

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 17, 2013 which denies the appellant's request for Persons with Disabilities (PWD) designation. The ministry denied the request after determining that, based on the information provided, the appellant did not meet the following criteria under section 2 of the EAPWD Act and Regulation:

- The impairment is not likely to continue for two or more years;
- The appellant does not have a severe mental or physical impairment;
- The information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The prescribed professional does not indicate that the appellant requires the significant help or supervision of another person to perform daily living activities directly and significantly restricted by the impairment.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Act, section 2
EAPWD Regulation, section 2

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the appellant's PWD application which included a physician's report dated December 10, 2012 and an assessor's report dated December 10, 2012. Both reports are completed by the same physician.

The physician indicates that the appellant has been attending at his medical practice for three years, and in that time has seen the appellant 2-10 times. In the physician's report, she diagnoses the appellant as bipolar type II.

The physician notes that the appellant presents with severe anxiety, agitation, depression and sleep disturbance, and that he complains of poor appetite, impaired concentration and severe mood swings. The physician says that since treatment the appellant's mood has improved and stabilized however he is now suffering from sedation as a side effect of one of his medications, and some agitation as a side effect of the other.

The physician further notes that the appellant's impairments currently prevent him from working at his former occupation.

The physician indicates that the appellant is being prescribed medications that interfere with his ability to perform daily living activities, and the anticipated duration of the medication is indefinite and possibly lifelong, although the side effects should subside with ongoing treatment.

In terms of the appellant's functional skills, the physician notes that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations with lifting or remaining seated.

In terms of the appellant's cognitive and emotional function, the physician indicates that the appellant experiences significant deficits with his memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration.

In his additional comments the physician reiterates that the appellant has been diagnosed with a major mood disorder within the past six months. The physician adds that the appellant is significantly sedated at times during the day as his medications are being adjusted. He has poor motivation. All of these prescriptions affect his decision making abilities and social interactions.

In the assessor's report, the same physician indicates at Part B that the appellant has a good ability to communicate, and that he is independent with all identified aspects of mobility and physical activity. Also at Part B the assessor indicates that the appellant's mental impairments have a minimal impact on his insight and judgment, executive function, memory and language. Additionally, the physician indicates that the mental impairments have a moderate impact on the appellant's consciousness, emotion, and motivation, and a major impact on impulse control and attention/concentration.

Under Part C, the assessor indicates that the appellant is independent in all identified areas of the daily living activities of personal care, basic housekeeping, shopping, meals, paying rent/bills,

medications, transportation and social functioning although he does require periodic supervision with some of his interactions and when dealing with unexpected demands.

The assessor indicates that the appellant functions at a good level with both his immediate and extended social networks.

At Part D, the assessor indicates that the appellant requires the help of family for emotional support, meals etc.

At the oral hearing, the appellant's advocate gave the following evidence:

- The ministry failed to recognize the physician's comments that the appellant's condition is chronic and lifelong;
- The appellant's condition is severe as noted by the physician's comments at Part B of the physician's report;
- The appellant's impairments directly and significantly restrict his ability to perform daily living activities as noted by the assessor's comments and as noted by the evidence of the witness;
- The appellant's medications are his "assistive devices" and without them he would be unable to function.

At the oral hearing, the appellant gave the following evidence:

- Some days are good and some are not so good;
- On the "not so good" days he exhibits violent, angry and nasty behavior;
- He does not know the cause of his mental impairments but he definitely does have issues;
- He has taken various medications over the years and this past year he has been on seven different medications. The medications negatively affect him (ie: liver function, kidney function, and sexual function) and one medication in particular has likely caused his most recent diagnosis of diabetes.

