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CLEONet is a web site of legal information for community workers and advocates who work with low-income and disadvantaged communities in Ontario.
About our presenter...

Catherine Manson is a Community Legal Worker and Licensed Paralegal from Flemingdon Community Legal Services with 22 years experience in the legal clinic system. She has been giving presentations on the Ontario Disability Support Plan (ODSP) and Ontario Works (OW) benefits since 2004. She is a member of the ODSP Action Coalition (Co-Chair of the Train the Trainer Committee), and past Chair of the Toronto Region ODSP Action Coalition.
Applying for Ontario Disability Income Support
Completing the Disability Determination Package

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- Who/Why apply for Income Support
- 2010 Income Support Rates
- Financial Eligibility
- Application Process
- Establishing Disability
Larromana v. Ontario (Disability Support Program, Director)

- Larromana v. Ontario (Disability Support Program, Director)

HUMAN RIGHTS CODE

The Divisional Court dismissed an appeal finding that the ODSP disability definition did not discriminate against the broader group of people who were disabled within the Code definition of disability. The Court stated (at para. 6):

- The broad definition of disability in the Code is designed to protect a broad range of individuals from discriminatory treatment based on any degree of actual or perceived disability. The much narrower definition of disability in the ODSPA is designed to provide a financial benefit to a smaller disadvantaged group, those with more serious degrees of impairment. That benefit meets the requirements of s. 14(1) of the Code which provides, inter alia, that rights to be free from discrimination guaranteed under the Code are not infringed by a special program designed to relieve hardship or disadvantage. Even a program that falls within s. 14(1) is not permitted to discriminate on grounds not relevant to furthering the purpose of that program: Ontario Human Rights Commission and Roberts v. Ontario 1994 CanLII 1590 (ON C.A.), (1994), 19 O.R. (3d) 387 (C.A.).

- However, where the government elects to provide a benefit to a group identified by a prohibited ground of discrimination (such as disability), it is not required to extend that benefit to every conceivable member of that broad class.
### 2010 Income Support Rates
up to November/December 2010

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<th>Category</th>
<th>Single Basic Needs</th>
<th>Single Shelter</th>
<th>Couple Basic Needs</th>
<th>Couple Shelter</th>
<th>Couple (1 disabled) (both dis.) Basic Needs</th>
<th>Couple (1 disabled) (both dis.) Shelter</th>
<th>Double Disabled Couple Basic Needs</th>
<th>Double Disabled Couple Shelter</th>
<th>Actual Entitlement</th>
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<td><strong>$464</strong></td>
<td><strong>$855</strong></td>
<td><strong>$1153</strong></td>
<td><strong>$1584</strong></td>
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<td><strong>$1584</strong></td>
<td><strong>$1882</strong></td>
<td><strong>$1742</strong></td>
</tr>
</tbody>
</table>
ODSP Application Process

You can apply for ODSP in a number of ways:
- Application through Ontario Works
- Application directly to ODSP
- Grand-parented from Family Benefits
- Fast track application for “prescribed class” including people:
  - Age 65+ and not receiving Old Age Security
  - In receipt of CPP-D
  - Resident in certain health facilities

Most people apply for Ontario Works first because one can usually get assistance more quickly, and ODSP Applications can take several months to a year or longer.

Note - CLEONET Webinar - July 27, 2010 - OW/ODSP Applications and Appeals
ODSP - Establishing Disability

- Decisions about disability (medical eligibility) for every ODSP application in Ontario are made by the Disability Adjudication Unit (DAU). The DAU is in Toronto and decides or “adjudicates” based on the forms in the applicant’s Disability Determination Package “DDP”.

- The “DDP” forms package is given to the applicant to be completed and submitted to the DAU within 90 days of receiving forms [keep a copy!]

