

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated May 3, 2013 which found that the appellant did not meet two 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 she has a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes 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; and,
- as a result of these restrictions, 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

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

- 1) Report dated November 4, 2010 from a physician assessing the appellant's ability to return to work;
- 2) Brief Assessment Report dated March 23, 2012 by a registered psychologist, reporting on a 2-hour assessment completed on March 21, 2012. For current functional status, the psychologist reported with respect to activities of daily living that the appellant spends most of her time at home because of her anxiety. She only leaves her apartment to walk her dogs (1 1/2 hours per day) or to complete errands when required, e.g. grocery shopping. The appellant reported significant difficulty functioning in activities outside her home, especially busy public places and avoids these situations whenever possible. She is able to leave her home with slightly less difficulty when accompanied with her dogs or her friend. The appellant noted reduced functioning in her home with regards to completing self-care tasks and household chores due to a combination of depressive and anxiety symptoms. She does not currently drive and she avoids taking public transit whenever possible due to anxiety. For interpersonal functioning, the appellant reports having a good friend who lives in her building and has infrequent contact with another friend by phone. She is otherwise socially isolated and avoids social situations as much as possible due to her anxiety and depressive symptoms;
- 3) Discharge Report dated June 4, 2012 by a registered psychologist, reporting on 7 sessions with the appellant. At the last session the appellant reported no significant improvement in her psychological symptoms or functioning. Her anxiety symptoms remain severe and depressive symptoms continue to be of moderate-to-severe intensity. The psychologist concludes that a longer duration of treatment in combination with concurrent psychiatric treatment would be required for her to achieve enough psychological recovery for her to participate in vocational activities;
- 4) Letter dated October 26, 2012 from the physician who completed the physician report in the PWD application stating in part that the appellant suffers from significant anxiety and P.T.S.D., she is significantly depressed. Her symptoms are: sleep disruption, emotionally labile, anxiety, panic attacks, binge eating, socially withdrawn and isolated, unable to concentrate, occasional suicidal ideation, agoraphobia. Her condition has not improved and he is of the opinion that she is unable to work in any capacity;
- 5) Letter dated September 11, 2012 from an addictions counselor, M.Ed., CCC [Canadian Certified Counselor] stating in part that the appellant is in a vulnerable position resulting from multiple traumas and PTSD symptoms, substance abuse recovery, and intense anxiety. She is regularly unable to complete basic tasks regarding hygiene (e.g. cleaning, showering, etc.), self care and basic needs (e.g. sleeping, eating, taking prescribed medications, etc.) and scheduled appointments (i.e. regularly cancelling counseling and medical appointments, requesting outreach and phone sessions). It is his belief that the appellant would be completely unable to complete any duties required in any gainful occupation until further supports were put in place;
- 6) Person With Disabilities (PWD) Application comprised of the applicant information dated December 2, 2012 which did not include a description of her disability or how it affects her life, and the physician report dated December 7, 2012 completed by a general practitioner who has treated the appellant for over 10 year and an assessor report dated December 23, 2012 completed by a another physician who has known the appellant for 2 weeks;
- 7) Medical Report- Employability dated February 13, 2013 which lists the appellant's primary medical condition as post traumatic stress disorder and the secondary condition as depression and the associated restrictions as anxiety, sleep disorder, lack of concentration; and,
- 8) Request for Reconsideration- Reasons dated April 5, 2013.

Diagnoses

The appellant has been diagnosed by her long-time general practitioner with anxiety-depression, and PTSD [post traumatic stress disorder] and she is a recovering alcoholic.

Daily Living Activities (DLA)

