

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") March 20, 2013 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because he did not meet all the requirements in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. The Ministry was not satisfied that the Appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions he requires help to perform those activities.

The Ministry was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner his impairment is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act ("EAPWDA") Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 2.

PART E – Summary of Facts

With the Appellant's consent, a Ministry observer attended the hearing, but did not participate in it.

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's PWD application consisting of:

- Physician's Report ("PR") completed on December 10, 2012 by his psychiatrist who indicated that the Appellant has been his patient for two and a half years, and he saw the Appellant between 2-10 times in the 12 months preceding the report.
- Assessor's Report ("AR") completed on December 12, 2012 by his family physician who indicated that he has known the Appellant for one and a half years and he has seen the Appellant 11 or more times in the last year.
- No self-report.

2. Appellant's request for reconsideration dated March 11, 2013.

Diagnoses

In the PR, the psychiatrist diagnosed the Appellant with long standing alcohol dependence, marijuana dependence, alcohol induced anxiety disorder, specific phobia, and cocaine dependence, which is in sustained full remission.

Neither the psychiatrist nor the physician diagnosed the Appellant with any physical health conditions.

Physical Impairment

In the PR, the psychiatrist reported that the Appellant:

- Can walk unaided on a flat surface for 4+ blocks, climb 5+ steps unaided, has no limitations with lifting or remaining seated.
- Does not use any prostheses or aids.

Mental Impairment

In his request for reconsideration, the Appellant wrote that:

- His mental health issues are severe to the point where he does not interact with people (anti-social).
- He has developed shaking of the hands and body so he will not go out if he doesn't have to.
- He has a CT brain scan scheduled on March 14th and then will be seeing a nerve system doctor.
- He would not be here without the help of his psychiatrist who has been working with him for over 2 years and who stated that the Appellant will have his problems for life.

In the PR, the psychiatrist wrote that:

- As a result of the Appellant's disorders, he is unable to hold a job.
- He cannot easily go out in a crowd, as he gets panic attacks.
- The duration is likely to be life-long due to the nature of the disorders.
- The Appellant has had several hospitalizations. "He often feels suicidal. He is irritable and has difficulties with interpersonal relationships".

[REDACTED]

The psychiatrist also reported that the Appellant has significant deficits with cognitive and emotional functioning in the areas of emotional disturbance, impulse control and attention or sustained concentration.

In the AR, the family physician described the Appellant as having:

- A history of mental impairments, alcohol dependence, anxiety disorder, phobias – social, therefore has difficulty for example going shopping, working with people, etc.
- Good ability to communicate in all areas.
- Impairments in cognitive and emotional functioning specifically moderate impacts on memory and other emotional or mental problems; minimal impacts on emotion and attention/concentration; and no impact to bodily functions, consciousness, impulse control, insight and judgment, executive, motor activity, language, psychotic symptoms and other neuropsychological problem,
- “anxiety – episodic – panic attacks in social situations and decreases in attention and concentration; decreases in motivation, won’t get out of bed; prone to alcohol/substance misuse, leads to suicidal thoughts/actions; other emotional – mental problems – irritability.”
- “recurring anxiety, substance abuse, recurrent visits to emergency, has suicidal thoughts and anxiety, interferes with sleep, difficulty functioning during the day.”

Restrictions to Daily Living Activities and Help Required

In the PR, the psychiatrist reported that the Appellant:

- Has not been prescribed any medication and/or treatments that interfere with his ability to perform daily living activities.
- Has unknown restrictions to daily living activities.

The family physician reported that the Appellant:

- Has good communication abilities.
- Is independent in all aspects of mobility and physical ability.
- Is independent in all tasks associated with personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, transportation and social functioning.
- Has good functioning with his immediate social network and marginal functioning with his extended social network, “per [his psychiatrist] – difficulties with interpersonal relationships.”

For assistance provided by other people, through assistive devices or by an assistance animal, the physician wrote “N/A” [not applicable].

In his notice of appeal, the Appellant wrote that he disagreed with the Ministry’s decision. He stated that he had an appointment with his psychiatrist and they both felt that the decision was wrong. The psychiatrist said he would provide a letter of explanation. His family doctor had not received the results from the CT scan.

At the hearing, the Appellant said his psychiatrist told him that he had nothing to add to his previous report and would not be providing another letter. The Appellant also provided the same information as in his request for reconsideration regarding his medical tests, appointments and relationship with his psychiatrist. The Appellant said he starts shaking for no reason and his family doctor has not determined the cause. His doctor is still waiting for the results of the CT brain scan and then will make the appointment with the nerve doctor. The Appellant also described how he sometimes panics

when riding in a car and when other cars get too close or are speeding. He said that he lives with his parents and has always tried to live with someone because when he gets anxious or depressed he relies on other people. The Appellant stated that he cannot really function by himself. He also said that he is doing the best he can, continuing to see his psychiatrist, who has been very helpful, on a regular basis but he sees nothing changing in his life.

The Appellant stated that he is not an alcoholic or a drug addict. For several years, he's had problems being in crowds and he traces his depression to his early teenage years. The Appellant indicated that his conditions do affect his daily living activities. He can go out if he has to; for example, when his children want to do things, but he doesn't like to go out. The Appellant stated that about three and a half years ago he was in the hospital several times after suicide attempts, but he said that period of his life is over. He also described not being able to get along with people or being around people. For that reason, he was not able to hold any job for more than six months. The Appellant also listed about six different medications he takes every day, different ones prescribed by both doctors.

