

**PART C – Decision under Appeal**

Under appeal is the Ministry of Social Development (the ministry's) reconsideration decision dated January 6, 2013 which held that the appellant did not meet 3 of the 5 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 has an impairment that is likely to continue for at least 2 years. However, the ministry was not satisfied that the appellant has a severe physical or mental impairment or 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 was also not satisfied that as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help 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 appellant failed to appear at the hearing at the scheduled time and date. Her advocate advised the panel that although the appellant had received appropriate notification; she was unable to attend. The hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 10 August 2012 which contained;
  - A Physician Report dated 2 July 2012 completed by the appellant's general practitioner (Dr. A), who has known the appellant for 8 months and seen her 2–10 times and;
  - An Assessor Report dated 2 July 2012 completed by Dr. A.
2. The appellant's Request for Reconsideration dated 9 January 2013 which included:
  - A submission prepared by the appellant's advocate dated 9 January 2013 referencing a letter of support dated 7 December 2012 from Dr. A and;
  - A letter of support dated 8 January 2013 from the appellant's daughter.

In the PR, Dr. A diagnoses the appellant with Agoraphobia with panic disorder since age 17. Under health history, Dr. A writes: agoraphobia – resistant to treatment, other medical problems include severe hypertension, hyperlipidemia and hyperthyroidism that are controlled with treatment. In answer to the question as to whether the appellant has been prescribed any medication and/or treatment that interfere with her ability to perform DLA, Dr. A indicates; "Not improved with medical treatment." In answer to the question as to whether the appellant requires any prostheses or aids for her impairment, Dr. A answers no. Dr. A explains under the degree and course of impairment that the impairment is difficult to treat and that the appellant seldom leaves the house and will not come to any appointments alone (brings her daughter).

As to physical functional skills, Dr. A indicates N/A. With respect to significant deficits with cognitive and emotional function Dr. A reports yes, with a comment of "Agoraphobia".

In the AR, Dr. A indicates that the appellant lives with family, friends, or care giver. Dr. A answers the question as to what mental or physical impairments impact the appellant's ability to manage DLA by indicating only; "Does not leave the house". In terms of ability to communicate, Dr. A assesses the appellant's ability in speaking, reading, hearing and writing as satisfactory. With respect to mobility and physical ability, Dr. A assesses the appellant as independent with respect to walking indoors, climbing stairs, standing, lifting and carrying and holding. Periodic assistance from another person is noted for walking outdoors. In terms of cognitive and emotional functioning, Dr. A assesses a moderate impact for emotion, insight and judgment, and motivation while a minimal impact is noted for impulse control. No impacts are indicated for bodily functions, consciousness, attention/ concentration, executive, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

As to DLA, under all aspects of Personal Care, Basic Housekeeping, Meals and Pay Rent and Bills, Dr. A assesses the appellant as independent. Under Shopping, the appellant is noted to require periodic assistance from another person with reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home while continuous assistance from another person or unable is noted for going to and from stores. Under Medications the appellant is noted to require periodic assistance from another person for all 3 aspects; filling/refilling prescriptions, taking as

directed and safe handling and storage. Under Transportation, the appellant is noted to be independent with getting in and out of a vehicle while Dr. A indicates that she is unable to use public transit, use transit schedules and arrange for transportation.

In terms of social functioning Dr. A assesses periodic support/supervision required in 2 listed areas; appropriate social decisions and able to develop and maintain relationships and continuous support/supervision in the remaining 3 listed areas; interacting appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others. Dr. A describes how the appellant's mental impairment impacts her relationship with her immediate social network as marginal functioning and her extended social networks as very disrupted functioning.

In response to whether the appellant requires help as indicated above which would help maintain her in the community, Dr. A indicates N/A. With respect to assistance provided by other people, Dr. A indicates that the appellant receives help for DLA from family (daughter) and describes the assistance that would be necessary as "Help with shopping/getting to appointments." No assistance is provided by assistance animals.

In the submission by the appellant's advocate, it is argued that the ministry "has not adequately assessed the very impactful nature" of the appellant's impairment that she has lived with for 35 years and as confirmed by Dr. A, is a condition resistant to treatment. The submission further makes note of the details provided in both letters of support.

