

Court File No.

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

BETWEEN :



Appellant

and

DIRECTOR OF THE ONTARIO DISABILITY SUPPORT PROGRAM

Respondent

NOTICE OF APPEAL

THE APPELLANT APPEALS to the Divisional Court from the order of the Social Benefits Tribunal made at Toronto, Ontario on October 29, 2018 and confirmed on Reconsideration dated December 24, 2018, in which the Tribunal refused to hold a reconsideration hearing.

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 (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:

1. ██████████ is a 31 year-old single mother of three children all under the age of 10. She has been diagnosed with lower back pain due to degenerative disc disease, heart arrhythmia, severe anxiety, depression, panic disorder, dysthymia and obesity. Her verified impairments include chronic pain, decreased range of motion, heart palpitations, shortness of breath, restlessness, lack of focus, fatigue, sadness, apathy, tachycardia and tachypnea.
2. As a result of her impairments ██████████ experiences the following verified restrictions: inability to walk more than two blocks before having to stop, inability to sleep well or work in the mornings, inability to focus on tasks or work in a team, inability to exert and organize herself, and difficulty initiating intelligent action.
3. ██████████ applied for Ontario Disability Support Program (ODSP) benefits. The Director of the program denied her application on August 8, 2017 and upheld that decision after an internal review.
4. ██████████ appealed to the Social Benefits Tribunal. The Tribunal denied her appeal, finding that her impairments were not substantial and that she did not experience substantial restrictions in her activities of daily living and therefore was not a “person with a disability” under s. 4(1) of the *Act*.
5. In denying the appeal, the Tribunal committed the following reviewable errors of law:

- a. The Member's questions and comments, both during the hearing and in its decision, raised a reasonable apprehension of bias because they signalled a prejudgment and prejudicial belief that [REDACTED] applied for ODSP benefits for improper reasons. More specifically, the Member made comments suggesting that [REDACTED] was seeking a "free ride" from the taxpayer because she failed to take her medication. This was despite evidence that her failure to take her medication was because of memory problems and an inability to focus.
- b. This pre-judgement and prejudicial belief led the Tribunal to misapprehend the evidence on the substantial nature of [REDACTED]'s impairments and restrictions. For example, the Tribunal was not satisfied that her memory problems were as serious as she claimed despite the unrefuted medical evidence regarding her impairments related to memory and focus.
- c. The Tribunal applied the wrong legal test. While treatment may be a relevant consideration, it is not determinative of whether a person meets the threshold of "substantial impairment". Rather, the Tribunal must consider the medical evidence in the context of the "whole person." The Tribunal found that [REDACTED] [REDACTED] impairments did not meet the threshold of substantial because it would have expected more intensive care, treatment and adherence to the recommended treatment, and patient advocacy for additional treatment. This finding is speculative and not based in law.

d. Such other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

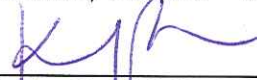
1. Section 31 of the *Ontario Disability Support Program Act, 1997*, which provides for a right of appeal of Social Benefit Tribunal decisions to the Divisional Court on questions of law;
2. The decision appealed from is final; and
3. Leave to appeal is not required.

The appellant requests that this appeal be heard at Toronto.

January 21, 2019

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- and -

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DISABILITY SUPPORT PROGRAM**

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