

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 17, 2012 which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that 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 the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal 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 consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated May 4, 2012, physician report dated May 18, 2012, and assessor report dated May 28, 2012;
- 2) Medical Report- Employability dated May 18, 2012 signed by the physician and stating in part that the appellant's primary medical condition is major depressive disorder with signs of psychosis and that his secondary medical condition is OCD (obsessive compulsive disorder) plus (illegible); the physician describes the overall medical condition as 'severe' as opposed to mild or moderate; in terms of restrictions specific to the medical conditions, the physician indicates "...no physical restrictions, mentally has difficulty making decisions (illegible)";
- 3) Letter dated July 12, 2012 from the ministry to the appellant denying his request for PWD designation and enclosing a copy of the original decision summary; and,
- 4) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

The appellant consented to the attendance at the hearing of a ministry observer. In his Notice of Appeal, the appellant states that his doctor indicated severe impairment, that the appellant considers his anxiety and depression severe and he is very dependent on his parents. The appellant states that he was admitted to the mental health unit again in the fall of 2010. In the Request for Reconsideration, the advocate states that the appellant has been diagnosed with a high degree of anxiety, mood disorder, psychosis, OCD traits and depression. The advocate states that the physician's comment that the appellant is "incapable of gainful employment" shows that skills are lacking to maintain employment and, therefore, also lacking to maintain and manage his social contacts and daily living activities (DLA). The appellant remains under the care of a psychiatrist and is extremely sensitive to people, comments and this causes aggravation towards his environment and he is extremely sensitive to observations of people's reactions and attitudes towards him. He frequently seeks approval and acceptance and requires a certain amount of prompting. The appellant's impairment has continued for several years. The physician has described the appellant's overall medical condition as "severe." The appellant lives at home with his parents. He requires help to manage his anxiety and gets continuous help from mental health, he has a case worker and sees a psychiatrist and also attends group therapy for anxiety and self esteem help. The appellant has difficulty with filling and refilling prescriptions and using public transportation, he cannot make decisions about personal activities, mobility outside the home (shopping, etc.). The appellant cannot (leave) the house without his parents, on a bad day.

At the hearing, the appellant stated that he would like to summarize what has gone on in his life. He has PTSD (post traumatic stress disorder). His half brother died and he has two uncles who committed suicide. He suffered serious head injuries in 2005 playing soccer and was admitted to the mental health unit in 2010. The appellant stated that he was hospitalized because he was not on the proper medications, that different medications were being tried, but he started to have problems. The appellant stated that he meets with a social worker, a psychiatrist and others at mental health. The appellant stated that his doctor does not know all his challenges and does not know the full extent of his impairment. The appellant stated that his parents help him with organizing, shopping, and banking. The appellant stated that this whole process of dealing with the ministry and the reconsideration of the ministry's decision causes him lots of anxiety. In response to questions, the appellant stated that he first saw the psychiatrist when he was hospitalized in 2010, that he saw the psychiatrist a lot in the hospital and then he used to meet with the psychiatrist quite frequently or approximately once a month but now it is about once every 2 or 3 months. The appellant stated that he now takes medications prescribed by the psychiatrist which work better. The appellant stated that he used to see his case worker, who is the social worker who completed the assessment report, a lot but now it is not as frequently. The appellant stated that he had worked with the social worker, that it was a process, but then he did not want to see the appellant anymore because he figured that the appellant was "getting better" and he had other clients to see, but they still stay in contact. The appellant stated that he still takes anxiety courses, leisure courses and self esteem programs and a core program group that helps to change one's way of thinking. In his self-report included in the PWD application, the appellant states that he has high anxiety often and depression too. The appellant states that he has been admitted to the psych ward where he received help

with his medications and coping skills in two instances.