The Appellant submitted that he was given misleading information about the PWD application process and therefore he did not provide all of the information about events, which contributed, to his current medical conditions. He said his doctors did not have enough information. The Appellant said that about thirteen years ago he was assaulted and since then he has been jumpy and irritable. The Appellant also described a motor vehicle accident from about five years ago, in which he sustained various injuries and fractures, including a fractured femur. After the accident, he was not the same. The Appellant specifically disputed the information provided in the PR about his physical abilities, stating that he can't stand for long, can't bend or squat for long, he can't walk for long and he gets back pains. The Appellant also said that the doctor, who treated him for these injuries and in fact had been his doctor since birth, had retired and all of that doctor's files are in an unknown location. Therefore, the information about his medical history and all his health conditions has not been available to his current doctors.

The Panel finds that the Appellant's testimony at the hearing about the assault, the accident and about his physical health conditions is new information that was not before the Ministry at reconsideration and is not in support of the information that was before the Ministry at reconsideration. Therefore, the Panel does not admit that testimony as evidence. As for the rest of the Appellant's testimony about his mental health conditions and how these affect his daily life, the Panel admits that testimony, pursuant to section 22(4) of the Employment and Assistance Act, because that testimony provides further detail relating to his mental health impairments and is in support of information that was before the Ministry at reconsideration.

At the hearing, the Ministry reviewed and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that that the Appellant was not eligible for PWD designation because he did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions he requires help to perform those activities.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:
 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 "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

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 Mental Impairment

The Appellant's position is that he has severe mental health issues, which are life-long and impact every aspect of his life. He takes about six medications a day. His doctors confirmed that he has a history of mental health impairments, has recurring anxiety and panic attacks, and has deficits in cognitive and emotional functioning. They also confirmed that he has difficulty going out and functioning during the day and he has marginal functioning with his extended social network.

The Ministry's position is that, although there is evidence of deficits to cognitive and emotional

functioning and diagnosis of various conditions, it is not satisfied that the information provided is evidence of a severe mental impairment.

The Panel's Findings

The EAPWDA provides that the determination of the severity of impairment is based on whether the Minister is satisfied that the information provided establishes a severe impairment, taking into account all of the evidence including that of the Appellant. That legislation is also clear that the fundamental basis for that assessment is the evidence from a prescribed professional regarding the type of impairment and its impact on daily functioning as evidenced by functional skill limitations and restrictions to daily living activities. The diagnosis of a medical condition is not itself determinative of a severe impairment.

The Appellant's psychiatrist indicated that the Appellant has deficits to cognitive and emotional functioning, specifically to emotional disturbance, impulse control and attention/concentration. His family physician also indicated moderate impacts to motivation and other emotional or mental problems (irritability), but only minimal impacts to emotion and attention/concentration. The Panel notes that for the majority of the areas of cognitive and emotional functioning, including consciousness, impulse control and insight and judgement, no deficits are reported.

Both doctors also described the Appellant as having panic attacks, social phobias and anxiety. This information is substantially the same as the evidence from the Appellant regarding his inability to deal with crowds, go out in public and the events which trigger panic attacks. However, the Panel notes that the evidence from both doctors is that the Appellant manages daily activities independently and specifically those that require some degree of mental functioning. For example, the Appellant is independent in personal care, shopping choices, medications and in all areas of social functioning, including making appropriate social decisions, interacting appropriately with others, and dealing appropriately with unexpected demands. He also has good functioning in his immediate social network although he has marginal functioning with his extended social network. When the evidence of the two doctors is considered together with that of the Appellant, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

Severe Physical Impairment

The Appellant submitted that his doctors did not have enough information about his physical impairments. He experiences physical limitations standing, bending, squatting and walking, and he also has back pain.

The Ministry's position is that there is no evidence of any physically limiting medical conditions and the doctors reported independent physical functioning. Therefore, it is not satisfied that there is a severe physical impairment.

The Panel finds that there is no diagnosis of any physical health conditions and no evidence of any physical impairment, other than the Appellant's testimony at the hearing, which the Panel did not admit as evidence. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

Restrictions to Daily Living Activities

The Appellant's position is that his medical conditions impact every aspect of his life so that he has to live with someone. He is unable to be in crowds, avoids going out, panics when riding in vehicles and is jumpy and irritable around people.

The Ministry's position is that no restrictions are reported and no assistance is required from other people with daily living activities. Therefore, the information from the prescribed professionals does not establish that the Appellant's impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b)(i) of the EAPWDA requires that a prescribed professional confirm that the Appellant's severe impairment directly and significantly restricts his daily living activities. In this case, there are two prescribed professionals, the Appellant's psychiatrist and his family physician. The Panel finds that the evidence from the prescribed professionals is that the Appellant independently manages all of his daily living activities, including all aspects of social functioning. The Appellant only experiences restrictions with his extended social network. In addition, there is no information about any assistance provided to or required by the Appellant. The family physician wrote "N/A" [not applicable] in those sections of her report. Therefore, based on the information from the two prescribed professionals, the Panel finds that the Ministry reasonably determined that the evidence provided does not establish that the Appellant has met the requirements in section 2(2)(b)(i) of the EAPWDA.

Help with Daily Living Activities

The Appellant's position is that he needs to live with someone to function.

The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons. Also, no assistive devices are used.

The Panel's Findings

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional to confirm that as a result of his restrictions the Appellant requires help with his daily living activities. The Panel finds that there is no evidence that the Appellant needs help with any daily living activities. The Panel also finds that the Ministry reasonably determined that because direct and significant restrictions in the Appellant's ability to perform daily living activities have not been established, it cannot be determined that the Appellant needs help to perform those activities.

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 it confirms that decision.