

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 28, 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 her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- 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; and,
- 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.

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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to Section 22(3)(b) of the Employment and Assistance Act.

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

- 1) Person With Disabilities (PWD) Application comprised of the applicant information which is not dated and the physician report and assessor report completed by the appellant's family physician of more than 5 years, both dated August 2, 2012; and,
- 2) Request for Reconsideration dated October 29, 2012.

Diagnoses

The appellant has been diagnosed by her general practitioner with depression ("MDD," or major depressive disorder) and asthma, with the date of onset for both over 20 years ago.

Physical Impairment

- In the physician report, the general practitioner has not commented regarding the appellant's asthma, either in the health history or additional comments sections.
- Functional skills reported in the physician report indicated that the appellant can walk 4 or more blocks unaided, she can climb 5 or more steps unaided, and she has no limitation with lifting or remaining seated.
- The physician reported that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform her daily living activities (DLA) and she does not require any aids for her impairment.
- In the assessor report, the appellant is reported as being independent with all areas of mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding.
- In her self-report included with the PWD application, the appellant stated that she feels sick in her mind and her body and that she has aches all over her body, but otherwise described the symptoms of her depression.

Mental Impairment

- In the physician report, the general practitioner indicated that the appellant has had chronically low mood for over 20 years, has seen various psychiatrists and tried various medications, as well as group and individual psychotherapy with minimal to no improvement. She has poor concentration, energy, motivation, and sleep. She has difficulty interacting with others and has anxiety in public.
- In the physician report, significant deficits are reported in 5 of 11 listed aspects of cognitive and emotional function in the area of executive, memory, emotional disturbance, motivation and attention or sustained concentration. In the assessor report, there are major impacts reported on the appellant's daily functioning in the areas of emotion and motivation as well as moderate impacts in attention/ concentration, executive and memory, with minimal or no impact in the remaining 8 areas. No descriptive narrative is provided by the general practitioner.
- The general practitioner reported that the appellant has a good ability to communicate in all areas.
- In the additional comments, the general practitioner reported that the appellant is socially isolated, that she only completed Grade 10 and she has marginal interaction with others.
- The appellant stated in her self-report that over the years she has tried over a dozen different anti-depressants but she has not responded well to treatment. The appellant stated that she feels sick in her mind and her body and that she is an emotional wreck. She cannot function, has an inability to concentrate and to make the right choices. She feels angry and out of control, compulsive and has an

overwhelming anxiety. The appellant stated that she cannot seem to manage in life. She has a hard time getting along with people and she is not happy with herself.

DLA

- In the assessor report, the general practitioner reported that all of the tasks are performed independently for each listed DLA, including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation.
- The general practitioner indicated that the appellant requires periodic support/supervision in all 5 listed aspects of social functioning and has marginal functioning with both immediate and extended social networks. The explanation provided by the general practitioner is that the appellant has anxiety in public, that she is usually withdrawn and stays at home. She is irritable with others and has a poor ability to make friends. For the support/supervision required to maintain the appellant in the community, the physician added "...may need psychotherapy."
- In her self-report, the appellant stated that she does not enjoy food and has no appetite so she forces herself to eat. She also has a hard time getting along with people and is not happy being around people.

Need for Help

- The general practitioner reported that the appellant does not require an aid for her impairment, and does not need or use an assistive device.
- When asked to describe the assistance provided by other people, the physician wrote "nil" and for assistance which is necessary where none is available, the general practitioner stated "...need psychotherapy (individual), perhaps life skills course."

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision because she suffers with depression and anxiety (mental illness). She is not functioning at all and is not able to take care of herself. She is not able to make the right decisions. Mentally she is very sick and needs help.

Prior to the hearing, the appellant provided the following written evidence:

- The appellant reported that her doctor made multiple mistakes on her application. He asked her to complete the application in pencil and he would change it to pen when he had time, but he did not write down what the appellant wrote. The appellant stated that her doctor is wrong with how many city blocks she can walk and how many stairs she can climb. He wrongly stated that she has no limitation with lifting and with remaining seated.
- The appellant stated that her doctor wrote that she does not need assistance for meal preparation and cooking her own meals and doing her own grocery shopping but she does need help. The appellant stated that she did not write on the application that she was independent in the areas she mentioned.
- The appellant stated that she is not functioning and she does need help with daily living tasks and she needs assistance with making the right decisions. The appellant stated that having major depression is crippling. She has suicidal thoughts every day.
- The appellant stated that she has been living in poverty for years, that the cost of living goes up but the money she gets never goes up, that she does not have enough to live on and everything is a struggle.

The ministry did not raise an objection to the admissibility of the appellant's submission. The panel admitted the appellant's evidence, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to her diagnosed conditions and in support of information that was before the ministry on reconsideration.

The ministry relied on its reconsideration decision as its submission on the hearing.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not meet all the criteria in Section 2 of the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment and that her 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.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable PWD criteria at issue in this appeal.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of her asthma, which she has had for over 20 years.

The ministry's position is that the information provided by the general practitioner indicated that the appellant is able to walk 4 or more blocks unaided, to climb 5 or more steps unaided and that she has no limitations in lifting and no limitations to remain seated. The ministry argues that the appellant stated that she feels sick in her body and mind but the physician indicated that all of the appellant's mobility and physical abilities are considered independent.

