

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of August 30, 2012, which found that the appellant did not meet three of 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 met the age requirement and that in the opinion of a medical practitioner his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that he has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that he requires help as defined in section 2(3)(b) of the EAPWDA.

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 appellant did not attend the hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of reconsideration included the following:

- The appellant's application for designation as a PWD. The application included a self-report (SR) signed by the appellant on June 11, 2012, a physician report (PR) signed by the appellant's physician dated June 14, 2012, and an assessor report (AR) also signed by the appellant's physician dated June 14, 2012.
- A letter from the ministry to the appellant, dated July 30, 2012 advising the appellant that he had been found ineligible for designation as a PWD.
- The appellant's Request for Reconsideration form signed by the appellant on August 28, 2012, including a written submission by the appellant.

Information subsequently put before the appeal panel included the following:

- The Notice of Appeal dated September 10, 2012.

The SR portion of the application form was left blank. The appellant ticked the box indicating that "I choose not to complete this self-report."

In the PR the physician, who is a non-certified specialist in psychiatry, indicated that the appellant had been his patient for 1 week and that he had seen the appellant once in the past 12 months. He diagnosed the appellant with bipolar disorder, cluster B traits, borderline/antisocial, and R/O cyclothymic disorder. The physician reported that the appellant has chronic mood dysregulation, with a life-long history of poor coping skills and poor interpersonal skills. The physician wrote that he needs time to see if a mood stabilizer will moderate the appellant's chronic anger and consequent social dysfunction. In terms of functional skills, the physician indicated that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations in lifting or remaining seated. The appellant does have cognitive difficulties with communication, and significant deficits with 3 of 11 categories of cognitive and emotional function: emotional disturbance (*e.g. depression, anxiety*), motivation (*loss of initiative or interest*), and impulse control. The physician made no indication with respect to whether the appellant requires any prostheses, aids, or assistance to perform DLA.

In the AR the physician completed section B.4 of the form, which applies to applicants with an identified mental impairment or brain injury. The physician indicated that the appellant's impairment has a moderate impact on 4 of 13 categories of cognitive and emotional functioning: emotion, impulse control, insight and judgment, and attention/concentration. With respect to the appellant's ability to perform DLA, the physician indicated that the appellant is independent in all DLA with the exception of social functioning. He reported the appellant as requiring continuous support/supervision in 5 of 5 categories of social functioning: appropriate social decisions, able to develop and maintain relationships, interact appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others. He described the appellant as being marginally functional

with respect to both his immediate and extended social networks.

In the written submission included with his Request for Reconsideration, the appellant wrote that he had been granted disability status previously in 1997 after an incident and suicide attempt with the police. He said that his life is considerably worse now than it was then and that he's been to hospital/doctor many times for suicide/vengeance ideation. The appellant referred the reconsideration officer to his Facebook page in order to get "a better grasp of what [he's] been up against all these years." He wrote that he still had to face the same issues he had in 1997 and that since then his mother died of cancer, and he has also lost his sister, his son, and his girlfriend. He said that he recently travelled to another community to "murder" the police officer that is behind his "constant persecution". The appellant also made reference to acquaintances of his who are recipients of disability assistance and who he alleges satisfy none of the statutory criteria.

In his Notice of Appeal, the appellant stated that he had been granted disability assistance in 1997 even though he did not satisfy any of the statutory criteria at the time. He wrote that his body is crippled from years of work, and that he hates the human race because of the persecution he has endured from the police since 1997.

The information in the Notice of Appeal regarding his receipt of disability assistance in 1997 is accepted by the panel as evidence, as it is written testimony in support of information that was before the ministry at the time of reconsideration in accordance with s. 22(4) of the *Employment and Assistance Act* (EAA). The information regarding the crippling effects of his work experience raises a potential physical impairment that was not diagnosed by the physician and was not previously identified by the appellant. Accordingly, the panel has not accepted that statement into evidence, as it is not in support of information or records that were before the ministry at the time of reconsideration as required by s. 22(4) of the EAA.

The ministry relied on its reconsideration decision and did not provide any new evidence.

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 the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict him from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

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.

Severe Physical Impairment

The appellant did not expressly take a position on whether he has a severe physical impairment.

The ministry's position, as stated in its reconsideration decision, is that since the mobility and physical abilities are independent, the ministry is not satisfied that the information provided is evidence of a severe physical impairment.

On the evidence, it's clear that the physician has not diagnosed a physical impairment. The PR and AR indicate that the appellant has no physical functional limitations and that he is independent with respect to all 8 DLA prescribed in EAPWDR s. 2(1)(a) which are relevant to physical impairment. The

panel finds that the ministry reasonably determined that the appellant does not have a severe physical impairment.

Severe Mental Impairment

The appellant seems to have two alternative positions on severe mental impairment. On the one hand he says that he qualified for disability assistance in 1997, and that the mental issues which qualified him then still exist, as well as an additional "15 years of living hell", "torment", and "persecution." On the other hand, he says that he didn't satisfy any of the statutory criteria for disability assistance in 1997, that he knows other individuals who are receiving disability assistance without satisfying the statutory criteria, and that he needs help.

The ministry's position, as expressed in the reconsideration decision, is simply that based on the physician's assessment the ministry is not satisfied that the information provided is evidence of a severe mental impairment. The ministry also said that the physician is still waiting to see if the effects of the appellant's mental impairment can be alleviated with medication, and that the appellant can reapply for disability assistance in the future if the treatment options prove ineffective.

The physician has diagnosed a mental impairment. He was consistent in the PR and the AR in identifying significant deficits in cognitive and emotional function, but the additional detail in the AR shows that the impacts on daily functioning are "moderate" rather than "major". At the time of the PWD application the physician had only seen the appellant once and expressed the need for more time in order to be able to determine if the appellant's impairment could be moderated with medication.

The appellant's contention that he received disability assistance in the past and that his condition is worse now is irrelevant. The decision on his current eligibility must be based on evidence of his current condition, not on unsupported statements as to what his condition may have been 15 years ago. While it is clear that the appellant does suffer from a mental impairment, the medical evidence of moderate impact to aspects of cognitive and emotional functioning is not sufficient to show that the mental impairment is severe. Accordingly, the panel concludes that the ministry reasonably determined that the appellant does not have a severe mental impairment.

Direct and Significant Restrictions

The appellant has not expressly stated a position on whether his impairment directly and significantly restricts his ability to perform DLA either continuously or for extended periods.

The ministry's position, as expressed in the reconsideration decision, is that the physician indicated that all of the appellant's DLA are performed independently and there is no indication he takes significantly longer to perform them. The ministry is not satisfied that the legislative criteria have been satisfied.

The physician's opinion as set out in the AR and PR is that the appellant is independent in all DLA except for "relate to, communicate or interact with others effectively", as identified in s. 2(1)(b)(ii) of

the EAPWDR. The physician has indicated that the appellant requires continuous support and supervision in this DLA, but the appellant remains marginally functional in this area. This does not indicate a significant degree of restriction in the appellant's ability to perform DLA. The appellant himself has not provided any evidence as to how his impairment directly and significantly restricts his ability to perform any other DLA. Based on the evidence that there is only one DLA in which the appellant is restricted but still marginally functional, the panel concludes that the ministry reasonably determined that this statutory criterion was not satisfied.

Help in Relation to DLA

Regarding the need for help with DLA, the legislation requires that the need for assistance must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods in the opinion of a prescribed professional. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted either continuously or periodically for extended periods, it cannot be determined that help is required as set out in 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 declaring the appellant ineligible for PWD designation was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant, and therefore confirms the ministry's decision.