

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 31, 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 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, and the ministry was also satisfied that the evidence establishes that the appellant has a severe mental impairment. However, the ministry was 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, the ministry also found that 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) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated July 12, 2005, which states, in part, that: the appellant's primary medical condition is borderline personality disorder with date of onset of early adulthood and his secondary condition is chronic poly-substance abuse with date of onset of early adulthood. In the section of the Report regarding restrictions, the physician has noted "...cannot properly complete a cognitive task due to variable concentration, poor attention span, and limited ability to focus. Cannot consistently complete cognitive tasks as a result;"
- 2) Letter dated July 26, 2005 from the appellant's mother to the psychiatrist who completed the Medical Report PPMB stating in part that the appellant has been staying with her since leaving a treatment centre;
- 3) Letter dated October 3, 2005 to Human Resources from the appellant and his mother requesting cheques to remain issued in his mother's name;
- 4) Medical Reports- PPMB signature pages dated September 14, 2007 and September 23, 2009, attached to the same information as set out in the Medical Report dated July 12, 2005, as above;
- 5) Letter dated January 26, 2011 to the CEO of a health authority from the appellant's mother stating in part that the appellant has had a life-long struggle with ADD/ADHD and cannot cope with life on his own and requesting that he be admitted into a clinic that assists people to live with this condition;
- 6) Letter dated August 13, 2010 to a doctor from the appellant's mother stating in part that the appellant denies that he has been diagnosed with borderline personality disorder, and he asked her a few years ago to look after his welfare money and to pay his rent, etc., which she does. He is not functioning well, seems depressed and living in a terrible mess and not going anywhere;
- 7) Letter dated June 5, 2012 from the appellant's mother 'To Whom It May Concern' stating in part that she has been looking after the appellant off and on for years and years and have been trying to get him into an adult ADD clinic for several years without success. He will not answer his phone half of the time, needs his finances looked after; however in other areas he is very clever. For the disability forms, she is not sure how emotionally he will deal with it or admit what he cannot handle;
- 8) Person With Disabilities (PWD) Application: applicant information dated July 2, 2012, physician report dated July 3, 2012, and assessor report dated July 3, 2012; and,
- 9) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided additional documents as follows:

- 1) A copy of the PWD application and the Reconsideration Decision with handwritten notes added by the appellant's mother;
- 2) Note dated March 1, 1999 to the Ministry of Human Resources from the appellant giving his mother a power of attorney to manage all monies given to him by the government until such time as she notifies in writing that he is well;
- 3) Copy of the court decision in Hudson v. EAAT 2009 BCSC 1461 and excerpts from same; and,
- 4) Letter dated November 2, 2012 from the appellant's counselor with designations of a B.Sc. and R.C.C. 'To Whom It May Concern' stating in part that he has been seeing the appellant for counseling sessions since March 2006 and they have had over 80 one-on-one appointments together and he has insight into the difficulties the appellant faces on a daily basis. He has difficulty maintaining routines and staying on track, including basic things such as keeping his home tidy, getting up and getting going for the day and being on time; despite his attempts at being self-sufficient, he has not been able to remain consistent enough and congruent enough with his stated work and overall health and well-being goals.

In an email dated November 15, 2012, the ministry stated that its position on appeal is the reconsideration decision and did not raise an objection to admission of the additional documents. The panel reviewed the new documents and admitted the letter and notes, pursuant to Section 22(4) of the Employment and Assistance Act, as relating to the appellant's impairment and being in support of the information before the ministry on reconsideration. The court decision in Hudson was accepted by the panel as argument.

In the Notice of Appeal, the appellant's mother stated that she is providing information on the appeal as the appellant stated that he cannot stand any more things to deal with and he is breaking down but he pretends he is O.K. The appellant's mother stated that many of the comments made to the physician who completed the PWD application or that the appellant agreed with were false. The appellant's mother stated that she has provided a copy of the PWD application with her notes and initials to indicate those areas in which the appellant does have problems. The mother stated that the appellant has lived with her off and on over the years as he could not cope without help. He does not seem to have a realistic view of how his needs are being covered. The appellant cannot live with her further as she is on a fixed income. The most reasonable rent the appellant could find was \$500 not including hydro and it is impossible for him to live on \$637 per month. The appellant has to have a telephone so that one can daily check on him as he has bouts of depression and, other than seeing his counselor, he has very little social interchange. The appellant's mother collects the appellant's mail and gives it to him as he either loses it or forgets. He cannot handle much or any responsibility without getting stressed out. It seems hard for him to say what he feels or wants. His memory is poor for appointment times and she has to deliver his groceries as he rarely shops.

