

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") February 20, 2013 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because she 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 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 was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her 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

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's PWD application consisting of her self-report, a physician's report ("PR") and an assessor's report ("AR") both completed on October 19, 2012 by a psychiatrist who indicated that for two weeks the Appellant had been his patient and he had seen her every day since October 5, 2012.
2. Appellant's request for reconsideration with no additional information.

Diagnoses

In the PR, the psychiatrist diagnosed the Appellant with mood disorders – bipolar affected disorder onset 2005, and with degenerative disc disorders onset 2010. In the health history section of the PR, the psychiatrist wrote "patient has had 3 episodes of manic presenting, requiring admission into psychiatric hospital – 2005, 2007 and 2012", and "suffered degenerative disc disorder L5-S1 as per CT scan of 2010". In the AR, the psychiatrist reported that the Appellant's ability to communicate is satisfactory. He also reported that the Appellant is being provided with "acute psychiatric care."

Physical Impairment

The Appellant described her disability as:

- on-going sciatica occurring in the left leg that causes immense pain; sciatica runs from the lower back to the tip of the toes; overbearing to the point that it impacts her well-being and health; limits her in what she can do every day and night.
- immense pain keeps her up at night; therefore, she is exhausted during the day and thus she is unable to carry out errands, activities of daily living as well as live a normal life.

In the PR, the psychiatrist wrote that the Appellant:

- has a degenerative disc disorder and obviously is progressive in nature.
- can walk 1-2 blocks unaided, climb 2-5 steps unaided, has no limitations in lifting and can remain seated for less than 1 hour.

In the AR, the same medical practitioner reported that:

- the Appellant is independent walking indoors; takes significantly longer walking outdoors, climbing stairs and standing, adding "walks slowly, difficult climbing steps, only few flights of steps because of acute pain"; and, is continuously restricted in lifting, and carrying and holding, adding "unable because of herniation of disc".

Mental Impairment

The Appellant stated that the lack of sleep from pain affects her mental capacity.

In the PR, the psychiatrist reported that:

- the Appellant has severe mental illness, which is relapsing in nature, and compliance with medication mitigates prolonged relapse.
- has significant deficits with cognitive and emotional functioning, specifically in the areas of executive, psychotic symptoms, emotional disturbance and attention or sustained concentration.

In the AR, the psychiatrist reported the following impacts to cognitive and emotional function arising from the Appellant's mental impairment:

- major impact to emotion, to insight and judgement, and to psychotic symptoms.
- moderate impact to attention/concentration and to executive.
- minimal impact to impulse control and to other emotional or mental problems.
- no impact to bodily functions, to consciousness, to memory, motivation, to motor activity, to

language and to other neuropsychological problems.

- adding "when acutely ill has no insight and may become disturbed, agitated and unable to care for self".

Daily Living Activities

In the PR, the psychiatrist reported that the Appellant has not been prescribed any medications or treatments that interfere with her ability to perform daily living activities and she does not require any prosthesis or aids. He also indicated that:

- she has no restrictions with personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation and management of finances.
- she is continuously restricted with mobility outside the home.
- she is periodically restricted with social functioning and "when acutely ill may not interact appropriately because of loss of insight"; "loss of insight and inhibition when acutely ill and psychotic impairs social interaction".
- for the degree of restriction - "severe, requiring admission into the hospital under the Mental Health Act".

In the AR, the psychiatrist reported that the Appellant:

- is independent in all tasks associated with personal care, basic housekeeping and shopping except that she takes significantly longer with carrying purchases home "because of her degenerative disc".
- is independent in all task associated with meals, paying rent and bills, medications and using transit schedules, she takes significantly longer getting in/out of a vehicle and with using public transit.
- for social functioning, is independent in her ability to develop and maintain relationships and securing assistance from others; needs periodic assistance with making appropriate social decisions "when acutely ill with loss of insight", with interacting appropriately with others "when acutely ill" and with dealing appropriately with unexpected demands "when acutely ill".
- has very disrupted functioning with her immediate and extended social networks; her friends narrated significant damages when ill.

The psychiatrist indicated that the information for his assessment was based on office interviews with the Appellant, reviews in the hospital during her admission, file information and information from the Appellant's mother and long time friend.

Help with Daily Living Activities

In the PR, for assistance needed the psychiatrist indicated help with mobility and provided a further illegible comment.

In the AR, for help needed the psychiatrist wrote "follow-up by mental health team and monitoring via the clinic, physiotherapy assistance". He also indicated no assistance is provided by others, no assistive device or assistance animal is being used.

The Panel notes that the following was added to the AR, for equipment needed: "scooter – help me be mobile", in what appears to be the Appellant's handwriting.

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 she 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 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 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 Physical Impairment

The Appellant's position is that the degenerative disc disease and sciatica restrict what she can do every day and night. The immense pain affects her sleep so that she is exhausted and unable to carry out daily activities.

The Ministry's position is that the Appellant's functional skill limitations as reported by the doctor are more in keeping with a moderate degree of physical dysfunction and not a severe physical 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. However, that legislation is also clear that the fundamental basis for the assessment is the evidence from a prescribed professional respecting the type of impairment and its impact on daily functioning. The Appellant described her physical impairment as on-going sciatica occurring in her left leg causing immense pain. She stated that the pain impacts her well-being and health as it limits her in what she can do every day and night.