At the oral hearing the appellant's witness gave the following evidence:

- She is the appellant's common law partner and they have lived together for three years;
- She does not work outside of the home;
- Over the past three years, she has seen the appellant take various medications, and she has yet to see him on one where he can function; The medications either leave him "zombie-like" and incoherent, or agitated and irritable; She is a witness to the assistance the appellant requires, to his disabilities and to his limitations;
- With respect to his morning routine, the appellant is very forgetful. She has to run behind him to make sure things (ie: the stove) are turned off.
- There are times that the appellant cannot get out of bed;
- Her teenage son and daughter also assist;
- The witness feels as though she and her children are "walking on eggshells";
- The appellant can offer her very limited assistance with chores. For example, he will start to

vacuum, and then he will just stop. Also, she will send him to retrieve the mail which is four blocks away, he will go and then get side tracked as to where he is supposed to be going;

- She often has to be the one to drive when running errands because the appellant is too sedated as a residual effect of his medication and this is a concern because she has vision challenges (diplopia) and is at risk for losing her drivers license;
- The appellant does not function socially outside the home; and
- The appellant is able to budget and manage his finances, and in some respects is better than her.

The panel finds that, with the exception of the appellant's reference to the recent diagnosis of diabetes, the new information by the appellant, his advocate, and the witness is in support of the original information and records that were before the ministry at the time of reconsideration, as the information confirms and/or is in support of the diagnoses and related impairments already referred to by the appellant and the prescribed professional at reconsideration. As such, the panel admits the new information as evidence before this appeal pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry reasonably concluded that the appellant is not eligible for a PWD designation under section 2 of the EAPWD Act and Regulation because the appellant did not meet the following criteria:

- The impairment is not likely to continue for two or more years;
- The appellant does not have a severe mental or physical impairment;
- The information from the prescribed professional does not indicate the impairment directly and significantly restricts the appellant's ability to perform daily living activities either continuously or periodically for extended periods; and
- The prescribed professional does not indicate that the appellant requires the significant help or supervision of another person to perform daily living activities directly and significantly restricted by the impairment.

Section 2(2) of the EAPWD Act provides that 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.

Section (2)(3)(b) states that for the purposes of section (2)(2), 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.

Section 2 of the Regulation states as follows:

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.

[am. B.C. Reg. 196/2007.]

The appellant's position is that he has met the criteria for PWD designation as he has a chronic, ongoing, and severe mental impairment that significantly impacts his daily living activities. He adds that his medications make him unable to function and that he requires regular help and assistance from his common law spouse.

The ministry says that the appellant's impairment is not likely to continue for two years or more. Also, the ministry says the information provided by the physician/assessor indicates that the appellant does not have either a severe physical or mental impairment. The ministry bases its decision on the physician's original findings that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations with lifting or remaining seated. The ministry also relies on the

assessor's report wherein the same physician notes that the appellant can manage all of the identified daily living activities independently despite his bipolar disorder and the side effects from his medications.

For the same reasons, the ministry finds further that the appellant is not significantly restricted in his daily living activities to the extent that his impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods, and that the appellant does not require the significant help or assistance of another person or animal to perform the directly and significantly restricted activities of daily living. As such, the ministry says that they were unable to assign PWD status on the basis that the appellant did not meet the legislative criteria as set out in section 2 of the Regulation.

With respect to the duration of the appellant's impairment, the panel notes the physician's comment at Part E of the Assessor's report wherein the physician states that the appellant's condition is "chronic in nature i.e. lifelong" and "struggles with potentially all aspects of ADL". However, the panel also notes the physician's comments at Part C of the physician's report wherein he indicates that the actual impairment is not likely to continue for two years or more. The physician says "hopefully 6/12" suggesting that hopefully the impairment will subside within 6 to 12 months. The physician also states, "...Hopefully his condition will stabilize with the right combination of medications...". Given the physician's specific indication that the impairment is not likely to continue for two years or more, the panel finds that although the physician's evidence is that although the appellant's bipolar condition is ongoing and chronic, the ministry reasonably concluded that the resulting impairment did not meet the duration requirement as set out in section 2 of the Regulation.

The panel then considered the evidence of the physician, and in particular the evidence that the appellant's impairment is limited to his bipolar disorder, type II. The physician does not indicate any physical impairments in either the physician's report or the assessor's report. To the contrary, he indicates that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations with lifting or remaining seated.

The panel also considered the evidence of the physician in the assessor's report that the appellant's daily living activities are not in any way impacted by his impairments. The physician indicates that the appellant is independent in all of his mobility and physical abilities. As such, the panel finds that the overall evidence, or lack of, confirms that the appellant's physical impairments, if any, are not severe.