- In the physician report, the general practitioner indicated in the health history that the appellant has severe depression and acute anxiety and she is "...disabled from all work as a result."
- The general practitioner indicated that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLA, and she does not require any prostheses or aids for her impairment.
- The appellant's long-time general practitioner reported periodic restrictions to DLA in the areas of personal self care, meal preparation and basic housework, with the note that she has "flare-ups of condition". Continuous restrictions are reported for social functioning and the general practitioner wrote "socially isolated and withdrawn."
- For additional comments to the physician report, the general practitioner wrote that he is of the opinion that the appellant, "...due to the combination of her severe emotional issues is unable to work in any capacity" and he expressed doubt that she will be well enough in the future to rejoin the work force.
- In the assessor report, the second general practitioner indicated that the appellant has a good ability to communicate in all areas. She is also independent in all areas of mobility and physical ability, including walking indoors and outdoors.
- In terms of impacts to cognitive and emotional functioning, the general practitioner reported major impacts in the areas of bodily functions (e.g. eating problems, toileting problems, poor hygiene, sleep disturbances), emotion (e.g. excessive or inappropriate anxiety, depression, etc.) and motivation (e.g. lack of initiative, loss of interest). Moderate impacts were identified in insight and judgment and motor activity, with minimal or no impacts in the remaining 8 areas of functioning and no additional comments provided.
- The general practitioner reported that 6 out of 8 tasks of the DLA personal care are performed independently, and 2 tasks take significantly longer than typical (grooming and bathing), with no other explanation or description provided.
- The appellant is assessed as taking significantly longer than typical with basic housekeeping, with no further explanation or description provided.
- For shopping, the general practitioner assessed the appellant as independent with 3 out of 5 tasks, namely reading prices and labels, paying for purchases and carrying purchases home. The appellant takes significantly longer than typical with going to and from stores and making appropriate choices. No other comments are provided by the general practitioner.
- The general practitioner reported that the appellant is independent with all tasks of managing meals, medications and transportation.
- All listed tasks for the DLA of paying rent and bills require periodic assistance from another person. No explanation or description is provided by the general practitioner.
- The general practitioner assessed the appellant as being independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. Asked to describe how the mental impairment impacts the appellant's relationship with her immediate and extended social networks, the general practitioner indicated that there is very disrupted functioning with both. No other comments are provided by the general practitioner.
- In her Request for Reconsideration, the appellant wrote that the combination of her severe PTSD issues, anxiety, panic attacks, agoraphobia, depression and insomnia, have prevented her from having any social life. She is fearful and anxious every day.
- The appellant wrote that she depends mostly on her mother to take her to all her appointments and to shop for her groceries. The appellant wrote that when she has to get groceries, she has major panic attacks and sometimes is unable to get out of the car. The appellant wrote that she needs her mother's assistance as being in any environment with lots of people brings on her anxiety, fear and panic.
- The appellant wrote that she tends not to think about her hygiene and she only showers or bathes a couple of times a month. She usually eats one meal a day, sometimes two, with her mother constantly

reminding her of these things. The appellant stated that she lives in isolation other than being with her parents and going to her appointments and she has disengaged from all her friends.

Need for Help

- The general practitioner who completed the assessor report indicated that the appellant lives alone.
- The appellant's long-time general practitioner reported that help is required for DLA from the appellant's friends and family.

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision and wrote that she will have further information from her doctors to confirm that her condition disables her from day-to-day normal activities and she is not able to function without assistance.

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

- The appellant stated that the doctor who prepared the assessor report had only known her a few weeks and she believes that some information was misconstrued. She believes that this doctor did not have a full, clear picture of the chronic nature of her condition.
- The appellant stated that her PTSD, depression and anxiety are ongoing, they never go away. These conditions impact her life so that it is difficult for her to do her DLA. Her social functioning is impaired, and regulating her diet, getting proper sleep and even getting out of the house are impacted by these conditions.
- The appellant stated that she needs her mother's help with her DLA. Her mother helps her with going to the bank or with going shopping. To go grocery shopping, the appellant needs to get in and out of the store quickly. It takes her a long time to perform other activities.
- The appellant stated that her mother helps her most days of the week. The appellant explained that she will start her laundry but she will not complete the task and her mother will either complete it or remind her to finish. The appellant stated that she can cook but her mother helps to make sure that she eats the meal.
- The appellant stated that she depends on her mother to get her to her appointments and her mother will pick her up and drive her to the appointment. She also relies on her mother to remind her to wake up, to take her medications, to bathe, and to make sure she gets out of the house on a daily basis. Her mother lives "5 minutes away" and will call to remind her or come over to make sure she gets going with her day.
- The appellant's advocate stated that, based on her counseling of the appellant and her interactions with her, the comment by the general practitioner in the physician report that there are "flare-ups" of her condition is not accurate.
- The appellant stated that some days it is difficult for her even to get out of bed. Her conditions have a "profound effect globally" on her life. The appellant stated that 80-85% of the time it takes a couple of hours for her to mentally prepare to take one step out the door. She needs to meditate to be calm enough to do so.
- The appellant stated that she has no social life because she cannot deal with people.
- The appellant stated that she has been working with her advocate as a counselor and sees him on a weekly basis, sometimes twice a week, and also meets with her doctor approximately once per month to try to overcome some of these issues.