In the copy of the PWD application with the notes provided by the appellant's mother, she indicated that the appellant does not perform his personal self care, meal preparation or basic housework well, that he does not do daily shopping and rarely gets out. In the area of his ability to communicate, the appellant's mother noted that he is a slow reader, has great problems with writing, and has too many thoughts to respond positively to questions. The appellant's mother comments with respect to mobility and physical ability that the appellant very seldom goes for a walk and he "...lacks energy because of his lifestyle." For impacts to cognitive and emotional functioning, the appellant's mother noted that the impact to motor activity should be assessed as major, rather than minimal, that the impact to psychotic symptoms should be major rather than no impact and the impact to other emotional or mental problems should be major rather than no impact. In the areas of personal care, the mother commented that the tasks of grooming, bathing, and toileting are "sloppy at times", that feeding self is "not balanced" and regulating diet is "not consistent." For basic housekeeping, the mother has noted that both laundry and basic housekeeping are "not consistent." For the DLA of shopping, the mother noted for going to and from stores that the appellant "doesn't go out much" and for making appropriate choices that he is "not very wise" and for paying for purchases that she handles the money. In the area of managing meals, the appellant's mother commented that meal planning is "not well done, no proper meal time" and for safe storage of food that he is "lax on putting food in fridge." For social functioning, the appellant's mother commented regarding the aspect of making appropriate social decisions that there is "very little social" and for developing and maintaining relationships that he "fights with most people" and with interacting appropriately with others, she noted that he "does not critical." Where the physician has assessed the appellant with good functioning in his immediate social networks, the mother has commented that the appellant is "not very co-operative."

In the Request for Reconsideration, the appellant's mother stated that the appellant needs encouragement to eat balanced meals, he is not able to pay the rent on his own, he cannot handle money and needs to have his groceries delivered and bought. The appellant's mother stated that he is not focused well enough to work. He has problems with his short term memory, with remembering when to put the garbage out, which bills have to be paid. He is not keeping his laundry and dishes done, is mostly late for appointments and needs help on a daily basis for depression and anxiety and encouragement.

In his self-report, the appellant described his disability as "substance abuse which leads to poor coping skills in all areas of life or work. ADD is a problem." In describing how his disability affects his life and ability to take care of himself, the appellant stated that "...poor impulse control, money problems, self-destructive, etc."

The physician who completed the physician report confirmed that the appellant has been his patient for one day and that he has seen the appellant once within the last 12 months. In the physician report, the physician described the appellant's health history relating to the diagnosed medical conditions of Borderline Personality Disorder and poly-substance abuse as "...cannot perform job tasks due to unstable mood, anxiety; has

cognitive difficulties consisting of variable concentration and limited attention span, poor ability to focus and variable formation short term memory." The physician indicated that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA and he does not require an aid for his impairment. the physician reported no limitation to the appellant's ability to walk, climb stairs, lift, remain seated, or with communication. He identified significant deficits in six areas of cognitive and emotional functioning, namely: executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained commenting that the appellant "...has been unable to be gainfully employed for more than 10 years." The physician indicated that the appellant's impairment directly restricts his ability to perform DLA on a continuous basis in the area of management of finances with a comment regarding the degree of restriction that "...mom manages his money due to issues with substance abuse." In terms of the assistance the appellant needs with DLA, the physician indicated that the appellant "...requires management of finances by mother." The physician reported that the appellant is not restricted in all other DLA, including personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, and social functioning.

In the assessor report, the physician indicated that the appellant lives alone and his "...poor concentration and attention, unstable mood and anxiety" impact his ability to manage DLA. The physician reported that the appellant has a good ability to communicate in all areas. The physician indicated that the appellant is independent in all areas of mobility and physical ability. In assessing major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, impulse control, and attention/concentration as well as moderate impacts in insight and judgement, executive, memory and motivation, the physician also commented that "...emotional and cognitive issues have impaired his ability to be employed gainfully in the last 10 years; substance abuse prevails as well at times." The physician reported that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off chairs. The physician indicated that the appellant is independent with laundry and with basic housekeeping. The physician reported that the appellant is independent with all tasks of shopping with no further information provided. Further, the physician reported that the appellant is independent with all tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food. The physician indicated that the appellant requires continuous assistance from another person or he is unable to do his banking and budgeting and pay his rent and bills, with the note that the appellant's mother has a power of attorney and manages his money. The physician reported that the appellant is independent with all tasks of managing medications and transportation, with no further comments provided.

In terms of social functioning, the physician indicated that the appellant is independent with making appropriate social decisions, with developing and maintaining relationships, interacting appropriately with others and securing assistance from others, while requiring periodic support/supervision from another person with dealing appropriately with unexpected demands ("does not handle stress well"). The appellant is assessed as having good functioning with his immediate social networks and marginal functioning in his extended social networks. The physician indicated that the assistance required by the appellant with social functioning is that his "mother supervises finances." In the section of the report detailing assistance provided by other people, the physician has noted "mother" and that "...poor impulse control leads to spending excessively and drug use when he has managed own finances in the past." The physician reported that the appellant does not have an assistance animal.

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 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.
- (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.