With respect to the appellant's mental impairment, the panel has considered the evidence of the appellant and his common law spouse regarding the daily impacts of the appellant's mental impairment. In particular, the panel takes note of the spouse's evidence that the appellant is very forgetful with respect to such basic activities like turning off the stove after he uses it. The spouse indicates that that many times the appellant cannot even get out of bed in the morning and that he is "zombie" like for much of the day. She explains how the appellant forgets what he is doing when he gets part way down the block to retrieve the mail. Notwithstanding this evidence, the ministry was not satisfied that the appellant's condition is severe.

The panel then considered the physician's report wherein the physician says the appellant presents with severe anxiety, agitation, depression and sleep disturbance, and that he complains of poor appetite, impaired concentration and severe mood swings. The physician says that since treatment the appellant's mood has improved and stabilized however he is now suffering from sedation as a side effect of one of his medications, and some agitation as a side effect of the other.

The physician further notes that the appellant's impairments currently prevent him from working at his former occupation.

In terms of the appellant's cognitive and emotional function, the physician indicates that the appellant experiences significant deficits with his memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration.

In his additional comments the physician reiterates that the appellant has been diagnosed with a major mood disorder within the past six months. The physician adds that the appellant is significantly sedated at times during the day as his medications are being adjusted. He has poor motivation. All of these prescriptions affect his decision making abilities and social interactions.

Having said that, the same physician indicates at Part B of the assessor's report that the appellant has a good ability to communicate. Also at Part B the assessor indicates that the appellant's mental impairments have a minimal impact on his insight and judgment, executive function, memory and language. The physician indicates that the mental impairments have a moderate impact on the appellant's consciousness, emotion, and motivation, and a major impact on impulse control and attention/concentration. The physician indicates also that the appellant's impairments do not at all impact his bodily functions, motor activity, psychotic symptoms, other neuropsychological problems, or other emotional or mental problems. The physician says that the impact on daily functioning fluctuates according to mood, and that the symptoms vary day to day with overall improvement since initiating medications.

Although the appellant suffers from mental impairments, the panel finds the overall medical evidence suggest that the impairments do not at all impact his daily living activities, and further that they have only moderate to major impact on limited aspects of his mental functioning. As such, the panel finds that the ministry also reasonably concluded that the appellant does not have a severe mental impairment.

Turning to the question of whether the appellant's impairments directly and significantly restrict the appellant's ability to perform daily living activities either continuously or periodically for extended periods, the panel finds also that the ministry reasonably concluded that this criterion has not been met. In making this finding, the panel again considered the physician's evidence that the appellant is able to walk 4+ blocks unaided, can climb 5+ stairs unaided, and has no limitations with lifting or remaining seated. The panel also considered the assessor's report wherein the same physician notes that the appellant can manage all of the identified daily living activities independently. Additionally, the panel considered the physician's evidence as to the limited impact on daily functioning, as noted above.

The panel recognizes the evidence of the witness with respect to how limited the appellant is with his impairments. However, the legislation clearly states that the determining information must be provided by a prescribed professional. As such, and in the absence of further information from the prescribed professional suggesting direct and significant restrictions, the panel finds that the ministry's decision is reasonable in that it concluded that the appellant's impairments do not directly and significantly restrict the appellant's ability to perform daily living activities either continuously or periodically for extended periods.

With respect to whether or not the appellant requires significant help or supervision to perform daily living activities that are significantly restricted by his impairment, the physician has said very little about this, other than to note that the appellant relies on family for emotional support and assistance with meals. The physician has not identified the duration or extent of the help that the appellant requires. Further, the panel points out that, pursuant to the legislation, the need for help must be for activities of daily living that are determined to be directly and significantly restricted. As none of the appellant's activities of daily living have been identified by the physician as being directly and significantly restricted, the panel concludes that the ministry reasonably determined that the appellant does not require help or supervision of others to perform daily living activities that are directly and significantly restricted.

In summary, the panel concludes that the ministry reasonably determined that the appellant has not met all of the legislated criteria in order to be eligible for PWD status, and that the ministry's decision was reasonably supported by the evidence. As such, the panel confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.