

**SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N :

BRADLEY FERRIS

**Appellant
(Appellant in appeal)**

and

DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM

**Respondent
(Respondent in appeal)**

APPEAL UNDER s. 31 of the *Ontario Disability Support Program Act, 1997*,
S.O. 1997, c. 25, Sched. B. and under s. 70 of the O. Reg. 222/98.

NOTICE OF APPEAL

THE APPELLANT APPEALS to the Divisional Court from the order of the Social Benefits Tribunal dated May 6, 2013 and confirmed on Reconsideration, dated July 11, 2013 and received July 15, 2013, made at Owen Sound, Ontario.

THE APPELLANT ASKS that the order be set aside and an order be granted as follows:

1. An Order directing that the Appellant qualifies as a “person with a disability” under subsection 4(1) of the *Ontario Disability Support Program Act, 1997*.
2. In the alternative, an Order referring the appeal back to the Tribunal for a new hearing before a different Tribunal member with specific directions.
3. Such other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

1. Bradley Ferris is a 54-year old man. Until recently he worked as a carpenter. However, due to chronic injuries resulting from a series of traumatic accidents, Mr. Ferris now experiences chronic pain and loss of movement in both shoulders, his left foot and right knee. He experiences difficulty in walking, standing, climbing, kneeling, bending, lifting, pushing, pulling and reaching overhead. Mr. Ferris also experiences alcohol and substance dependency, although this disability has recently been controlled.
2. Mr. Ferris applied for Ontario Disability Support Program (ODSP) benefits on November 26, 2011. By letter dated May 1, 2012, the Respondent denied his application, and subsequently denied a request for an internal review.
3. Mr. Ferris appealed to the Social Benefits Tribunal. The Social Benefits Tribunal denied his appeal on May 6, 2013.
4. In denying the appeal, the Social Benefits Tribunal committed the following errors:
 - a. The Tribunal erroneously concluded that the report of Mr. Ferris' treating specialist was not relevant because it documented Mr. Ferris' condition as of the date of the report and thus after the date of the Director's decision. To the contrary, the letter clearly states that Mr. Ferris was last reviewed by the specialist four-and-a-half months prior to the Director's decision. The specialist's opinion was thus relevant, reliable and centrally related to the issues before the Tribunal. The Tribunal erred by refusing to consider this evidence.
 - b. The Tribunal erroneously concluded that the medical reports confirming Mr. Ferris's disabilities were "inconsistent" with earlier reports and "unreliable", and thus

- dismissed this evidence as a reflection of deterioration after the date of the Director's decision. To the contrary, the medical reports clearly reflect Mr. Ferris's condition at the time of the Director's decision and are consistent with earlier medical evidence as well as Mr. Ferris' testimony. The Tribunal erred by refusing to consider this evidence.
- c. The Tribunal applied the wrong legal test and irrelevant considerations by requiring Mr. Ferris to be undergoing additional treatment to qualify as a "person with a disability", in the absence of evidence that any further treatment would ameliorate Mr. Ferris' substantial impairments and restrictions. Mr. Ferris's treating orthopaedic surgeon provided evidence that Mr. Ferris suffers from permanent disabilities despite having undergone surgical repairs.
 - d. The Tribunal erred by concluding that Mr. Ferris' impairments in standing had not been verified by a medical professional. This impairment was verified by Mr. Ferris' treating specialist.
 - e. Such other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 31 of the *Ontario Disability Support Program Act, 1997, supra*, which provides for a right of appeal of Social Benefit Tribunal decisions to the Divisional Court on questions of law;
2. The decision appealed from is final; and
3. Leave to appeal is not required.

The appellant requests that this appeal be heard at Brampton.

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