

## Ontario Works Policy Directives

### 10.2 Appeal Process

#### Legislative Authority

Sections 2, 24 - 36 and 60 - 67 of the Act.

Sections 68 and 72 - 83 of Regulation 134/98.

Section 14 of Regulation 135/98.

#### Audit Requirements

A copy of the **Notice of Decision** is on file.

Verification is on file that the applicant or participant was issued the **Notice of Decision**, including appeal rights where applicable.

Verification is on file that written submissions are filed with the Social Benefits Tribunal (SBT) within 30 calendar days of receiving the request for submission.

#### Application of Policy

Decisions affecting eligibility for income assistance and mandatory benefits or the amount of income assistance issued may be appealed to the SBT.

A decision may be appealed to the SBT only after an internal review has been completed or the time period for completing the review has passed without a decision. An appeal cannot proceed if the request for an internal review was withdrawn by the applicant or recipient ([see Directive 10.1: Notice and Internal Review Process](#) for more information).

The SBT cannot hear appeals on:

- employment assistance that does not affect eligibility for income assistance or mandatory benefits;
- discretionary benefits;
- assistance in exceptional circumstances made by the Lieutenant Governor in Council (i.e. Orders-in-Council to provide assistance when the person would not otherwise be eligible);
- financial assistance given directly to third parties (e.g. direct payment of rent or utility costs);
- the appointment of a trustee for applicants/participants under the age of 18;

- a variation, refusal or cancellation of assistance caused by an amendment to the Act or regulations;
- emergency assistance;
- a decision of the Administrator not to extend the time period for requesting an internal review; or
- a decision to refuse, suspend, cancel or reduce basic financial assistance based on the death of a member of the benefit unit.

## **Appeals to the SBT**

The applicant or recipient has 30 calendar days from the receipt of the internal review decision, or the elapse of the 30 calendar day period for the completion of the internal review, to file an appeal with the SBT. Requests for a hearing by the SBT are made by completing the **Notice of Appeal** form. The reasons for the appeal must be set out on the form.

The SBT may extend the time for filing an appeal of a decision if it is satisfied that there are reasonable grounds for both the appeal and the extension. The SBT will review requests for extensions on a case by case basis.

Under no circumstances can the SBT extend the time for filing an appeal beyond one year past the date of the Administrator's decision.

## **Interim Assistance**

The SBT can order the provision of interim assistance to an applicant or recipient who is awaiting a decision by the SBT if he/she will suffer financial hardship during the appeal, and where he/she meets all other conditions of eligibility.

The SBT can make interim assistance orders up to the date the SBT's decision is delivered. Under no circumstances can the SBT order the Administrator to pay more assistance than is allowed under the regulations.

The SBT has the authority to include benefits as part of the interim assistance order. The order should specify exactly what is included in the provision of assistance.

If the Administrator disagrees with the amount of interim assistance, he/she must provide reasons in writing that clearly outline the financial circumstances the Tribunal should consider.

An applicant or recipient shall repay the interim assistance provided to him/her if the SBT upholds the Administrator's decision ([see Directive 10.3: Recovery of Interim Assistance](#) for more information).

## **Manner of and Parties to the Proceedings**

The SBT conducts appeals through oral or paper hearings. The SBT may hold a paper hearing where all parties to the proceedings consent to this format.

The Administrator, the applicant or recipient who requested the hearing and other persons as specified by the SBT are parties to the proceedings. The Administrator may appear personally before the SBT or may be represented by their staff or legal counsel in addition to providing a written submission.

## **Notice of Hearing**

The SBT has 60 days to send a **Notice of Hearing** to all parties to the proceedings. The **Notice of Hearing** includes the manner of holding the hearing (i.e. paper or oral), and sets out:

- for a paper hearing: the dates by which the parties are required to provide their written submissions and documentary evidence to the SBT;
- for an oral hearing: the place, date and time of the oral hearing.

This does not mean that all hearings have to take place within 60 days of the appeal being initiated. Timing for actual hearing dates will vary, and the SBT will work with the parties to schedule.

## **Written Submissions**

If the Administrator intends to file written submissions on an appeal, the submissions must be filed with the SBT no later than 30 calendar days following the receipt of the **Notice of Appeal** form. (Note: written requests or notifications are deemed to be received 3 days after mailing).