In the letter of support by Dr. A of December 7, 2012, he confirms that the level of the appellant's disability is severe and will continue for more than 2 years. Dr. A reports that the appellant has agoraphobia with panic disorder that is a lifelong condition which has not responded to medical treatment such as anti-depressant medication. Dr. A indicates that the appellant's condition "has grown significantly worse due to an emotionally, verbally, and physically abusive relationship that existed with her ex-husband." Dr. A reports that the appellant is on medication specifically for her blood pressure levels as well as her thyroid. Dr. A indicates that the appellant:

- seldom leaves her house,
- is unable to go to any appointments alone,
- experiences weeks where she leaves the house a maximum of 2 times,
- finds with age leaves house less and less,
- due to her severe medical condition is prevented from being in crowded spaces, including malls, grocery stores and prevents her from taking public transit
- avoids all social situations except with her children,
- requires assistance to perform DLA such as grocery shopping, cooking, cleaning and managing her medications from her daughter because her motivation is affected by her agoraphobia,
- avoids driving by herself as stopping at a traffic light or a stop sign causes extreme paranoia, and will have her daughter accompany her while driving.

Dr. A indicates that as a result of the appellant's severe disability, she requires continuous and ongoing assistance for the DLA mentioned above.

In the letter of support by the appellant's daughter, it is indicated that her grandmother, aunt and mother all suffered from agoraphobia, all their lives, and that her mom has been to a couple of

psychiatrists, to no avail. The mother was given Paxil pills which did not help. The appellant's daughter indicates that her mother needs constant assistance to leave the house, get into the vehicle, leave the vehicle to go into stores, to make appointments, to make and receive phone calls and to take her medication. The daughter helps with cooking, cleaning, taking out garbage and vacuuming as her mother has severe back problems and can only stand for a very limited period of time. The daughter writes about the need for assistive devices such as a handrail for the stairs and the fear her mother has about falling in the tub. In order to describe the impact of the mother's medical condition on herself; the daughter states that her life is impacted by her mom's inability to be able to call and make medical appointments for her and attend them with her.

In her Notice of Appeal 18 January, 2013, the appellant give as Reasons for Appeal: "Because it is patently unreasonable."

At the hearing, the appellant's advocate presented a written submission, which included the following details:

- The appellant was not present when Dr. A completed the PWD application and "therefore he was unable to consult with her surrounding the detailed questions that a physician is required to answer."
- The appellant's physician mailed off the application without the appellant reading over the answers and "having the opportunity to add more detail about the severity of her condition, the restrictions she faces, and the assistance she requires."

The rest of the advocate's submission went to argument. In answer to a question from the panel, the appellant's advocate confirmed she had drafted the letter of support dated 7 December 2012 and the new letter dated 31 January 2013 for Dr. A's signature.

At the hearing the appellant's advocate also presented a second letter of support from Dr. A dated 31 January 2013 which reported that as a medical practitioner he considers the appellant's disabilities to be severe, "that her daily living activities are significantly restricted for an extended period of time, and that she requires the significant help of her daughter for a number of her daily living activities including driving to medical appointments, grocery shopping, cleaning her residence, cooking, and maintaining a proper medicinal regime."

At the hearing the appellant's other daughter who is 28 years old and lives in a different community from her mother testified by telephone that:

- She remembers being 10 years old and her mom having difficulty getting into the car.
- Her mother's doctor had retired and only because the appellant knew someone in Dr. A's office did she start seeing him.
- Her mom has been divorced from their father, her ex-husband since year 2000.
- Her mom has seen psychiatrists in the past.
- Her 17 year old sister lives with the Mom and has the only bedroom in their basement suite which also has a small kitchen and bathroom.
- She had moved away 7 years ago and remembers her mom as always being in need of help.
- Her mother has never lived on her own and has been in the same place for about 12 years.
- With the extra money her Mom would have more gas money, be able to find a suitable place with 2 bedrooms and leave the seedy area with drug addicts and perhaps be able to get out

more.

- Her 17 year old sister now has a learner's license.

The ministry was asked whether they had any objection to the acceptance of new evidence as presented by the appellant's advocate, to which the ministry responded that it was okay to accept it and added that they "find the letter not specific enough".

The panel finds that the new information provided by the appellant's advocate at the hearing to include Dr. A's most recent letter and the testimony from the appellant's elder daughter is further description of the agoraphobia and its impact and is therefore in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

## PART F – Reasons for Panel Decision

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

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

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

The following section of the EAPWDA applies to this appeal:

**2 (2)** The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person's ability to perform daily living activities either
    - (A) continuously, or
    - (B) periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.
- (3) For the purposes of subsection (2),
  - (a) a person who has a severe mental impairment includes a person with a mental disorder, and
  - (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
    - (i) an assistive device,
    - (ii) the significant help or supervision of another person, or
    - (iii) the services of an assistance animal.