At the hearing, the ministry relied on its reconsideration decision.

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 has a severe mental impairment but 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.

- (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.

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

At reconsideration, the ministry was satisfied that the information provided is evidence of a severe mental impairment.

Restrictions in the ability to perform DLA

The appellant's position is that her severe mental impairment directly and significantly restrict her ability to perform DLA and she requires the significant assistance of another person, being her mother, to perform many DLA. The appellant argued that the general practitioner was not accurate in his description of "flare-ups" of her condition as her symptoms of PTSD, depression and anxiety are ongoing and never go away. The appellant also argued that the general practitioner who completed the assessor report had only known her for 2 weeks and he did not have a full and clear picture of the impact of her conditions on her DLA.

The ministry's position is that the evidence of the prescribed professionals does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods of time. The ministry argued that the general practitioner indicated in the physician report that the appellant is periodically restricted in her ability to manage personal self care, meal preparation and basic housework but that "flare up of condition" does not describe the frequency or duration of these periodic restrictions. The ministry argued that while the general practitioner also indicated that the appellant is continuously restricted in her ability to manage her social functioning, the other general practitioner indicated in the assessor report that the appellant can independently manage all of her social functioning. The ministry argued that the general practitioner indicated that the appellant has not been prescribed any medication and/or treatment that would interfere with her ability to perform DLA. The ministry argued that for those tasks identified by the general practitioner in the assessor report as taking significantly longer than typical or requiring periodic assistance, there is no explanation provided to determine whether this is for extended periods of time.

Panel Decision

The evidence of the appellant's long-time general practitioner, as a prescribed professional, is that the appellant is periodically restricted with the DLA of personal self care, meal preparation, and basic housework with the explanation that there are flare-ups of the condition. In the assessor report, the other general practitioner reported that 6 out of 8 tasks of the DLA personal care are performed independently, and 2 tasks take significantly longer than typical (grooming and bathing), with no other explanation or description provided. The general practitioner reported that the appellant is independent with all tasks of managing meals and takes significantly longer than typical with basic housekeeping, with no further explanation or description provided. The appellant stated that her PTSD, depression and anxiety are ongoing, they never go away and it is not accurate to describe "flare-ups" of her condition as they are constant and impact her life so that it is difficult for her to do her DLA. The appellant explained that she will start her laundry but she will not complete the task and her mother will either complete it or remind her to finish. However, the appellant stated at the hearing that some days it is difficult for her even to get out of bed, which the panel finds demonstrates an exacerbation of her condition, yet the appellant did not describe how often this occurs. In her Request for Reconsideration, the appellant wrote that she tends not to think about her hygiene and she only showers or bathes a couple of times a month. She usually eats one meal a day, sometimes two, with her mother constantly reminding her of these things. The appellant stated at the hearing that she can cook but her mother helps to make sure that she eats the meal.

In a Brief Assessment Report dated March 23, 2012, a registered psychologist indicated that the appellant noted reduced functioning in her home with regards to completing self-care tasks and household chores due to a combination of depressive and anxiety symptoms; however, further detail was not provided. In a letter dated September 11, 2012, an addictions counselor, wrote that the appellant is regularly unable to complete basic tasks regarding hygiene (e.g. cleaning, showering, etc.), self care and basic needs (e.g. sleeping, eating, taking prescribed medications, etc.) and scheduled appointments (i.e. regularly cancelling counseling and medical appointments, requesting outreach and phone sessions). While the evidence of the addictions counselor tends to support the ongoing nature of the restrictions to these DLA, as argued by the appellant, the counselor is not identified as a registered psychologist or any of the other professionals qualified as a "prescribed professional" as listed in Section 2(2) of the EAPWDR. Neither general practitioner provide elaboration of the frequency or duration of exacerbations to the appellant's conditions and the panel finds that, in the absence of these details, the ministry reasonably determined that there is insufficient information to support periodic restrictions for extended periods of time.

