

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated April 18, 2012 which found that the appellant did not meet two of the five statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant meets the age requirement, and has a severe mental or physical impairment that is, in the opinion of a medical practitioner, likely to continue for two years or more. The ministry was not, however, satisfied that in the opinion of a prescribed professional the appellant's impairment directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods. The ministry also found that it could not be determined that the appellant, in the opinion of a prescribed professional, requires help - as defined in section 2(3)(b) of the EAPWDA - to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, (EAPWDA) section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the following:

- The appellant's PWD application signed by the appellant on February 9, 2012, including a Physician's Report (PR) and Assessor's Report (AR). Both the PR and the AR were prepared and signed by a physician on February 7, 2012.
- A one-page self-report written by the appellant and dated February 7, 2012.
- A letter from the ministry to the appellant, dated February 21, 2012 denying the appellant PWD status.
- The appellant's Request for Reconsideration, dated March 7, 2012.

In the PR the physician – who has known the appellant for 1 year - diagnosed the appellant with 5 mental disorders: dissociative disorder NOS, bipolar 1 disorder, OCD, social phobia – panic disorder, and sexual identity disorder. He also diagnosed epilepsy. In the Health History section of the PR form, the physician noted that the appellant has “a long history of mental illness. Sexual identity disorder with associated stressors. His dissociative disorder leads to ‘lost periods of time’. His bipolar and affective disorders need medications and problems with control.” The physician noted that according to the appellant, one of his medications is causing him “difficulty in focusing”. In terms of physical functional skills, the physician reported the appellant can walk unaided for over 4 blocks, can climb more than 5 stairs unaided, and has no limitations with respect to lifting or remaining seated. In terms of cognitive and emotional functioning, the physician identified significant deficits in the areas of emotional disturbance, motivation, and dissociative disorder leading to “lost times”.

In the AR the physician reported the appellant as being independent in all categories of mobility and physical ability, and his ability to communicate is satisfactory in 4 of 4 categories. In Part B of the AR form the assessor is required to “indicate to what degree the applicant's mental impairment ... restricts or impacts his/her functioning.” The physician has identified the appellant as being

- minimally impacted in 5 of 14 categories of cognitive and emotional functioning (bodily functions, consciousness, memory, motor activity and language);
- minimally to moderately impacted in 1 category (insight and judgment);
- moderately impacted in 5 categories (emotion, impulse control, attention/concentration, and executive);
- moderately to majorly impacted in 3 categories (motivation, psychotic symptoms, and other neuropsychological problems – dissociative);

and noted that “This man's mental illnesses are multiple with varying impairments.”

In terms of DLAs, the physician reported that the appellant is independent in all categories of personal care, shopping, meals, paying rent and bills, medications, and transportation. He reported the appellant as independent with basic housekeeping, but as needing periodic assistance with laundry. There is no information as to the frequency or duration of the assistance required with laundry. He described the appellant as requiring periodic support or supervision in 5 of 5 categories of social functioning but again provided no information on the frequency or duration of assistance

required. The physician wrote that the appellant is marginally functional in terms of both his immediate and extended social networks, particularly at dissociative times. In response to the question asking for a description of the support/supervision which would help to maintain the appellant in the community, the physician wrote "No". With respect to a question on assistance provided by other people the physician wrote "family assistance with laundry and support". He wrote "N/A" with regard to assistive devices, and "No" with regard to assistance animals.

In his February 7, 2012 self report the appellant said that he suffers irregular periods of lost time lasting anywhere from 5 minutes to days, weeks, and on one occasion a full month. He maintains a poor level of hygiene, diet, and household cleanliness, and described himself as often tending to be anti-social and hermit like. He struggles every day with feelings of hopelessness and fear, and finds it very difficult to ask for help. He has had a headache continuously since 1992. It varies in intensity but never goes away.

In an April 12 letter (date stamped as being received by the ministry on May 1, 2012) "To Whom it May Concern", the physician provided more detail on the appellant's impairment. The appellant has major problems in associating with people in society in an appropriate way, and exhibited "extreme hostility and anger" at his consultation of the same date. He described the appellant as "poorly groomed and odiferous". The appellant has periods of time with his dissociative disorder "where he does not remember how he got places or what went on."