The following section of the EAPWDR applies to this appeal:

**2 (1)** For the purposes of the Act and this regulation, "daily living activities",

- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
  - (i) prepare own meals;
  - (ii) manage personal finances;
  - (iii) shop for personal needs;
  - (iv) use public or personal transportation facilities;
  - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
  - (vi) move about indoors and outdoors;
  - (vii) perform personal hygiene and self care;
  - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
  - (i) make decisions about personal activities, care or finances;
  - (ii) relate to, communicate or interact with others effectively.

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.

#### *Severity of physical impairment*

In the reconsideration decision, the ministry reviewed the evidence set out in the PR and AR and in Dr. A's letter. The ministry noted that in terms of physical functioning Dr. A writes N/A or non-applicable. The ministry therefore found that there is not enough evidence to establish a severe physical impairment.

With respect to this criterion and others at issue, the appellant's advocate highlights Section 8 of the Interpretation Act [RSBC 1996 c. 238] as requiring that every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. The advocate also points to case law as authority for the position that if there is any ambiguity in the interpretation of the criteria, it is to be resolved in favour of the appellant [Abrahams v. Canada 1983 142 D.L.R. (3d) 1] and that the evidence of the physician and the assessor must be read in its entirety and in a broad way and the legislation interpreted with a benevolent purpose in mind [Hudson v. EAAT 2009 BCSC 1461].

The position of the appellant with regard to the severity of her physical impairment is that the ministry's decision is unreasonable. In her submission, the appellant's advocate states that the ministry failed to adequately assess the very impactful nature of the appellant's impairment.

The panel finds that the appellant's physical mobility is not at issue. Rather it is the impact of her agoraphobia on her ability to function independently and effectively. The panel notes that in the PR and AR there is no description of any physical functional limitations. Based on these considerations, the panel finds that the ministry reasonably determined that a severe physical impairment had not been established.

#### *Severity of mental impairment*

In the reconsideration decision, the ministry reviewed the information submitted by Dr. A which noted agoraphobia with panic disorder and that no specifics on areas with deficits to cognitive and emotional functioning were provided. Further the ministry found that impacts to daily functioning are mostly moderate and no descriptive comments were included. As the impacts are not major and with lack of narrative to support a severe mental health condition that significantly limits the appellant's ability to function, the ministry is not satisfied that the information provided such that the appellant seldom leaves the house and desires accompaniment to appointments is evidence of a severe mental impairment.

In her submission, the appellant's advocate argues that Dr. A reports that the appellant is resistant to treatment for her agoraphobia and that she has other medical problems including severe hypertension, hyperlipidemia and hypothyroidism. In Dr. A's letter of support, he elaborates that the appellant's condition has grown significantly worse due to an emotionally, verbally and physically abusive relationship that existed with her ex-husband. Dr. A also reports that the appellant's condition has not improved with medical treatment and that she is difficult to treat, seldom leaves her house and is unable to go to medical appointments alone. In Dr. A's most recent letter, he indicates that

without further financial assistance and medical benefits, the appellant's severe condition will continue to deteriorate.

The panel notes that in addition to the PR and AR, some further information as set out in the letters of support from Dr. A and from both appellant's daughters elaborates on the impacts on the appellant as a result of both her medical and personal history. The panel also notes that she has seen a psychiatrist in the past however, no recent assessment has been provided. The panel finds that the PR while acknowledging that the appellant has significant deficits with cognitive and emotional function, does not indicate which if any of the deficits listed in the PR; (consciousness, executive, language, memory, perceptual psychomotor, psychotic symptoms, emotional disturbance, motivation, motor activity, attention or sustained concentration, other) are evident. In the AR, it's reported that emotion, insight and judgment, and motivation have moderate impacts on daily functioning without any explanation. Furthermore, no major impact on daily functioning for any of the listed aspects of cognitive and emotional functioning are reported to have an impact on daily functioning. In Dr. A's first letter, he states that the appellant's motivation to perform DLA such as grocery shopping, cooking and cleaning the house is significantly affected by the agoraphobia. In Dr. A's more recent letter, he indicates that he considers the appellant's disabilities to be severe, however, without further explanation as to why the appellant's disability is severe, given the information that there is no major impact on her daily cognitive and emotional functioning, the panel finds that the ministry reasonably determined that a severe mental impairment had not been established.

