



Appealing Denial of the Persons with Disabilities (PWD) Benefit: The Appeal Tribunal

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If your application for Persons with Disabilities (PWD) status was turned down by the Ministry of Social Development and Poverty Reduction (MSDPR) and your Request for Reconsideration has been denied, you can appeal the Ministry's decision. You can ask for an Appeal Tribunal hearing.

This Help Sheet is designed to help you understand the appeal process and how to ask for an Appeal Tribunal. Please note that, although this Help Sheet provides an overview of the appeal process and gives suggestions on how you may increase your chance of success, it does not take the place of an advocate's assistance.

Indeed, as the success rate for people appealing Ministry decisions has gone down quite significantly in recent years, we strongly suggest you seek the advice of an advocate at the beginning of the process. To speak to an advocate, contact the Advocacy Access program (604-872-1278 or toll-free 1-800-663-1278) or go to the PovNet website (www.povnet.org) and click on "Find an Advocate" to see if there is an advocate in your area.

If you are looking for assistance to apply for a Request for Reconsideration for PWD, see Help Sheet 5A. If you are looking for assistance to apply for PWD, see Help Sheet 2.



How to appeal the denial of your PWD benefit

There are two levels in the appeal process:

Level 1: The Request for Reconsideration

If your Request for Reconsideration is successful, the MSDPR will give you the PWD benefit.

Level 2: The Appeal Tribunal

If the MSDPR turns down your Request for Reconsideration, you can go to Level 2 of the appeal process and ask for an Appeal Tribunal hearing.

If you are using this Help Sheet, you should be at Level 2 of the appeal process. This means that you have sent the MSDPR a Request for Reconsideration and it has turned down your request.

How to apply for an Appeal Tribunal Hearing

When you receive a letter, called the Reconsideration Decision, from the MSDPR saying that your Request for Reconsideration has been denied, you should take the following steps:

1. Act immediately

When you receive the Reconsideration Decision, **you have only 7 business days** to ask for an Appeal Tribunal to hear your case. The day after you receive the denial letter from the MSDPR is Day 1. From that day, you count weekdays, but not weekends or holidays.

TIP: When you get the Reconsideration Decision from the MSDPR, immediately write the date on the top.

2. Do you still think you are eligible for PWD status?

Look carefully at the reasons that the MSDPR has turned down your original application and your Request for Reconsideration. Also look at all the information that was provided in your application by you, your doctor and others who helped with your application. Review the requirements you must meet to qualify for the PWD benefit:

- You must be at least 18 years of age.
- You must have a severe mental or physical impairment.
- Your doctor must have confirmed that your impairment will probably continue for at least two years.
- A doctor or health professional must have confirmed that your impairment “directly and significantly restricts” your ability to perform daily living activities. The PWD legislation says this restriction must be either “continuous” or “periodic for extended periods.” This



means it is something that you always experience or something that happens often and for long periods.

- You must show that, because of these restrictions, you need help from a person, from an assistive device or from an assistance animal in order to perform daily living activities. If you do not have help, but take much longer than usual to complete many daily tasks, this may satisfy this requirement.

Daily living activities are defined in the Employment and Assistance for Persons with Disabilities (EAPWD) Regulations as:

- performing personal hygiene and self care (for example, bathing)
- preparing meals
- taking medications
- keeping the home clean
- shopping for personal needs
- moving about indoors and outdoors
- using public or personal transportation facilities (for example, a bus)
- managing personal finances.

If you have a mental health disability, daily activities also include the ability to:

- make decisions about personal care, activities or finances
- relate to, communicate with, or interact with people effectively (in other words: get along with people).

NOTE: You do not have to need assistance with all the daily living activities listed above in order to qualify for PWD status.

3. Asking for an Appeal Tribunal Hearing

You have a right to ask for an Appeal Tribunal to hear your case and, you hope, decide in your favour. But you have to decide if an Appeal Tribunal hearing is your best course of action. It is important to understand what you can and cannot do at the Tribunal hearing:

- You **can** provide the Tribunal with more information to **support** the evidence that you have already given MSDPR in your original application and in your Request for Reconsideration. For example, you could provide a letter from your doctor that clarifies issues related to your PWD application.
- You can also give testimony (tell your story) or ask witnesses to give testimony if they have knowledge of your health limitations.

But:

- You cannot provide new evidence that has nothing to do with your PWD appeal. For example, a letter stating that you do not have enough money to live on does not relate to PWD eligibility.
- The Tribunal Chair decides which evidence will be accepted.



4. Complete the Notice of Appeal to the Employment and Assistance Appeal Tribunal (EAAT) form

This form is mailed with the Reconsideration decision. It is also available on the EAAT website (please see the back page of this Help Sheet for the website address).