- The “DDP” detailed medical information stays at the DAU. It is not on the client’s file at the local ODSP office.
Section 2

Ontario Disability Support Program (ODSP)

- Definition of Disability
- ODSP Timeline
- Disability Adjudication Unit (DAU)
- Disability Determination Package (DDP)
  - Health Status Report (HSR)
  - Activities of Daily Living (ADL)
  - Self Report
- Tranchemontagne Decision
- Medical Reviews
ODSP Definition of Disability

- ODSPA section 4(1):
  - a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;
  - 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
  - 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.
ODSP - Appeal Timeline

Application Received

Application Must be Submitted to DAU

Internal Review Negative Decision

SBT Sends Notice of Hearing Date

New Decision from DAU

SBT Negative Decision

Application Negative Decision from DAU

Decision reqd. in 10 days

10 days in advance of hearing date

Min. 30 days in advance of hearing date

Max. 60 days

End

90 days

30 days

30 days

30 days

30 days

Medical Reports Submitted to DAU and SBT

Internal Review to DAU

Appeal to SBT

Hearing at SBT

Request for Reconsideration

Thank you to Ted Strange, East Toronto Community Legal Services.
Forms provided with this presentation are for educational purposes only!

The Disability Adjudication Unit (DAU) will NOT accept a Photocopy of these forms.

Application for Ontario Disability Support Program (ODSP)

This package contains the forms required to determine if you qualify as a person with a disability under the Ontario Disability Support Program Act, 1997.

The package consists of four separate forms:
- Health Status Report (HSR) and Activities of Daily Living Index (ADL) (yellow)
- Consent to the Release of Medical Information (ORMI)
- Consent to the Disclosure, Transmittal or Examination of a Clinical Record under subsection 35(3) of the Mental Health Act
- Self Report (SR) (pink)

The forms must be completed and submitted in one package to the Disability Adjudication Unit (DAU) within 90 days of the date that you receive them. Once you have submitted the completed forms, an adjudicator will review all of the information and decide if you qualify. If the DAU does not receive your package within 90 days, your file will be closed and you will be required to re-apply.

Although it is in your best interest to submit all of the forms, return of the self-report is voluntary.

Who may complete the forms

The following persons may complete the forms:

Health Status Report (HSR)
- Family Doctor or Specialist
- Psychologist
- Ophthalmologist/Opthamologist
- Registered Nurse in the Extended Class (RNEC)

Activities of Daily Living (ADL)
- Family Doctor or Specialist
- Chiropractor
- Ophthalmologist/Ophtalmologist
- Psychologist
- Occupational Therapist
- Physiotherapist
- Audiologist
- Registered Nurse in the Extended Class (RNEC)
Disability Determination Package “DDP”

Package consists of 4 parts:

• Health Status Report (completed by any of: doctor, registered nurse, extended class, psychological associates, ophthalmologist/optometrist – licensed to practice in province of Ontario)

• Activities of Daily Living Index (completed by above or any of: audiologist, chiropractor, occupational or physical therapist – licensed to practice in province of Ontario)

• Self Report (completed by client or advocate) which is optional but must be signed and returned with package

• Medical Consent form

(health professionals are paid by OHIP fees for completing DDP)

Keep a copy of your DDP and send it “registered mail”.

Health Status Report
Step 1 - Before booking a doctor’s appointment

- Ensure all necessary medical testing is completed before asking OW/ODSP office for Medical Referral to DAU
  - Normally recommend that a person create a journal or photocopy the DDP and complete copy in their own words - what is the known diagnosis; impairments, restrictions, medications, treatments (past and present); include list of all specialists and appointments and/or test results.
  - This may be too exhausting for some, have a friend/family member assist
Step 2: Major Reason Applications Fail
Lack of Objective Medical Evidence!

- Contact Doctor’s office - ask for a 20 minute appointment; one may require a second appointment

- Some health centers will work with a social worker or case manager to gather the necessary information before presenting the forms to the health professional

- Once the health professional has completed and signed the forms - ensure that all test results, hospitalizations, consultation reports or specialist reports that will support the application are included in the package.

- Many applications are denied because specialist reports are not included.
Step 3 – Review the forms

- Page 3/4 of HSR -
- Are Conditions clearly stated?
- Are the conditions/impairments expected to last more than 366 days? If prognosis is likely to improve - any delays - therapy, waiting lists?
- Are Impairments directly related to condition?
- Do the Restrictions clearly show a direct or cumulative effect of the impairment in one or more activities of daily living:
  - personal care,
  - function in the community and/or
  - function in a workplace
Intellectual and Emotional Wellness Scale (IEWS)

- Question 8, pg 7 of HSR
- Form states that “It is not necessary to complete this chart for persons whose conditions are solely of a physical nature”
- Even if condition is solely physical - many people still experience psychological and/or stress related impairments
- Recommend at least one referral for psychological assessment
  - if chart filled in - can be used during appeal process or substantiate “impairments and restrictions” - for example - chronic pain syndromes - normally long term, pain medications, drowsiness, reduced focus, reduced concentration,
Activities of Daily Living (ADL)

