

Court File No.

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

**B E T W E E N :**

**XX**

**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.

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**NOTICE OF APPEAL**

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**THE APPELLANT APPEALS** to the Divisional Court from the order of the Social Benefits Tribunal dated June 1, 2015, which was confirmed on Reconsideration September 9, 2015, received September 11, 2015, made at Mississauga, Ontario.

**THE APPELLANT ASKS** that the order be set aside and that 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* (“the Act”).

2. In the alternative, an Order referring the appeal back to the Tribunal for a new hearing before a different Tribunal member with such directions as this Honourable Court considers reasonable.
3. Such other relief as counsel may advise and this Honourable Court may deem just.

**THE GROUNDS OF APPEAL** are as follows:

4. Ms XX is a 51 year-old woman from Kabul, Afghanistan, with a high school education. Ms XX suffers from a type of diabetes that is very resistant to treatment, and has led to nerve damage in her legs and retinopathy. This has exacerbated her osteoarthritis, which has resulted in multiple poorly-healed fractures in her left foot. Ms XX also suffers from the following ailments: obesity, headaches, leg and knee pain, extreme fatigue, chest pain, and shortness of breath / asthma. Ms XX has had two strokes, which have left her with weakness and numbness in her right arm and face.
5. All of these ailments were verified by medical professionals. Ms XX's family doctor stated that these conditions "prevent her from functioning in the community or being able to gain any work and also resulting in many restrictions to her activities of daily living."
6. Ms XX applied for Ontario Disability Support Program (ODSP) benefits. Her application was denied by the Respondent on June 25, 2014.
7. Ms XX appealed to the Social Benefits Tribunal, which denied her appeal on June 1, 2015. While accepting that the Appellant's impairments were continuous and verified, the Tribunal held that her impairments were not "substantial", and therefore that she was not a "person

with a disability” under s. 4(1) of the Act. The Tribunal subsequently denied Ms XX’s request for reconsideration of its decision on September 9, 2015.

8. In denying the appeal, the Tribunal committed the following reviewable errors of law:
  - a. The Tribunal applied the wrong legal test by expressly refusing to consider the evidence of Ms XX’s considerable restrictions (her confirmed inability to work, function in the community or see to her personal care without assistance). This was contrary to the “whole person” test required under s. 4(1) of the Act.
  - b. The Tribunal erred in law by making findings contrary to the evidence before it. In particular, the Tribunal found that Ms XX “manages” her pain without any prescribed pain medication, while the record clearly states that she uses Oxycocet, received injections for pain and has had to undergo surgery to treat the causes of pain in her feet. The Tribunal also found that Ms XX treated her stroke(s) with “very conservative treatment”, despite medical evidence showing that her impairments place limitations on any more extensive treatment. Further, the Tribunal refused to consider Ms XX’s claims regarding Retinopathy and her two strokes, in spite of uncontradicted evidence on the record substantiating these claims.
  - c. The Tribunal violated procedural fairness by relying on purported inconsistencies in the Appellant’s testimony to undermine her claim, without making an explicit adverse credibility finding against her. This denial of procedural fairness warrants that the decision be overturned.
  - d. 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.

October 8, 2015

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- and -

**DIRECTOR OF THE ONTARIO  
DISABILITY SUPPORT PROGRAM**

Appellant

Respondent

**Court File No.**

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SUPERIOR COURT OF JUSTICE  
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