



**Social  
Benefits  
Tribunal**

**APPELLANT**  
Appellant's Representative

Jamal Abdi  
Nidhi Vinayak

**RESPONDENT**  
Respondent's Representative

Director, Ontario Disability Support  
Program  
Luba Neuwirth

**PRESIDING MEMBER**

Michal Juhas

**Hearing Date**  
**SBT File No.**

06 September 2023  
2302-00808

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## **DECISION**

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### **ISSUE**

[1] The Appellant disagrees with the Director's 17 January 2023 decision that the Appellant is not a person with a disability, as defined in section 4 of the *Ontario Disability Support Program Act, 1997* (the *Act*). The Director determined that the impairments were not substantial and also that there were no substantial restrictions in one or more of the activities of daily living listed in section 4(1) of the *Act*.

### **DECISION**

[2] The Tribunal is satisfied that the Appellant is a person with a disability within the meaning of section 4(1) of the *Act*.

## REASONS

### Applicable Law

[3] In order to be considered a “person with a disability” for the purposes of the *ODSPA*, an Appellant must meet the requirements of section 4(1) of the *Act*.

4. (1) A person is a person with a disability for the purposes of this Part if,

(a) the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;

(b) the direct and cumulative effect of the impairment on the person’s ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in one or more of these activities of daily living; and

(c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications.

[4] Section 23(10) of the *Act* states that the onus is on an Appellant to satisfy the Tribunal that the decision of the Director was wrong.

### Verification of Impairments, Duration and Restrictions

[5] The *Act* requires that a person with prescribed qualifications verify the impairment and its likely duration and the restriction in the Appellant’s activities of daily living.

[6] Based on the Health Status Report (HSR) completed by the Appellant’s family physician who has the prescribed qualifications, the Tribunal is satisfied that the following impairments and restrictions were properly verified as continuous or recurrent and expected to last one year or more, at the date of the Director’s decision:

Condition	Impairment	Restriction
Severe anxiety disorder	<ul style="list-style-type: none"><li>• Anxiety</li><li>• Unable to interact with others</li><li>• Panic attacks, fears</li><li>• Poor communication</li><li>• Worrying</li></ul>	<ul style="list-style-type: none"><li>• Unable to perform tasks requiring human social interaction, concentration, responsibility etc.</li></ul>

Obsessive consumption of internet	<ul style="list-style-type: none"> <li>• Unable to do routine daily tasks due to obsession with internet</li> </ul>	<ul style="list-style-type: none"> <li>• Unable to perform tasks requiring concentration, focus, attention</li> </ul>
Rule out autism	<ul style="list-style-type: none"> <li>• Trouble interacting with other people</li> <li>• Poor communication</li> </ul>	<ul style="list-style-type: none"> <li>• Unable to interact socially or in work environment</li> <li>• Poor communication</li> </ul>

### Substantial Impairments and Restrictions

[7] In addition to the requirement for proper verification, in order to be found to be a “person with a disability” under subsection 4(1) of the *Act*, an Appellant must satisfy the Tribunal that he or she had a physical or mental impairment that met the threshold of substantial, and that the direct and cumulative effect of the impairment resulted in a substantial restriction in his or her ability to attend to personal care, function in the community, or function in a workplace, at the time of the Director’s decision. The legislation requires the Appellant to meet both of these thresholds of “substantial” in order to be determined to be a “person with a disability.”

#### *Substantial Impairments*

[8] With respect to the definition of "person with a disability" guidance has been provided by the Ontario Court of Appeal in *Gray v. Director, Ontario Disability Support Program* (2002), 59 O.R. (3d) 364 (C.A.). In this case the Court dealt with the important issue of the appropriate determination of substantial impairment within the meaning of s. 4(1) of the *Act*.

[9] The Court held that "compared with its predecessor and with similar federal legislation, it would appear that the current definition of 'person with a disability' in the *ODSPA* was intended to encompass a broader segment of society and to provide assistance to persons with *significant* but not *severe* long-term functional barriers".

[10] The Court also held that when interpreting the word "substantial" in s.4(1)(a) of the *Act* "the word should be given a flexible meaning related to the varying circumstances of each individual case in a manner consistent with the purposes of the *Act*."