In the case of a paper hearing, written submissions must be filed before the deadline so that the information can be set out in the **Notice of Hearing**.

The SBT may accept a late submission if appropriate, but the 30 calendar day time limit should be met wherever possible to avoid the need for an extension request.

It is highly recommended that a submission be provided in every case. The SBT will review the submission in preparation for the hearing and will refer to it during the hearing.

If the appellant intends to provide written or documentary evidence in addition to appearing at the hearing, his/her submissions or documents must be filed with the SBT at least 20 days before the oral hearing.

The Administrator must provide any supplementary submissions or documents to the SBT, including the response to the appellant's written submission or evidence, at least 10 days before the oral hearing.

Copies of written submissions and documentary evidence being submitted to the SBT should also be provided to the other parties to the proceedings.

### **Appellant Fails to Attend Hearing or to Provide Necessary Documentation**

The SBT may deny an appeal if:

- the appellant fails to provide the written materials necessary for a paper hearing; or
- the appellant fails to attend an oral hearing without reasonable justification as determined by the SBT.

If an appeal is denied for one of these reasons, the appellant cannot appeal a subsequent decision on the same issue for two years.

### **Social Benefits Tribunal Decisions**

The SBT is required to deliver a written decision to the parties within 60 days following the SBT's receipt of the last evidence presented in the appeal.

In an oral hearing, the last evidence would be provided at the hearing unless the SBT specifically makes an order allowing additional material to be filed after the hearing.

In a paper hearing, the last evidence would be provided on the date the parties were required to provide their written submissions and documentary evidence to the SBT.

In its decision, the SBT may:

- deny the appeal;
- grant the appeal;
- grant the appeal in part; or
- refer the matter back to the Administrator for reconsideration in accordance with any directions the SBT considers proper.

The Administrator must act on the decision of the SBT. The SBT's decision remains in effect pending the outcome of a request for reconsideration or an appeal to the Divisional Court.

## **Request for Reconsideration and Variation of SBT Decision**

A reconsideration of an SBT decision can be requested by any party to the appeal within 30 calendar days of receiving the decision. The **Request for a Reconsideration** must be in writing and the requestor must send a copy to all parties to the appeal.

The SBT may extend the time for requesting the reconsideration if it is satisfied that there are apparent grounds for reconsideration and reasonable grounds for the extension. Under no circumstances can the SBT extend the time for requesting a reconsideration hearing beyond one year past the date of the SBT's decision.

The other parties to the appeal may respond in writing to the **Request for a Reconsideration** within 15 days of receipt.

The SBT must provide a written response to the request no later than 60 days, and no earlier than 20 days, from the date of receipt.

An Administrator may consider requesting a reconsideration hearing where it is believed that the SBT has made an error in law in its decision given the facts of the case or the SBT's interpretation of the Act and regulations.

In a reconsideration hearing, the party requesting the reconsideration presents their case first and must provide the SBT and the other parties with any written submission or evidence 20 days prior to the hearing date. The other parties must provide written submissions 10 days prior to the hearing date.

## **Appeal to Divisional Court**

An appeal to Divisional Court cannot be made until the SBT has either denied a **Request for Reconsideration**, or held the reconsideration hearing and provided its decision.

An appeal of an SBT decision can be made to Divisional Court where it is believed that the SBT has made an error in law.

When an appeal to Divisional Court is made, the party appealing is required to send the **Notice of Appeal** to the other parties. If a **Notice of Appeal** is received, it must be forwarded to the Ministry's Legal Services Branch with a copy of the SBT's decision.

The following information is prepared by the Ministry's Legal Services Branch and is provided for information purposes only. The regulation sets out which

documents must be filed with the Divisional Court by the SBT. The combination of these documents becomes the **Record of Proceedings**:

- **Notice of Appeal**;
- original decision of the Administrator;
- any written submission or documentary evidence filed with the SBT;
- any correspondence regarding the appeal;
- decision of the SBT; and
- notes taken by an SBT member at the hearing or a transcript of the hearing.

The SBT is required to file the Record of Proceedings with the Divisional Court no later than 60 days following receipt of the **Notice of Appeal** to the Divisional Court.

The Ministry's Legal Services Branch follows up with the delivery agent following the outcome of a Divisional Court decision, and advises what is to be done as a result of the decision.