

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 14 Aug 2012 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry did determine that the appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

## 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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 03 March 2012, with a Self Report (SR) written by the appellant and a Physician Report (PR) and Assessor Report (AR), both completed by the appellant's general practitioner (GP) and dated 31 January 2012. The appellant has been the GP's patient for 5 years and he has seen her 2 – 10 times over the past 12 months.
2. The appellant's Request for Reconsideration dated 10 July 2012, attached to which are a draft letter prepared by the appellant's advocate for the GP's consideration dated 10 August 2012, a letter from the GP in response dated 12 August 2012 in which he states agreement with the points raised by the advocate, and a letter of support from a friend dated 08 August 2012.

In her SR, the appellant writes:

Since I was a child I have had anxiety. I hoped I would get over it but it has only got worse. I have a sister who has some of the same problems growing up, with a mother who drank and would try to leave us or she would try to kill herself. And my father was always away [...]. It was very hard on us. I spent most of my childhood worrying and taking care of her that later in my life I got a bad nervous problem

I can't deal with everyday life. This is being going on for years now. I can't leave my house. I am afraid to go to appointments, to the store or almost anywhere. I have a lot of fears. I can't even take a bus. I am always scared.

I started drinking and now I have a severe alcoholism problem and often hurt myself. I have been in the hospital many times for stitches and mental evaluation. Now I have bad scars all over my arms. It has gotten worse over the last 10 years. I can't work or anything as I get sick and scared just getting out of bed. So I am always depressed. I also have menear's disease which makes me dizzy and off balance. I has been like this for so long I don't know what it's like to feel normal.

In the PR, the GP diagnoses the appellant with alcohol abuse, depression and social phobia, all with onset many years ago. Under health history, the GP writes: "This patient is markedly disabled due to (1) alcoholism, (2) depression (3) social anxiety." The GP indicates that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA. He reports that she does not require any prostheses or aids for her impairment. He indicates that her impairment is likely to continue for two years or more.

With respect to functional skills, the GP reports that the appellant can walk 4+ blocks unaided and climb 5+ steps, with no limitations in lifting or remaining seated and with no difficulties with communication. He reports significant deficits with cognitive and emotional function in the following areas: emotional disturbance, motivation, impulse control and attention or sustained concentration.

In the AR, the GP indicates that the appellant lives with family or friends. He reports that the appellant's mental or physical impairments that impact her ability to manage DLA are alcoholism/depression. He assesses her ability to communicate as good in all areas - speaking reading and writing and hearing. He assesses her mobility and physical ability as independent for all physical areas of physical functioning - walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

As to cognitive and emotional functioning, the GP assesses major impacts on emotion, impulse control, insight and judgment, attention/concentration and motivation. A moderate impact is assessed with respect to executive function. He assesses a minimal impact for bodily functions consciousness and memory, and no impact for motor activity and language, psychotic symptoms, other neuropsychological problems or other emotional or mental problems.

With respect to DLA, the GP assesses the appellant independent in all aspects of personal care, basic housekeeping, shopping, meals, pay rent and bills, medications, and transportation. With respect to social functioning, he indicates that the appellant requires periodic support/ supervision regarding appropriate social decisions, ability to develop and maintain relationships, interacting appropriately with others, ability to deal appropriately with unexpected demands, and ability to secure assistance from others. He describes how the appellant's mental impairment impacts her relationship with immediate social and extended social networks both as very disruptive functioning. He describes the support/supervision required as "alcohol withdrawal support." Regarding assistance provided, the GP indicates that help is provided from family and friends.

Under additional information, the GP writes: "this patient would benefit most from residential alcohol rehabilitation clinic, e.g. [name of residential treatment center] or similar situation."

In his draft letter for the GP's consideration, the appellant's advocate seeks agreement from the GP a number of points. These include:

- When considered in conjunction, her diagnoses serve to significantly impair the appellant on a frequent and daily basis. In the GP's opinion the appellant suffers from cognitive impairment that should be considered a severe.
- Most notably the appellant is restricted in her ability to communicate and interact effectively with others. She describes extended periods of social isolation where she will not leave her home for a week at a time. As a result she has difficulty attending to appointments, grocery shopping and in taking public transit.
- While the GP indicated in the PWD designation application that the appellant is independent in terms of performing the majority of her DLA, this is only true when she is having a good day and experiencing only limited symptoms from her diagnoses. However she experiences very few good days in any given month. She faces significant restrictions to many of her DLA on a frequent and ongoing basis.
- The appellant would benefit from peer support and counseling to aid her in communicating and interacting with others. As it stands she is unable to independently attend appointments, use public transportation, or shop for personal needs. She frequently makes poor decisions regarding personal self care so requires frequent and ongoing support to ensure that she adequately manages her personal finances, diet and personal hygiene.