[11] The Court of Appeal in *Crane v. Ontario (Disability Support Program)*(2006), 278 D.L.R. (4th) 374, stated that s.4(1) presents three separate tests that require separate analysis and answers. The onus is on the Appellant to establish all three factors. However, the Court went on to say that in some cases, not all, there can be an overlap of evidence relevant to the factors in paragraphs (a) and (b) of s.4(1). This is because although the concept of impairment is anchored in medicine, the determination of whether an impairment is substantial will require consideration of the whole person, including a person's ability to function in the domains of personal care, community, and workplace.

[12] The Tribunal's findings of facts are based on the medical evidence and the Appellant's testimony at the hearing. Substantiality is a flexible concept determined on the totality of the evidence, which may include, in addition to testimony, medications, treatment plan, hospitalizations, specialist reports, diagnostic and imaging reports, use of assistive devices, activity limitations, narratives and severity scoring found in the Intellectual and Emotional Wellness Scale (IEWES) and the Activities of Daily Living Index (ADLI) in the HSR. Social and individual background, such as work history, education, living arrangements, and community and family circumstances, may also be relevant to understanding how an individual experiences an impairment, although it is always the medical impairment itself that must cause a substantial restriction in an activity of daily living. No one factor is determinative or required to reach a finding of substantiality, as the Tribunal's responsibility is to assess the evidence, weigh all of it in balance, and consider the Appellant in their own personal context.

[13] The Tribunal finds it to be more likely than not that at the time of the Director's decision the Appellant's cumulative impairments related to severe anxiety disorder, obsessive consumption of internet, and potential autism were substantial based on the Appellant's testimony, the medical evidence set out in the Disability Determination Package (DDP) and the supplemental medical evidence submitted on behalf of the Appellant.

[14] By way of background, the Appellant was 19 years old at the date of the Director's decision. He lived with his mother, stepfather, and three other siblings in a 3-bedroom apartment. His highest level of education was partially completed grade 10. The Appellant was never employed.

[15] The Appellant's testimony was partially supportive of a substantial impairment. The Tribunal had some concerns about the reliability of the Appellant's testimony. The HSR completed by the Appellant's family physician indicates on page 5 that the Appellant had severe insight and judgement deficits. The August 2022 letter from the Appellant's psychiatrist also notes that the Appellant is pretty ill and has been for a long time. The psychiatrist also wrote that the Appellant does not agree with his medical team despite two police interventions, with the police advising that the patient might benefit from a Form 2 Order for Examination under the *Ontario Mental Health Act*. The Appellant was also very measured in his response during the hearing and provided only very little detail in his testimony, often answering questions with one or only a few words. As a result, the Tribunal put less weight on the Appellant's testimony than on the documentary evidence in its consideration.

[16] With respect to impairments relating to severe anxiety disorder at the time of the Director's decision, the Appellant testified that he felt anxious all of the time, he would stay in his room, he would not want to see people, and he experienced difficulty talking to people (including not wanting to talk to his family and being scared to talk to people even over a phone). He stated that he did not think he was experiencing anxiety attacks, describing his anxiety as continuous. He testified that he was experiencing anxiety even around people he knew. He stated that he did not know how to describe his anxiety and referred the Tribunal to his written self-report. In his written self-report, the Appellant described that anxiety took control of his life and he felt empty, unmotivated, and without hope. He also described in his self-report that he did not enjoy talking with anyone other than his older sister and that he was avoiding social interactions due to his anxiety for several years.

[17] With respect to impairments relating to obsessive consumption of internet at the time of the Director's decision, the Appellant testified that he spent pretty much all day every day on his phone or on his computer. He denied that the internet use restricted him from performing other activities and stated sometimes he would do his routine daily tasks and sometimes not. The Tribunal notes that this is inconsistent with the documentary evidence from the Appellant's family doctor and psychiatrist but is consistent with the clinical documentation about Appellant's limited insight and judgement deficits.

[18] With respect to impairments relating to potential autism at the time of the Director's decision, the Appellant testified that he was referred to a specialist for a diagnosis or therapy to see if he had autism but that he did not pursue the referral because the consultation cost a lot of money.