The general practitioner indicated in the assessor report that the appellant is independent with 3 out of 5 tasks of shopping, namely reading prices and labels, paying for purchases and carrying purchases home, and takes significantly longer than typical with going to and from stores and making appropriate choices. The general practitioner also reported that all listed tasks for the DLA of paying rent and bills require periodic assistance from another person. However, no explanation or description is provided by the general practitioner with respect to either of these DLA to elaborate on how much longer it takes the appellant or the frequency or duration of her need for assistance. At the hearing, the appellant stated that she needs her mother's help with her DLA, that her mother helps her with going to the bank or with going shopping. In her Request for Reconsideration, the appellant wrote that she depends mostly on her mother to take her to all her appointments and to shop for her groceries. The appellant stated that when she has to get groceries, she has major panic attacks and sometimes is unable to get out of the car. She needs her mother's assistance as being in any environment with lots of people brings on her anxiety, fear and panic. The panel finds that the appellant's evidence again demonstrates exacerbations of her condition as "sometimes" she is unable to get out of the car. The legislation requires that the opinion of a prescribed professional confirm that the resulting periodic restrictions to DLA are for extended periods of time, and the panel finds that the ministry reasonably determined that there is insufficient information from the prescribed professionals regarding these DLA. The general practitioner indicated in the assessor report that the appellant is independent with all tasks of managing meals, medications and transportation.

For those DLA specifically relating to a person with a severe mental impairment, the general practitioner indicated in the physician report that the appellant is continuously restricted with social functioning with the comment that she is socially isolated and withdrawn. For additional comments, the same general practitioner wrote that he is of the opinion that the appellant, "...due to the combination of her severe emotional issues is unable to work in any capacity" and he expressed doubt that she will be well enough in the future to rejoin the work force. Likewise, in a Discharge Report dated June 4, 2012 by a registered psychologist, the letter dated October 26, 2012 from the physician who completed the physician report, and the letter dated September 11, 2012 from an addictions counselor, the focus of the reports is on an assessment of the appellant's ability to participate in vocational activities, which is not a criterion under the legislation for PWD designation.

In the assessor report, the second general practitioner indicated that the appellant has a good ability to communicate in all areas. Also in the assessor report, the general practitioner assessed the appellant as being independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. Asked to describe how the mental impairment impacts the appellant's relationship with her immediate and extended social networks, the general practitioner indicated that there is very disrupted functioning with both; however, no other comments are provided by the general practitioner to explain the apparent discrepancy with the previous assessment. At the hearing, the appellant stated that she has no social life because she cannot deal with people. In her Request for Reconsideration, the appellant wrote that the combination of her severe PTSD issues, anxiety, panic attacks, agoraphobia, depression and insomnia, have prevented her from having any social life, that she is fearful and anxious every day. However, in the Report dated March 23, 2012, a registered psychologist indicated for interpersonal functioning that the appellant reported having a good friend who lives in her building and has infrequent contact with another friend by phone. The panel concludes that the ministry reasonably determined that there is not sufficient evidence in the opinion of the prescribed professionals to establish that the appellant's mental impairment directly and significantly restricts her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 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, primarily her mother, to perform DLA. The appellant argued that she also gets help trying to overcome some of her issues from her advocate providing counseling once a week and her doctor with whom she consults approximately once per month.

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 from other persons. The ministry argued that the general practitioner indicated that the appellant does not require an aid for her impairment and she does not require the services of an assistance animal.

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 or the significant help or supervision of another person or the services of an assistance animal in order to perform a DLA.

The general practitioner who completed the assessor report indicated that the appellant lives alone and the appellant's long-time general practitioner reported that help is required for DLA from the appellant's friends and family. Neither general practitioner provided information regarding assistance needed through counseling from health authority professionals or community service agencies, for example. While the panel finds that the

evidence of the prescribed professionals establishes that the appellant requires some assistance with tasks of some DLA, 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.