The psychiatrist described the Appellant's diagnosis as degenerative disc disorder that is progressive in nature. He also reported that the appellant's physical functional skills are limited to walking 1-2 blocks unaided on a flat surface, climbing 2-5 steps unaided, no lifting and remaining seated for less than 1 hour. However, he also indicated that the Appellant is not restricted in daily living activities requiring physical abilities, such as aspects of personal care, meal preparation, housework and mobility inside the home. The psychiatrist only reported that the Appellant is continuously restricted in mobility outside the home, and that she takes significantly longer carrying purchases home and getting in and out of a vehicle. Based on this evidence, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe physical impairment.

Severe Mental Impairment

The Appellant's position is that she has been diagnosed with a severe mental illness, which relapses and requires hospitalization. When she is acutely ill she experiences direct and significant restrictions to her cognitive and emotional functioning. She is also restricted in her ability to manage her social functioning skills and has very disrupted functioning with her immediate and extended social networks.

The Ministry's position is that although the doctor reported severe mental illness and several deficits to cognitive and emotional functioning, the Minister was not satisfied that the information provided is evidence of a severe mental impairment.

The Panel's Findings

The only information that the Appellant herself provided about how her mental impairment affects her functioning was her statement that the lack of sleep from pain affects her mental capacity. The rest of the evidence is found in the psychiatrist's reports. He diagnosed the Appellant with mood disorders, bipolar affected disorder with an onset in 2005. He also described the Appellant's condition as a severe mental illness, which is relapsing in nature and required admission into hospitals. But the Panel notes that there is no information about the frequency of the relapses except for the psychiatrist's report of admission to psychiatric hospitals in 2005, 2007 and 2012. There is also no information about how long the Appellant's relapses last. The psychiatrist did write that medication mitigates prolonged relapses and he indicated that the Appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities. The psychiatrist also reported restrictions to cognitive and emotional functioning, including major impacts to emotion, insight and judgement, and psychotic symptoms, and moderate impacts to attention/concentration and executive. He added that when the Appellant is acutely ill she has no insight and is unable to care for herself.

As for daily living activities requiring mental functioning abilities, such as aspects of shopping,

personal care, paying rent and taking medications, the psychiatrist reported that the Appellant is independent. Only in aspects of social functioning does the psychiatrist indicate that the Appellant requires periodic assistance, but he qualifies that report with the comment "when acutely ill". As for the Appellant's relationships with her immediate and extended networks the psychiatrist reported very disrupted functioning; however, he also qualified that with the comment "when acutely ill", the same qualification he made in other parts of the AR. Again, the Panel notes there is no information about how frequently the Appellant is acutely ill or for how long. The psychiatrist reported that he had seen the Appellant every day for about two weeks and he was providing her with acute psychiatric care. However, he did not indicate whether such care would be continuing, only that she will need follow up by the mental health team and monitoring via the clinic. The Panel finds that although the psychiatrist provided evidence that the Appellant has a severe mental illness which affects her cognitive and emotional functioning and her ability to look after herself, it is not clear from his evidence how often or for how long the Appellant is acutely ill or how long each of her relapses lasted or may last. Therefore, the Panel finds that the Ministry reasonably determined that the evidence does not establish that the Appellant has a severe mental impairment.

Daily Living Activities

The Appellant's position is that the pain from her sciatica impacts her well-being and health as it limits her in what she can do every day and night. She is exhausted during the day from immense pain keeping her up at night so that she is unable to carry out errands and activities of daily living. Also, her psychiatrist reported that when she is acutely ill she is unable to look after herself and she needs periodic assistance in aspects of social functioning.

The Ministry's position is that, except during infrequent episodes of acute illness, the information from the prescribed professional 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) of the EAPWDA requires the opinion of a prescribed professional to confirm that the Appellant's severe impairment directly and significantly restricts her daily living activities. In other words, the restrictions to those activities must be directly caused by the severe impairment. The psychiatrist who completed the PR and the AR is the prescribed professional in this case. He reported that she is independent in managing all aspects of daily living activities, except for requiring periodic assistance with making appropriate social decisions, interacting appropriately with others and dealing appropriately with unexpected demands. She also has very disrupted functioning in her immediate and extended social networks. The psychiatrist qualified these restrictions with the comment "when acutely ill", but with no information about how often she is acutely ill or for how long. As for restrictions caused by the Appellant's degenerative disc, the psychiatrist reported that the Appellant needs continuous assistance with lifting, and carrying and holding. However, he also reported only that carrying purchases home takes significantly longer because of her degenerative disc, and getting in and out of a vehicle and using public transit take significantly longer. The Panel finds that these reported restrictions affect few daily living tasks. Therefore, based on this evidence from the prescribed professional, the Panel finds that the Ministry reasonably concluded that the information provided does not establish that the Appellant has satisfied the requirements in section 2(2)(b)(i) of the EAPWDA.

Help with Daily Living Activities

The Appellant's position is that she needs an assistive device and significant help with daily living activities.

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

The Panel's Findings

Section 2(2)(b)(ii) of the EAPWDA also requires a prescribed professional to confirm that as a result of her restrictions the Appellant requires help with her daily living activities. The Panel finds that there is some evidence that the Appellant needs help with certain social functioning tasks, with lifting and carrying, and with mobility. However, the only type of assistance the psychiatrist described was follow-up by a mental health team, monitoring via a clinic and physiotherapy assistance. There is no evidence regarding how often or to what extent such help is needed by the Appellant. Therefore, the Panel 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 the 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. Therefore, the Panel confirms the Ministry's decision.