Evidentiary considerations:

The panel notes that the physician who completed both the physician report and the assessor report filed in support of the PWD application saw the appellant once to complete the reports and based his assessment on an office interview with the appellant and his mother. Although the appellant's mother also provided a letter from the appellant's counselor to supplement the physician's assessments for DLA, the panel finds that the counselor is not a "prescribed professional" as set out in the definition in the EAPWDR.

Whether ability to perform DLA is directly and significantly restricted:

The ministry argues that the evidence does not establish that the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry argues that the physician reports continuous restrictions to the appellant's ability to manage his finances as his mother manages his money due to issues with substance abuse. However, the appellant does not have restrictions in his ability to manage the remaining 9 out of 10 DLA. The ministry argues that the physician indicated that the appellant is not restricted in his ability to manage his social functioning. The ministry argues that in the assessor report the physician indicated that the appellant can independently manage all of his DLA except for the paying of rent and bills and this limitation in and of itself does not provide evidence that the appellant's impairment significantly restricts his ability to manage his DLA. The ministry argues that the physician reported that the appellant can independently manage the majority of his social functioning. The ministry argues that although the physician reported that the appellant requires periodic assistance with his ability to deal appropriately with unexpected demands as he does not handle stress well, the physician does not include a description of the degree and duration of the support/supervision required. The ministry argues that although it may be reasonable to assume that the appellant's mental impairment might have a much greater impact on his ability to manage many of his DLA, the physician has not provided evidence that would confirm that the appellant's impairment significantly restricts his ability to manage his DLA.

The appellant argues, through his mother as his advocate, that the evidence of the physician establishes that he is directly and significantly restricted in his ability to perform his DLA either continuously or periodically for extended periods. The appellant's mother argues that the appellant pretends he is O.K., that many of the

comments made to the physician who completed the PWD application or that the appellant agreed with were false. The appellant's mother argues that the appellant has lived with her off and on over the years as he could not cope without help. The appellant's mother argues that the appellant has to have a telephone so that one can daily check on him as he has bouts of depression and, other than seeing his counselor, he has very little social interchange. The appellant's mother points out that she collects the appellant's mail and gives it to him as he either loses it or forgets, that he cannot handle much or any responsibility without getting stressed out. The appellant's mother argues that the appellant does not perform his personal self care, meal preparation or basic housework well, that he does not do daily shopping and rarely gets out. The appellant's mother argues that for the aspect of social functioning of making appropriate social decisions that there is "very little social" and for developing and maintaining relationships that he "fights with most people" and with interacting appropriately with others, she noted that he "does not critical." The appellant's mother provided excerpts from the court decision in Hudson v. EAAT, 2009 BCSC 1461 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, but 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. The physician who completed both the physician report and the assessor report indicated that the appellant is not restricted and is completely independent with performing a majority of his DLA, including preparing his own meals, shopping for his personal needs, using public or personal transportation facilities, performing housework to maintain his residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medications. The appellant's mother argues that the appellant has not fully disclosed his limitations to the physician and that he does not perform his personal self care, meal preparation or basic housework well, that he does not do daily shopping and that he rarely gets out. However the panel finds that this has not been confirmed in the opinion of a prescribed professional, as required by the legislation. The physician indicated that the appellant is restricted in the area of managing his personal finances and that he requires continuous assistance from another person with all personal finance tasks and noted that the appellant's mother has a power of attorney and manages the appellant's finances. While the Medical Reports- PPMB describe the appellant's restrictions from his medical conditions as "...cannot properly complete a cognitive task due to variable concentration, poor attention span, and limited ability to focus" and might suggest an impact to the appellant's ability to manage other of his DLA, the panel finds that there is no detail of specific impacts to the DLA as defined in the PWD legislation.

With respect to the two DLA applicable to a person with a severe mental impairment, the panel notes that for making decisions about his personal activities, care, or finances, the physician indicated in the assessor report that the appellant is independent with making appropriate social decisions but that that "...mom manages his money due to issues with substance abuse." With respect to relating to, communicating or interacting with others effectively, the physician assessed the appellant as having a good ability to communicate in all areas, as being independent in interacting appropriately with others, and having good functioning in his immediate social network. While the appellant's mother commented that the appellant "fights with most people" and that he is "not very co-operative", and, in describing how his disability affects his life and ability to take care of himself, the appellant stated that "...poor impulse control, money problems, self-destructive," the panel finds that, with the exception of the area of managing finances, these other impacts have not been confirmed in the opinion of a prescribed professional, as required by the legislation. The appellant's mother relies on the Hudson decision as authority for the position 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:

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The ministry points out that the physician indicated that the appellant does not require an assistive device or the services of an assistance animal. The appellant's mother argues that the information from her and the physician confirms that the appellant's impairment necessitates her daily assistance.

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 or an assistance animal, the panel notes the information from the physician and the appellant's mother is that the appellant lives alone and receives assistance for DLA primarily from his mother. 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.