In his letter of response, the GP states that he is in agreement with the points made in the draft. He states that: "There is no doubt that this patient's ongoing battle with addictions precludes her ability to receive help and treatment that would be meaningful in all aspects of her life. The focus of any help this patient receives should be directed primarily at assisting her in achieving and maintaining sobriety."

In a letter of support, the friend writes that for as long as he has known her, since 1989, she has always dealt with issues such as severe depression and anxiety. She cannot go outside without

panicking. The fear of interacting with others on any daily basis makes her physically ill. She has no family to help her as her parents are very old and her sister is not mentally well enough to help. The appellant lives alone as it is the only way she can be, without feeling anxiety at its worst. Because there is no one to offer the support she needs through family or friends, the friend hopes she somehow gets the financial support for her to have people to shop for things or pick up the medications she requires on a daily basis.

In her Notice of Appeal dated 24 August 2012, the appellant writes:

"I don't know what to do. I am afraid all the time. I am even afraid to send this form. I have been in abusive relationships, and I hardly ever leave my house because I get sick and have panic attacks.... I have no phone or TV or anything. I can't handle it. I don't know what I will do now. I can't even get to my doctor's. I need help."

At the hearing, the appellant stated that she hardly ever leaves her home. She doesn't have a phone or TV and can't talk to anyone. She gets sick from her panic attacks. She has panic attacks even when she gets up in the morning and every time she has to go out - she is scared of earthquakes and fires, and when being driven by her friend to an appointment she gets scared about car accidents. She will often cancel appointments because of her panic attacks. She quit driving because of her panic attacks. She sees her doctor only once about every three months, mainly to renew her prescriptions. He has her on medication for her high blood pressure as well as for her panic attacks, but the latter do not help very much. She does not tell her doctor about personal things and when she sees him he only renews her prescriptions and talks to her about stopping drinking. She said that she only drank to make her comfortable when she had to go out. She said that she does not drink that often anymore - she can't afford it. In fact she disputes the diagnosis of alcoholism and in answer to a question stated that she had not sought any help to quit drinking.

In answer to a question, the appellant stated that she lives alone, not with family/friends as indicated in the AR. In answer to a question, the appellant stated that she had talked with her advocate at some length about what was described in the advocate's draft letter to the GP, but that she had not gone into that kind detail with the GP himself.

The ministry stood by its position at reconsideration. The appellant indicated she agreed with the ministry that she does not have a physical impairment. The ministry noted that the appellant does not need PWD designation for the ministry to provide her with help in addressing her addiction issues.

The panel finds that the new information provided by the appellant in her Notice of Appeal and at the hearing concerning her medical condition is in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act

The panel finds problematic the information contained in the advocate's draft letter to the GP and the GP's letter indicating agreement to the points raised in the draft. In her testimony, the appellant has indicated that the descriptions of her situation in the draft letter are what she told the advocate. The panel views these descriptions as a self report passed second-hand to the GP. Accordingly, the panel does not consider this exchange of correspondence to constitute evidence of an "opinion of a medical practitioner" under section 2(2)(b) of the EAPWDA.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2 of the EAPWDA. Specifically the Ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions she requires help to perform those activities.

The Ministry did determine that she met the 2 other criteria in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

**2 (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.

The following section of the EAPWDR applies to this appeal:

**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.

*Severity of impairment.*

In the reconsideration decision, the ministry determined that, as there are no physically debilitating medical conditions diagnosed and the appellant's functional skills are not limited, a severe physical impairment had not been established. As the appellant has agreed with this conclusion and as there is no other evidence that would point to another conclusion, the panel finds that the ministry reasonably determined that a severe physical impairment had not been established.

In terms of mental impairment, the reconsideration decision notes that the GP reports four deficits to cognitive and emotional functioning (emotional disturbance, motivation, impulse control, and attention/ concentration). The ministry also notes that communication is good, with no difficulty. The ministry also notes that there are five major impacts on daily functioning related to the deficits mentioned above, although there is no specific information on how these impacts restrict the appellant's ability to perform DLA. From the evidence, the ministry concludes that the appellant is able to make decisions about personal activities, care and finances and is able to relate to, communicate and interact with others adequately, albeit with a degree of social phobia. On this basis, the position of the ministry is that the information provided is not sufficient evidence of a severe mental impairment.