[19] The treatment identified in the DDP, additional documentation and the Appellant's testimony is persuasive of substantial impairment. The Appellant was prescribed 50mg daily Zoloft for his anxiety at the time of the Director's decision. He was also previously prescribed Cipralex, but it was discontinued because it did not appear to help. The Appellant testified that he did not notice a difference after taking his medication and stopped taking the medication and stopped going to his family doctor at around the time of the Director's decision. The Appellant stated that he did not remember specific dates when he discontinued his medication or the name of the medication but later clarified he was still taking some anxiety medication at the time of the Director's decision. He also stated that his mother made him go to the doctor and would accompany him to his medical appointments but that he did not want to go. The Appellant also testified that his family doctor discussed additional treatment and referrals but that he did not hear back about any potential referrals. The family physician noted that the Appellant will try counselling on page 9 of the HSR. The Tribunal finds that the level of treatment is reasonably persuasive of substantial impairment, especially when the Tribunal considers the Appellant's anxiety, difficulty interacting with others, and poor communication ability.

[20] The Intellectual and Emotional Wellness Scale (IEWES) is persuasive of substantial impairment. The combination of substantial ratings includes 5 severe symptom ratings (in the areas of amotivation, anxiety, insight deficit, judgement deficit, and being withdrawn) with 9 moderate symptom ratings (in the areas of attention deficit, comprehension deficit, concentration deficit, depressive mood, emotional dysregulation, executive function deficits, excessive sleeping, speech deficit, and thought disorganization).

[21] The supplementary medical evidence documents are persuasive of substantial impairment and add credibility to the Appellant's testimony. The Tribunal was provided with two supplementary documents: an August 2022 psychiatric consultation report and a May 2023 biopsychological assessment report. The Tribunal finds that both reports were

reasonably proximate to the time of the Director's decision (approximately 5 months before and 3.5 months after the decision). The August 2022 psychiatric consultation report documents the diagnoses listed as conditions in the impairment table above. The psychiatrist noted that the Appellant "is pretty ill and has been so for a very long time" and described that the Appellant has been struggling with social isolation and withdrawal, significant anxiety with panic attacks when the Appellant has to confront other people in public either through the phone or in person, compulsive need to be on a computer, and not taking care of himself. The psychiatrist noted that the anxiety symptoms were high (up to 8 out of 10) and that the Appellant would worry and be afraid of interacting with people and experience difficulty going out of the house. The psychometric scores listed in the report among other findings also appear to suggest excessive social phobia and close to a cut off mark for a suspected autism spectrum disorder. The psychiatrist also noted that the Appellant disagreed with his medical team about his impairments (even after two police interventions) and previously disagreed also with school counselors when he stopped going to school to spend all day in front of the computer. This is consistent with the severe insight and judgement deficits noted on the HSR. The psychiatrist noted that the Appellant's mother reported that the Appellant would spend 24 hours in front of the computer and began losing weight due to not eating properly. The May 2023 biopsychological assessment report describes results of a phone assessment completed in April 2023 by a registered social worker and psychotherapist. The Tribunal put less weight on the biopsychological assessment report when considering the Appellant's level of impairment at the time of the Director's decision, since the assessor did not have the qualification to verify Appellant's impairments according to section 46(1) of the *Act*. The biopsychological assessment report describes that the Appellant was feeling anxious, sad, stressed and depressed and experienced excessive worrying, social withdrawal, and disrupted sleep pattern. The Appellant also indicated high social anxiety, withdrawal from the society, loss of trust in others, lack of enjoyment in spending time with his family or others, and difficulty to make friends or communicate with others. The Tribunal finds the supplementary medical evidence documents are persuasive of substantial impairment at around the time of the Director's decision.

[22] Based on the Appellant's cumulative impairments (related to the severe anxiety disorder, obsessive consumption of internet, and potential autism) together with the efforts at treatment, as established through the sworn testimony of the Appellant that was generally consistent with the documentary medical evidence, the Tribunal finds it to be more likely than not that the Appellant did experience a substantial impairment at the time of the Director's decision.

*Substantial Restrictions*

[23] The remaining issue for the Tribunal is whether these substantial impairments, individually or cumulatively, result in substantial restrictions in one or more activities of daily living - that is the ability to function in the community, the workplace or attend to personal care.