In a second letter "To Whom it May Concern" dated May 16, 2012 the physician wrote that the April 12 letter "does not adequately provide the severity of the poor functionality of this man with regard to his basic activities of daily living." The appellant is able to get up and dress himself when going out, but admits to poor dressing and self care when isolating himself. He does not shower or bathe, but merely uses a wash cloth with limited success. He feeds himself extremely poorly, and his nutrition could benefit from a proposed move to a room and board situation. The physician wrote that it is very difficult to ascertain the length of time and frequency of the appellant's dissociative disorder lapses of time, but believes it to be "significant" and a major part of his dysfunctional capabilities.

In a written submission accompanying his Notice of Appeal and dated May 1, 2012 the appellant said he has been in constant debilitating pain for more than twenty years. He reiterated his evidence of random lost periods of time, depression, social anxiety disorder, poor motivation, poor eating habits, poor household cleanliness, and feelings of anger, hopelessness and fear. He wrote that asking for help is one of the most difficult things in his life.

The physician's letters of April 12 and May 16, and the appellant's submission of May 1 provide further detail as to the appellant's impairment and the impact it has on his DLA. Accordingly, the panel finds that these documents are written testimony in support of information and records that were before the ministry at the time of reconsideration, and admits them as evidence in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that in the opinion of a prescribed professional the appellant's severe impairment does not directly and significantly restrict him from performing DLA either continuously or for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislative provisions are as follows:

EAPWDA section 2:

2 (1) In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

EAPWDR section 2(1):

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;
- (iii) shop for personal needs;
- (iv) use public or personal transportation facilities;
- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi) move about indoors and outdoors;
- (vii) perform personal hygiene and self care;
- (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

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Restrictions in Performing DLA

In the reconsideration decision the ministry relied on the fact that the physician had identified the appellant as being independent in all but 1 DLA, and the fact that the physician had not identified the level of assistance required by the appellant, or the frequency or duration of periodic assistance, to find that the appellant is not significantly restricted in performing DLA.

The panel has the benefit of additional evidence that was not available to the ministry at the time of reconsideration. In his letters of April 12 and May 16, the physician has provided details about the poor standard to which the majority of the appellant's DLA are performed on an ongoing basis. He describes 3 features of the appellant's cognitive and emotional functioning as being significantly

impacted at times and 8 out of 12 having a moderate impact most of the time. In the panel's view the poor standards and large number of major and moderate impacts to cognitive and emotional functioning constitute restrictions to DLA. With respect to the frequency and duration of the restrictions, the physician says it is difficult to ascertain but says it is primarily due to onsets of the lapses of time and awareness resulting from his dissociative disorder, and that it is a significant and major part of his dysfunctional capabilities. The appellant's evidence and the physician's evidence are consistent in showing that the appellant's DLA in terms of housekeeping, personal care, meals, and appropriate interactions with others are directly and significantly impacted most of the time. In the panel's view, this constitutes evidence of direct and significant restrictions of the appellant's ability to perform DLA periodically for extended periods. On balance, and considering the new information, the panel concludes that the ministry unreasonably found that it was not the opinion of a prescribed professional that the appellant's severe impairment directly and significantly restricts his ability to perform DLA either continuously or for extended periods.

Help to Perform DLA

The legislation does not authorize the ministry to designate a person as a PWD unless it is satisfied that, in the opinion of a prescribed professional, as a result of direct and significant restrictions caused by his impairment, the person requires help to perform DLA. A person requires "help" in relation to DLA if he requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal. The physician has confirmed that the appellant does not require assistive devices or an assistance animal. The only assistance indicated is periodic help from "family" with respect to laundry and "support". "Support" is not a DLA. The physician describes the appellant as independent with respect to all but 1 DLA. In his subsequent supporting letters, the physician indicates that the appellant's nutrition could benefit from a proposed room and board situation, and it's implicit that his other DLA could also benefit from the supervision of another person. In the panel's view, however, the evidence falls short of showing that, in the opinion of a prescribed professional, the appellant requires the significant help or supervision of another person. On the balance of the evidence, the panel finds that the ministry reasonably determined that the appellant does not require "help" as defined in the EAPWDR, and concludes that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant.

Accordingly, the panel confirms the ministry's decision.