The position of the appellant is that she suffers from severe social phobia, leading to depression and panic attacks. The panic attacks make her physically sick and prevent her from leaving the home for shopping or attending appointments. Her social phobia is also a barrier to talking with others, including her GP, about her issues and finding the help she needs to deal with them. In her view, the social phobia, the resulting depression, and her tendency to use alcohol to overcome her fears, are all evidence of a severe mental impairment.

The legislation provides that the determination of the severity of impairment is at the discretion of the minister. The reasonable application of this discretion involves taking into account all the evidence, including that of the appellant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner identify the impairment and confirm that the impairment will continue for at least two years. In light of the GP's diagnosis of alcohol abuse, depression and social phobia, the panel considers it reasonable that the ministry would expect, in order to substantiate a severe mental impairment, more medical evidence of how and to what extent the appellant's mental functioning restricts her ability to function independently, appropriately or effectively. There is no evidence that a psychiatric assessment has been sought or is available, nor is there any indication from the GP that he has prescribed any medication for her depression or social phobia. And while the GP stresses that the appellant would benefit from attending a residential treatment centre for her alcoholism, there is also no indication that the GP considers her depression and social phobia serious enough to refer her to a mental health professional for therapy or treatment.

The GP has identified major impacts in several areas of cognitive and emotional functioning. However, the narrative does not include any analysis, or even examples, as to how these impacts manifest in daily functioning. For example, for attention/concentration, there is no information given as to how the diagnosed impairment manifests in her being distractible, unable to maintain concentration or having poor short term memory.

Further, the panel notes that the GP commented that the appellant "would benefit most from residential alcohol rehabilitation clinic," implying that the appellant's alcoholism is treatable and recovery from alcoholism would mitigate her other mental health issues.

Based on the foregoing, the panel finds that the ministry reasonably determined that the information provided did not establish a severe mental impairment.

*Whether DLA are significantly restricted*

As to whether, in the opinion of a prescribed professional, the impairment directly and significantly restricts DLA either continuously or periodically for extended periods, the reconsideration decision notes that all DLA are performed independently, including shopping. Social functioning requires periodic support/supervision in all five aspects; however the ministry notes that the GP states that she would benefit most from residential alcohol rehabilitation clinic. However the need for assistance with mental health issues from other people is not described. The ministry concludes that as all DLA are performed independently or require periodic help from others to social functioning (alcohol rehabilitation) the information from her prescribed professional -the GP-does not establish that impairment significantly restricts DLA, either continuously or periodically for extended periods.

The position of the appellant is that her ability to manage DLA is significantly and continuously restricted by her social phobia and panic attacks. She is so scared to go shopping that she has to have someone else do it for her. And her social phobia frequently results in her canceling medical appointments and foregoing any social or recreational activity outside her home. Her mental condition prevents her from being able to relate effectively with others. All this points to her DLA being significantly restricted.

The panel notes that this criterion requires the evidence to be "in the opinion of a prescribed professional." Therefore the panel must rely on the PR and AR before the ministry at reconsideration. With respect to the additional DLA relating to a person with a mental impairment i.e. make decisions about personal activities, care or finances; and relate to, communicate or interact with others effectively, the panel notes that there are no descriptions or examples of how her diagnosed impairments impact her ability to make decisions about his personal or family care, and with respect to the second, only that she has very disrupted functioning with both immediate and extended social networks, but without any description as to the specific cause or the consequences. In the panel's view, assessing the appellant's overall ability to function as reported in the PR and AR, it is difficult to assess the GP's opinion as confirming that these restrictions are "significant." The panel therefore finds that the ministry reasonably determined that this legislative criterion had not been met.

*Whether help to perform DLA is required*

In the reconsideration decision, the ministry noted that the GP has indicated that the appellant does not require any prostheses or aids and that she does not use an assistive device to compensate for her impairments. As it had not been established that DLA are significantly restricted, the ministry concludes that it cannot be determined that significant help is required from other persons and that the appellant does not require the services of an assistance animal.

The position of the appellant is that, as a result of her social phobia she requires the assistance of others for shopping and any other activity outside the home, especially attending medical appointments.

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required under section 2(2)(b)(ii) of the EAPWDA.

*Conclusion*

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence and therefore confirms the ministry's decision.