

Court File No.

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

B E T W E E N :

A B

**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 July 9, 2015 and confirmed on Reconsideration dated October 2, 2015, received October 5, 2015, made at Toronto, 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* (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. A B is a 54 year-old woman with a history of domestic abuse. She suffers from major depressive disorder, post-traumatic stress disorder (PSTD), insomnia and pain. She has multiple medically verified impairments, including anxiety, sociophobia, intermittent suicidal ideation, and panic attacks.
2. Because of her impairments, Ms B is significantly restricted in her ability to socialize or function in society and the workplace. She has been unable to be employed in the past several years, and attempts to return to employment could significantly aggravate her depression and anxiety.
3. Ms B applied for Ontario Disability Support Program (ODSP) benefits, but was denied. She appealed to the Social Benefits Tribunal which denied her appeal on July 9, 2015.
4. The Tribunal accepted Ms B's verified impairments but decided that they were not "substantial" because of the lack of treatment for her conditions: she had minimal prescribed medication, no psychotherapy, no hospitalization or crisis intervention, and no evidence of suicide attempts.
5. The Tribunal member expressly refused to consider any of Ms B's restrictions in her activities of daily living.

6. Ms B applied for reconsideration of the decision, but was refused by the Tribunal on October 2, 2015.
7. In denying the appeal, the Tribunal committed the following reviewable errors of law:
 - a. The Tribunal applied the wrong legal test for substantial impairment by requiring specific forms of treatment for Ms B’s mental health conditions. This is contrary to the flexible, “whole person” and individualized approach required under s. 4(1) of the *Act*.
 - b. The Tribunal applied the wrong legal test for substantial impairment by requiring highly interventionist forms of treatment such as hospitalization and crisis intervention, and drastic action such as actual suicide attempts. It thereby imposed a “severe” threshold rather than the appropriate “substantial” threshold under the *Act*.
 - c. The Tribunal applied the wrong legal test in precluding itself from considering Ms B’s restrictions which were relevant to the question of whether her impairments were substantial. This was contrary to the “whole person” test required under the *Act*.
 - d. The Tribunal further erred in law by making findings unsupported by the evidence with respect to the medical treatment of Ms B’s mental health conditions.
 - 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 Toronto.

October 30, 2015

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- and -

**DIRECTOR OF THE ONTARIO
DISABILITY SUPPORT PROGRAM**

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