- Broader range of health professionals may complete ADL section (pgs 11-14)
- Chart - page 12 - ensure that the restrictions match and expand upon the restrictions as noted in HSR (pg 4)
- Use pgs 11 and 13 to expand on any concerns or compensation of tasks:
  - Do family members or friends come in - provide meals, housekeeping, driving
  - If able to do a task - compensation techniques - Kick/throw laundry down stairs instead of carry it? How long to accomplish task - ie dust for 5 minutes, rest for 10 minutes;
- Cultural/Lifestyle Awareness - if person not responsible for a specific task - such as housekeeping - is there another task/ job that requires compensation to complete task
Self Report

- Must be signed by person applying for ODSP
- Although a person may choose not to complete form - strongly recommended as this is a person's chance to tell their own story
- Page 7/8 - Use the journal information suggested to create a picture of one's day to day activities - focus on how the medical condition (s) and impairments stop or limit a “normal” day to day lifestyle
- IF resume available - use it to show restrictions in workplace activities
- Make sure the doctor sees a copy of this Self Report and it matches information provided by doctor/health professional in HSR and ADL and consultation reports
Next Steps

- DDP to be returned within **90 days** of receiving package from the ODSP/OW worker

- IF a person cannot meet the 90 day deadline to submit the application - request an Extension of Time - the DAU will normally grant a 60 day extension

- May take 3 to 4 months to receive an answer

- If application denied - 30 days to file a written Request for Internal Review (beginning of Appeal process)

- One can add new medical reports with the Internal Review
Tranchemontagne Decision

- ODPSA - 5(2) A person is not eligible for income support if,
  (a) the person is dependent on or addicted to alcohol, a drug or some other chemically active substance;
  (b) the alcohol, drug or other substance has not been authorized by prescription as provided for in the regulations; and
  (c) the only substantial restriction in activities of daily living is attributable to the use or cessation of use of the alcohol, drug or other substance at the time of determining or reviewing eligibility. 1997, c. 25, Sched. B, s. 5 (2).

Thursday September 16, 2010 - The Ontario Court of Appeal released it's decision that has affirmed the decisions of the Divisional Court and the SBT that the denial of ODSP income support to two individuals on the basis of the substance dependence exclusion in ODSPA s. 5(2) was contrary to the Human Rights Code: Ontario (Director, Disability Support Program) v. Tranchemontagne, 2010 ONCA 593, Court File No. C50970 (Simmons, Cronk and Rouleau J.J.A.) [CRO No. SAS-D-24313].

Background: This was an appeal from the "post-Supreme Court of Canada" Divisional Court decision in the long-running Tranchemontagne/Werbeski proceedings. The individual respondents had been denied ODSP in the late 1990s on the basis that their only substantial impairment was alcohol addiction. Their appeals had been dismissed by the SBT. Subsequent appeals (which were heard jointly) took them all the way to the Supreme Court of Canada, which ruled that the SBT had the right and obligation to apply the Code to the ODSPA and sent the case back to the SBT for determination of the Code issues. Subsequently, the Government again appealed the decision of the SBT to grant ODSP benefits.

(Synopsis provided by Clinic Resource Office, Legal Aid Ontario)
Medical Reviews

- The Director (ODSP) may determine that based on the health professional's prognosis for improvement or the approved recovery and treatment recommendations it would be beneficial to the applicant to have a medical review - normally 1 to 5 years from the date the original application was granted.

- The person will receive the exact same forms (DDP) but in different colours; and will be required to submit the forms back to the DAU within 90 days of receipt.

- The Medical/Health professional must indicate if the person's original condition(s), impairments and restrictions have improved, stayed the same or worsened. Also include any new conditions.

- Important to include consultation reports & test results to confirm diagnosis and opinion of impairments and restrictions.

- If this medical review is denied by the DAU, the person has a right to file a Request for Internal Review and subsequent appeal to the SBT (Social Benefits Tribunal)
Where to Find Help...

- For information about benefits or for help at anytime
- **Contact your nearest Community Legal Clinic**
- **or community legal advocate!!!**
- **Contact your local Member of Provincial Parliament**

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