- a) Be sure to include information on any special needs that you might have in order to attend the Appeal Tribunal hearing. For example, will you need accessible facilities or an interpreter? If someone is helping you with your Tribunal, you can send in a Release of Information with the Notice of Appeal. This form, available on the EAAT website, acknowledges the role of your advocate or helper.
- b) Remember, you must submit the form requesting an Appeal Tribunal within **7 business days**. Then, the Tribunal must be held within **15 business days** after that, unless you, the MSDPR, and the Tribunal Chair agree to a time extension.
- c) Decide which kind of Tribunal to request. The EAAT form gives you three choices: in person, in writing or by conference call. Here are some things to consider when making your decision:

In person. This is often the best option.

- If you attend the Appeal Tribunal hearing in person, the panel members can see you and you can see them.
- It is often easier to tell your story (make your argument) and present your evidence in person.
- It may be easier for your witnesses to give testimony.
- You can make sure that you have a copy of all the documents that the Tribunal is looking at.

In writing. This means that you send your information in writing to the Appeal Tribunal but you do not appear before the panel members.

- You will not be present to answer any questions the panel members may have.
- Writing a good argument can be difficult. Remember, you are asking the Tribunal panel members to decide that the Ministry made the wrong decision. Your argument has to be well organized and you must know the kinds of information that will convince the Tribunal panel to overturn the Ministry's decision.
- You cannot see what documents the panel members are reviewing, so you cannot be certain that you have copies of all of them.
- Testimony from witnesses must be in writing.

By conference call. This means that you present your information on the telephone to the Tribunal panel members.



- You must have a phone you can use for at least an hour, without anyone interrupting you.
- You should feel comfortable talking to more than one person that you cannot see.
- Body language is important—it says a lot about what a person is thinking and feeling. You will not be able to see and use this kind of information over the phone.
- You have to fax or mail any new supporting documentation to the EAAT in advance.
- It may be harder for your witnesses to give testimony.

5. Submit your completed form right away

- a) Sign your form.
- b) The form can be mailed or faxed to the EAAT office. (Address is on the form.) It is usually faster to fax your form. Toll-free: 1-877-356-9687. If you do not have access to a fax machine, ask your local MSDPR office to date stamp your form and fax it for you. **Make sure you get a copy.**

Before an In-Person or Teleconference Tribunal Hearing

- The EAAT office will mail you a package called the Appeal Record. The Appeal Record contains all the documents that the Ministry used when it decided to deny your PWD application and Request for Reconsideration. Each of the Tribunal panel members will have this Appeal Record before the hearing.
- The EAAT office will mail you a letter advising you of the date and time of the Tribunal hearing.
- You usually get about one week's notice of your Tribunal hearing. If you cannot attend the hearing on that scheduled day, phone the EAAT office and request a time extension (also called an adjournment). An Appeal Adjournment Request form can be found on the EAAT website under "Forms." Try to give as much notice as possible when asking for an adjournment. Everyone—you, the MSDPR, the Tribunal Chair—must agree to the time extension. If the time extension is granted, another date will be set for the hearing.

What Happens at the Tribunal Hearing

- a) The Tribunal hearing will begin with introductions of all the people there. The Tribunal panel can have up to three people and there will usually be a representative from the Ministry. The Tribunal Chair will explain what is going to take place.
- b) The Chair will make sure that everyone has all the documentation that is in the Appeal Record. If there is anything wrong or missing, you should tell the Chair. This is also when you can ask the Chair to accept any information "in support" of your case by giving the Chair and panel members this material.
- c) After everyone has looked at the documents, you will be asked to explain why you believe the Ministry's decision to deny you the PWD benefit is not reasonable.



- d) If you have witnesses that have come to speak, they will be invited to speak or answer your questions. The panel members will then have the chance to question your witnesses and the Ministry representative.
- e) Then the Ministry will present its argument to support its decision. Again, the panel members will be able to ask questions. You also have the right to question the Ministry representative.
- f) When the panel feels that all the information has been presented, you can ask to make some closing remarks before the hearing ends.
- g) The Appeal Tribunal will issue a written decision, which will be sent by mail, usually within two weeks of the Tribunal hearing.

The Tribunal Result

If you have won your Tribunal, the letter will say that the Ministry's decision has been "rescinded." You will start receiving your PWD benefits the month following your Tribunal decision. If the Tribunal decision "confirms" the Ministry's decision to deny your benefits, this means you have lost. You may want to speak to an advocate.

PWD Tribunal Tips

- Review the Appeal Record before the hearing. Mark any pages you plan to refer to.
- If you plan to give the Tribunal panel any supporting documentation that is not part of the Appeal Record, try to get it in time to fax it to the EAAT office—at least 3 business days before the hearing. If that isn't possible, make four copies to take to the hearing: one for each panel member and one for the Ministry representative.
- Write down what you want to say at the Tribunal hearing. It helps you to organize your thoughts and stay on topic.
- An advocate, if available, may help you prepare and present your case. If you do not have an advocate, you can ask someone you know to go with you as a support person (a support person is not usually a witness).
- Be prepared to answer questions about your disability and how it limits your daily life.
- The emphasis of your presentation should be your "limitations," not your "abilities."
- Examples of previous tribunal decisions can be found on the EAAT website.

To access the EAAT website, go to <http://www.eaat.ca/home>.





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