The physician who completed the physician report indicates the appellant has been his patient for 29 years, or since the appellant's birth, and that he has seen the appellant 2 to 10 times in the past 12 months. In the physician report, the physician confirms a diagnosis of anxiety disorders and mood disorders, both with onset in 2005. In describing the severity of the medical condition relevant to the appellant's impairment, the physician notes "...he developed anti-social psychotic mental breakdown in 2005 requiring psychiatric hospital/ following admission and treatment complex features of (illegible) a high degree of anxiety, obsessive compulsive traits and depression emerged. Over the years, he has required careful scrutiny, medications and care- living with his parents. He was incapable of gainful employment. He was partially through college- working toward a B.A. at [name of college]- general studies. Over time, with medication, counseling, he has achieved (illegible) his B.A. He remains unemployed. He is very sensitive/aggravated towards his environment, often misunderstanding the meaning of observations of people's reactions/ attitudes towards him. He frequently seeks approval and acceptance. He still requires a certain amount of prompting." The physician indicates that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does not require an aid for his impairment. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, that he can climb 5 or more steps unaided, and there are no limitations with lifting or remaining seated. The physician indicates that there are no difficulties with communication. The physician reports that there is a significant deficits with cognitive and emotional function in the area of emotional disturbance (anxiety), with no further comments provided. The physician has responded "no" to the question whether the impairment directly restricts the appellant's ability to perform DLA and goes on to assess the appellant as not restricted in all areas of DLA, including social functioning. The physician adds a comment with respect to social functioning that the appellant "...tends to be very shy, easily hurt, often seeking approval and acceptance." In response to a question regarding the assistance the appellant needs with DLA, the physician has noted "none".

The appellant's case worker, a social worker, prepared the assessor report and indicates that he has known the appellant for 2 years and that initially the case management was weekly and intense to work on anxiety and now they meet once or twice a month to maintain anxiety education and treatment and some supportive counseling is provided. The assessor indicates the appellant has a good ability to communicate in all areas. The assessor indicates that the appellant is independent in all areas of mobility and physical ability. The assessor indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, and with transfers in/out of bed and transfers on/off chair, with no other explanation or description provided. The assessor reports that the appellant is also independent with doing laundry and with basic housekeeping, with no further comments. The assessor indicates that the appellant is independent with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. The assessor reports that the appellant is independent with all of the tasks of managing meals, finances, medications and transportation, with no further comments provided.

The assessor reports there are no major or moderate impacts to the appellant's cognitive and emotional functioning and one minimal impact in the area of emotion (e.g. excessive or inappropriate anxiety, depression) and no impact in the remaining 13 areas of functioning. The assessor adds a comment that there is "...some current anxiety, no apparent depression, will avoid social situations at times." For social functioning, the assessor reports the appellant as independent in all areas, including with making appropriate social decision, developing and maintaining relationships, interacting appropriately with others ("he has a few challenges interacting with others; none so much that could be considered clinical challenges"), dealing appropriately with unexpected demands, and securing assistance from others. The assessor indicates that the appellant has marginal functioning in both his immediate ("in between marginal and good") and extended social networks, with the comment that "...anxiety keeps him from interacting at times." In response to the question regarding support or supervision required to maintain the appellant in the community, the assessor has noted "none".

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as he does not have a severe mental or physical impairment and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

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.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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 physical impairment:

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry points out that the appellant's physician indicates that there is no physically debilitating medical condition nor are there any functional skills limitations. The ministry points out that all aspects of mobility/ physical abilities are performed independently. The appellant did not argue that he has a severe physical impairment, although he pointed out that suffered serious head injuries in 2005 playing soccer.

The panel finds that the evidence of a medical practitioner has not confirmed a diagnosis of a physically debilitating medical condition. Although the appellant points out that he suffered serious head injuries in 2005 playing soccer, there was no evidence presented of brain damage sustained at the time or that has had enduring impacts. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, that he can climb 5 or more steps unaided, and there are no limitations with lifting or remaining seated. The physician indicates that the appellant has not been prescribed medications or treatments that interfere with his ability to perform daily living activities (DLA) and he does not require an aid for his impairment. In the Medical Report dated May 18, 2012, the physician indicates that there are "...no physical restrictions" as a result of the appellant's medical conditions. The assessor indicates that the appellant is independent in all areas of mobility and physical ability. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment was reasonable.