[24] In *Director, Ontario Disability Support Program v. Gallier*, [2000]101 A.C.W.S. (3d) 642 the Court ruled that in considering whether an Appellant is substantially restricted in activities of daily living the Tribunal is "entitled to consider the applicant in the context of her own situation...The test is not whether any person with these impairments and restrictions met the criteria, but whether this person met the criteria."

[25] For the following reasons the Tribunal is persuaded that the Appellant's ability to function in the workplace was substantially restricted by the Appellant's substantial impairments at the time of the Director's decision.

[26] The Appellant's testimony was partially supportive of substantial restriction. As indicated above, the Tribunal had some concerns about the reliability of the Appellant's testimony due to his limited insight and judgement deficits and as a result assigned less weight to it in its consideration. The Appellant testified that at the time of the Director's decision he had difficulty interacting with others (being anxious even around people he knew), communicating with others, and being in public spaces. The Appellant testified that he did not leave his home except for a walk when accompanied with his older sister about twice a month and for medical appointments when accompanied by his mother. At the same time, the Appellant denied that any health conditions restricted his ability to function in a workplace and stated that interacting with strangers would be difficult, but he thought he



could get used to it. He also disagreed with the DDP and stated that he did household chores and performed self-care but not consistently. The Appellant also denied any difficulty with concentration or completion of tasks at the time of the Director's decision. The Tribunal finds the Appellant's testimony about his restrictions to be internally inconsistent and partially at odds with the other evidence but consistent with the documentary evidence about the Appellant's limited insight and deficits in judgement. It appears to the Tribunal that if Appellant had difficulty and experienced anxiety even when interacting with people he knew that it is unlikely that he would be able to interact with coworkers and customers in a workplace setting without experiencing substantial restrictions.

[27] The documentary evidence and physician's narrative are persuasive of substantial restriction. The May 2023 biopsychological assessment report documents that the Appellant was experiencing difficulty in managing day-to-day life, household responsibilities (such as household or other chores), isolation and feelings of loneliness, as well as fear, anxiety, lack of trust, difficulties socializing and having conversation in addition to other difficulties. The Appellant's family physician also noted on the HSR that the Appellant was "unable to interact socially or in work environment, poor communication" and "unable to perform tasks requiring social human interaction, concentration, responsibility, etc."

[28] The Activities of Daily Living Index (ADLI) is persuasive of substantial restriction. The combination of substantial ratings includes 1 severe rating (in the area of social interactions) with 7 moderate ratings (in the areas of bathing and self-cleaning, grooming, shopping for groceries, housekeeping, laundry, attending medical appointments, and hobbies).

[29] The Tribunal finds that the Appellant would not have been able to engage in employment of either a physical or sedentary nature without experiencing substantial restrictions at the time of the Director's decision. The Appellant's difficulty with interacting with others made this unreasonable for him.

[30] Although the Appellant denied some of the restrictions in his sworn Testimony, the Tribunal also considered the Appellant's limited insight about his health conditions and assigned less weight to his testimony in the Tribunal's consideration. The Tribunal still found the Appellant's testimony supportive of a substantial restriction in his ability to interact with

others. Together with the documentary evidence and the substantial indications in the ADLI, the Tribunal finds that it is more likely than not that the Appellant did experience a substantial restriction to his ability to function in a workplace.

[31] Section 5(1) of Ontario Regulation 222/98 under the Act, provides there shall be a review date for a determination that a person is a person with a disability unless the decision maker is “satisfied that the person’s impairment is not likely to improve.” The Tribunal is satisfied that it is appropriate to set a date because the Appellant’s age and potential further unexplored treatment options offer hope that his impairments will no longer reach the level of substantial. The Appellant’s family doctor discussed several treatment options and referred the Appellant for different consultations for which the Appellant was still waiting. The Appellant’s psychiatrist also recommended several other potential treatments, including paroxetine or venlafaxine pharmacotherapy and a more intensive psychotherapy program.

**ORDER**

[32] The appeal is granted. The decision of the Respondent Director is rescinded. The Tribunal orders that if otherwise eligible, income support shall be paid to the Appellant in accordance with section 17 of O. Reg. 222/98 made pursuant to the *Act*.

[33] A review date under section 5(1) of O.Reg. 222/98 under the *ODSPA* is set for 1 year from the date of this Order.



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**Signed by Michal Juhas**

**Date issued  
September 29<sup>th</sup>, 2023**