Panel Decision

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner, has diagnosed the appellant with long-standing asthma (20+ years). In the physician report, the general practitioner has not provided further detail regarding the appellant's asthma, either in the health history or additional comments sections. Functional skills reported in the physician report indicated that the appellant can walk 4 or more blocks unaided, she can climb 5 or more steps unaided, and she has no limitation with lifting or remaining seated. The appellant stated that her doctor was wrong with these assessments, but has not provided further information about her restrictions in these areas. Although the appellant stated that she feels sick in her mind and her body and that she has aches all over her body, despite her reported experience of illness and pain, her physician assessed her as being independent in all areas of mobility and physical ability, including walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. Therefore, the panel concludes that the ministry reasonably determined that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant argues that a severe mental impairment is established by the general practitioner's diagnosis of major depressive disorder. The appellant argues that she is not functioning and that having major depression is crippling, that she has suicidal thoughts every day. The appellant argues that she has an inability to concentrate and to make the right choices, that she feels angry and out of control, compulsive and an overwhelming anxiety. The appellant argues that she has a hard time getting along with people and she

needs assistance with making the right decisions. .

The ministry's position is that a severe mental impairment has not been established. The ministry argues that the physician identified major impacts to cognitive and emotional functioning in the areas of emotion and motivation and moderated impacts to attention/concentration, executive and memory and minimal and no impacts to the remaining areas. The ministry argues that this is more in keeping with a moderate degree of impairment as the physician indicated that the appellant has chronically low mood for over 20 years and has seen various psychiatrists with minimal to no improvement. The ministry further takes the position that while the physician reported that the appellant has poor concentration, energy, motivation and difficulty interacting with others in public, he has also provided no information to confirm that these impact the appellant's ability to function.

Panel Decision

The panel finds that although significant deficits are identified in cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation and attention or sustained concentration, these impacts are assessed as major in the two areas of emotion and motivation, with moderate impacts in attention/concentration, executive and memory and minimal or no impact in the remaining 8 areas of daily functioning. No descriptive narrative is provided by the general practitioner in this section of the assessor report. The appellant stated that having major depression is crippling, that she is an emotional wreck. The appellant stated that she cannot function due to an inability to concentrate and to make the right choices. While the general practitioner described the appellant as having chronically low mood for over 20 years and that she has seen various psychiatrists and tried various medications, as well as group and individual psychotherapy with minimal to no improvement, there were no reports of psychiatric specialists provided that would describe the impact of her mental health condition on daily functioning. The general practitioner indicated that the appellant requires periodic support/ supervision in all five listed aspects of social functioning but does not indicate the duration of the support/ supervision required to indicate that this is for an extended period of time, as required by the legislation. The explanation provided by the general practitioner is that the appellant has anxiety in public, she is usually withdrawn and stays at home, is irritable with others and has a poor ability to make friends. She has marginal functioning with both her immediate and extended social networks. The general practitioner further commented with respect to the support or supervision required to maintain the appellant in the community that she may need psychotherapy. The general practitioner indicated that the appellant has a good ability to communicate in all areas and independently manages all other listed tasks of daily living that relate to a person with a mental impairment, including her personal care and finances. The panel finds that while the information from the medical practitioner and the appellant describes several symptoms of the appellant's depression, there is little information provided as to how these symptoms restrict her ability to function independently, effectively or appropriately. Without such descriptive details or examples, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA to the point that she requires but does not receive assistance in various areas of DLA, including meal preparation, cooking, daily shopping and social functioning.

The ministry's position is that the evidence of the prescribed professionals establishes that all of the appellant's DLA are independent, with no indication that she takes significantly longer to perform them. The ministry argues that although the physician assessed the appellant as requiring periodic support with all areas of social functioning, he has not provided information on how often or the duration of support that the appellant requires.

Panel Decision

The evidence of a prescribed professional, the appellant's general practitioner, is that the appellant is independent with walking indoors and outdoors. All of the listed tasks for all other DLA requiring physical effort are managed independently. While the appellant stated that she does need assistance for meal preparation, cooking meals and grocery shopping, the panel finds that this has not been confirmed in the opinion of a prescribed professional, as required by the legislation. With respect to the DLA applicable to a person with a mental impairment, the only restrictions identified are in the areas of social functioning, including making appropriate social decisions and interacting appropriately with others, for which the appellant requires periodic support and supervision in the form of possible psychotherapy. The panel finds that the ministry reasonably concluded that there is not sufficient information to determine that the periodic support or supervision is required for extended periods of time. The general practitioner reported that the appellant has a good ability to communicate in all areas. The panel concludes that the noted restrictions in the appellant's ability to perform aspects of social functioning were reasonably viewed by the ministry as not constituting a direct and significant restriction of the appellant's ability to perform DLA in the opinion of a prescribed professional thereby not satisfying the legislative criterion of s. 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The evidence of the prescribed professional does not establish that the appellant requires assistance with any aspects of her DLA, and the panel also finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions.

Conclusion

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