Severity of mental impairment:

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician reports one deficit to cognitive and emotional functioning in the area of emotional disturbance (anxiety). Communication is good with no difficulty. The ministry argues that there is no restriction to social functioning although the appellant "tends to be shy, easily hurt, and often seeks approval and acceptance". There are no impacts on daily functioning in 13 of 14 aspects with minimal impact on emotion described as "...some current anxiety, no apparent depression, will avoid social situations at times." The ministry argues that the appellant is independently able to perform aspects of social functioning although he has "some challenges interacting with others- none so much that could be considered clinical challenges." Functioning in relationship with immediate social networks is gauged as between marginal and good and functioning in relationships with extended social networks is marginal as "...anxiety keep him from interacting at times."

The appellant, through his advocate, argues that he has a severe mental impairment as a result of a high degree of anxiety, mood disorder, psychosis, OCD traits and depression. The advocate argues that the physician's comment that the appellant is "incapable of gainful employment" shows that skills are lacking to maintain employment and, therefore, also lacking to maintain and manage his social contacts and DLA. The advocate points out that the appellant remains under the care of a psychiatrist and is extremely sensitive to people, comments and this causes aggravation towards his environment ; the appellant is extremely sensitive to observations of people's reactions and attitudes towards him, that he frequently seeks approval and acceptance and requires a certain amount of prompting. The advocate points out that the appellant's impairment has continued for several years and his physician has described the overall medical condition as "severe" in the Medical Report dated May 18, 2012. The advocate argues that the appellant lives at home with

his parents and he requires help to manage his anxiety and gets continuous help from mental health, he has a case worker and sees a psychiatrist and also attends group therapy for anxiety and self esteem help. The advocate provided excerpts from the court decision in Hudson v. EAAT, 2009 BCSC 1461 as authority for the position that the evidence of the physician and the assessor must be read in their entirety and in a broad way and significant weight must be placed on the evidence of the applicant, unless there is a legitimate reason not to do so.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of anxiety disorders and mood disorders in the PWD application and, in the Medical Report dated May 18, 2012 a primary medical condition of major depressive disorder with signs of psychosis and a secondary medical condition of OCD, all of which are expected to continue for more than 2 years. In the May 18, 2012 report, the physician describes the overall medical condition as 'severe' as opposed to mild or moderate and, in terms of restrictions specific to the medical conditions, the physician indicates "...mentally has difficulty making decisions (illegible)." The appellant stated that he has PTSD as a result of traumatic deaths in his family, but the panel finds that this has not been diagnosed by a medical practitioner, as required by the legislation. The appellant stated that his doctor does not know all his challenges and does not know the full extent of his impairment, however the panel finds that the physician has known the appellant since birth and there was no additional evidence presented from a specialist in mental disorders, such as the treating psychiatrist. In the PWD application, in describing the severity of the medical condition relevant to the appellant's impairment, the appellant's physician notes that the appellant "...developed anti-social psychotic mental breakdown in 2005 requiring psychiatric hospital/ following admission and treatment complex features of (illegible) a high degree of anxiety, obsessive compulsive traits and depression emerged. Over the years, he has required careful scrutiny, medications and care- living with his parents. He was incapable of gainful employment... Over time, with medication, counseling, he has achieved (illegible) his B.A. He remains unemployed. He is very sensitive/aggravated towards his environment, often misunderstanding the meaning of observations of people's reactions/ attitudes towards him. He frequently seeks approval and acceptance. He still requires a certain amount of prompting." In the physician report, the physician indicates that there are no difficulties with communication. The physician reports that there is a significant deficit with cognitive and emotional function in the area of emotional disturbance ("anxiety") and, in the assessor report, the social worker indicates that the impact on the appellant's daily functioning in this area is minimal and there are no impacts to functioning in the remaining 13 aspects with a comment that there is "...some current anxiety, no apparent depression, will avoid social situations at times." The appellant stated that he now takes medications prescribed by the psychiatrist which work better and the social worker did not want to see the appellant anymore because he figured that the appellant was "getting better" however they still stay in contact for "some supportive counseling."

