor on whether you have substantial restrictions in your activities of daily living (personal care, participation in community or workplace).

You may also have sent in other medical reports that add information about whether you are a person with a disability. If so, the Tribunal member will also have these and you can go over them and draw the Tribunal member's attention to what is important.

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 you are a person with a disability. Again, keep the test for a "person with a disability" in mind. When you are done with your summary, the representative from the DAU (if there is one) will also have a chance to summarize and say why the DAU thinks you are not a person with a disability.

The Decision

The Tribunal member generally does not give you a decision at your hearing. Instead, they have 60 days to write the decision which will be sent to you by mail.