#### *Whether DLA are significantly restricted*

In the reconsideration decision, the ministry notes that Dr. A indicates that the appellant is not restricted in her ability to independently manage the majority of her DLA, reporting that she requires help with shopping, medications and transportation (unable to use public transit). The ministry noted that although the appellant requires accompaniment by her daughter for these activities, this is not considered a significant restriction in her ability to perform these tasks. Additionally, the ministry noted that the appellant requires support and supervision with all aspects of social functioning, however no description of the degree and duration of the help required was provided. The ministry also concluded that the marginal functioning with immediate social networks and very disrupted functioning with extended social networks is related to agoraphobia and seldom leaving her home, as no other explanation is provided. The ministry concluded that there is not enough evidence from the prescribed professional to establish that the appellant's impairments significantly restrict her ability to manage her DLA either continuously or periodically for extended periods.

The position of the appellant, as set out in her advocate's submission is that with respect to this criterion and others at issue, that the evidence of the prescribed physician indicates a direct and significant restriction on at least 2 daily living activities and that the evidence of the physician and the assessor must be read in its entirety and in a broad way [Hudson v. EAAT]. It is argued that Dr. A has clearly demonstrated in both his PR and support letter that the appellant has a severe mental impairment, is significantly restricted on more than 2 prescribed activities of DLA and as such satisfies the eligibility requirement. The appellant's advocate argues that the ministry "has not adequately assessed the very impactful nature" of the appellant's impairment that she has lived with for 35 years and as confirmed by Dr. A, is a condition resistant to treatment.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to



perform DLA must be a result of a severe impairment, not established in this appeal. This DLA criterion must also be considered in the broader context of the legislation, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information explaining the restrictions.

Dr. A reports that due to the appellant's severe medical condition, she is prevented from being alone in crowded spaces, including malls, grocery stores and from taking public transit. Subsequently, Dr. A indicates that the appellant requires assistance with cooking, cleaning and to manage her medications because her motivation is affected by agoraphobia and that if at all possible, she will have her daughter accompany her while driving, as she is a source of emotional support while being out in public. In his most recent letter Dr. A states that the appellant's daily living activities are significantly restricted for an extended period of time, and that she requires the significant help of her daughter for a number of her daily living activities including driving to medical appointments, grocery shopping, cleaning her residence, cooking, and maintaining a proper medicinal regime.

At issue is whether the appellant's restrictions to DLA as reported by Dr. A meet the legislative criterion:

1. Under Transportation where 2 aspects such that the appellant is unable to use public transit or use transit schedules and arrange transportation while for the remaining aspect of getting in and out of a vehicle, she is independent and Dr. A reports that she avoids driving by herself as stopping at a traffic light or a stop sign causes extreme paranoia, and will have her daughter accompany her while driving.
2. Under Shopping where the appellant is noted to require periodic assistance from another person with 4 aspects such as reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home while continuous assistance from another person or unable is noted for 1 aspect of going to and from stores however the PR also indicates that the appellant's ability to communicate is satisfactory in all areas, (speaking, reading, writing and hearing).
3. Under Basic Housekeeping, the appellant is noted as Independent in all aspects while in Dr. A's letters, he indicates that she needs significant help from her daughter.
4. Under Medications, the appellant is noted to require periodic assistance from another person for all 3 aspects; filling/refilling prescriptions, taking as directed and safe handling and storage although Dr. A confirms that her medication is specifically for her blood pressure levels as well as her thyroid and that she is resistant to treatment for her agoraphobia.

In view of the above and specifically, the noted contradictions; the panel finds that Dr. A provides insufficient explanations of the restrictions to substantiate how significant the restrictions are in terms of the appellant's ability to manage specific tasks, and how often and for how long she requires help and what this help entails to make up for these restrictions. With respect to the additional DLA relating to a person with a mental impairment i.e. make decisions about personal activities, care or finances; and relate to, communicate or interact with others effectively, the panel notes that there are no descriptions or examples from a prescribed professional of how the appellant's agoraphobia impacts her ability to make decisions about her personal or family care, and with respect to the second, only that she has marginal functioning with immediate networks and very disrupted

functioning with extended social networks, but without any explanation for these assessments other than she avoids all social situations and the only socializing she partakes in is with her children. The panel finds that when assessing the appellant's overall ability to function as reported in the PR, AR and in Dr. A's letters; it is difficult to determine the medical practitioners opinion to confirm that the appellant is directly and significantly restricted in her ability to manage DLA. The panel therefore finds that the ministry reasonably determined that this legislative criterion had not been met.

*Whether help to perform DLA is required*

In the reconsideration decision, the ministry noted that as it had been established that DLA are not significantly restricted, it can be determined that significant help is not required from other persons. The appellant does not require the services of an assistance animal.

The position of the appellant is that her need for significant help from other person's results from the significant restrictions in her ability to perform DLA, as argued in the advocate's submission.

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

*Conclusion*

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