In the physician report, the physician indicates no restrictions to social functioning with the explanation that the appellant "...tends to be very shy, easily hurt, often seeking approval and acceptance." In the section of the assessor report to evaluate social functioning, the social worker has assessed the appellant as independent in all areas, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The social worker commented that the appellant "...has a few challenges interacting with others- none so much that could be considered clinical challenges." The assessor indicates that the appellant has marginal functioning in both his immediate ("in between marginal and good") and extended social networks, with the comment that "...anxiety keeps him from interacting at times." However, in response to the question regarding support or supervision required to maintain the appellant in the community, the assessor has noted "none". The panel finds that the evidence demonstrates that the appellant has mental disorders which are currently controlled by medications and that both the appellant's long-time physician and caseworker who has known the appellant for 2 years are of the opinion that the appellant is presently capable of independent functioning. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Whether ability to perform DLA is significantly restricted:

The ministry argues that the evidence does not establish 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. The ministry points out that the physician reports no restrictions to DLA including social functioning. The ministry also points out that in the assessor report, the social worker reports independent function in all DLA including social functioning, with some difficulty is reported as anxiety keeps the appellant from interacting "at times."

The appellant argues, through his advocate, that the evidence of the physician and the social worker establishes that the appellant is directly and significantly restricted in his ability to perform his DLA either continuously or periodically for extended periods. The advocate argues that the physician's comment that the appellant is "incapable of gainful employment" shows that skills are lacking to maintain employment and, therefore, also lacking to maintain and manage his social contacts and DLA. The advocate points out that the appellant lives at home with his parents, that he requires help to manage his anxiety and gets continuous help from mental health, he has a case worker and sees a psychiatrist and also attends group therapy for anxiety and self esteem help. The advocate argues that the appellant has difficulty with filling and refilling prescriptions and using public transportation, he cannot make decisions about personal activities, mobility outside the home (shopping, etc.) as he cannot (leave) the house without his parents, on a bad day. The advocate provided excerpts from the court decision in Hudson as authority for the position that there must be evidence from a prescribed professional indicating a direct and significant restriction on at least two DLA and that there is no statutory requirement that more than two DLA be restricted.

The panel finds that the legislation requires that the ministry must be satisfied that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. In the PWD application, the physician has responded "no" to the question whether the impairment directly restricts the appellant's ability to perform DLA and goes on to assess the appellant as not restricted in all areas of DLA, including social functioning. The physician adds a comment with respect to social functioning that the appellant "...tends to be very shy, easily hurt, often seeking approval and acceptance." In response to a question regarding the assistance the appellant needs with DLA, the physician has noted "none". In the Medical Report dated May 18, 2012, in terms of restrictions specific to the appellant's medical conditions, the physician indicates "...mentally has difficulty making decisions (illegible)." In the assessor report, the social worker indicates that the appellant is independent in all areas of mobility and physical ability. The assessor also indicates that the appellant is independent with all tasks of personal care, with doing laundry and basic housekeeping, and with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases. The assessor reports that the appellant is independent with all of the tasks of managing meals, finances, medications and transportation, with no further comments provided. For relating to, communicating or interacting with others effectively, the assessor reported no requirement for support or supervision but that the appellant has "...a few challenges interacting with others- none so much that could be considered clinical challenges" that "...anxiety keeps him from interacting at times."

The panel finds that the evidence of both the appellant's long-time physician and his case worker demonstrates that the appellant as independent and not requiring assistance with all of his DLA, with the exception of difficulty making decisions and a few challenges interacting with others "at times", but not to the extent to require assistance in these areas. The appellant argues that there is no statutory requirement that more than 2 DLA be restricted, however the panel finds that the ministry reasonably determined that the evidence does not establish a direct and significant restriction on a minimum of two DLA on either a continuous basis or periodically for extended periods of time. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

Whether help to perform DLA is required:

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel notes the information from the physician and the appellant that he lives with his parents and receives assistance from them as well as from counseling through mental health. As it has not been established that the ability to perform DLA is significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

Conclusion:

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.