

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated April 12, 2013, denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. Specifically the ministry determined it had not been established that in the opinion of a medical practitioner the appellant's impairment will continue for at least 2 years. The ministry further 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 the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, the person requires help to perform those activities.

The ministry found she satisfied the criteria of having reached 18 years of age.

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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application.

The Application contained:

- The appellant's Self Report (SR).
- A Physician Report (PR) dated December 7, 2012, completed by the appellant's physician, who has known the appellant for 14 years and seen her 11 or more times in the previous 12 months.
- An Assessor Report (AR) dated December 7, 2012, completed by the same physician.

2. The appellant's Request for Reconsideration, dated March 11 2013, including a letter from her and a letter from her advocate requesting an extension for submission.

In the PR, the GP diagnoses the appellant with Bipolar type II disorder with an onset date of February 2012.

The panel will summarize the evidence from the PR, the AR and the SR, as it relates to the PWD criteria at issue.

Severity and Duration of Impairment

Health history/severity

PR:

The physician writes that the appellant's disorder "is moderate in its severity but currently it is severe in its impairment regarding her ability to work. [The appellant] has seen a psychiatrist who has confirmed the diagnosis, but the patient has not yet commenced therapy." The physician stated that with the help of psychiatrist the appellant could reach a decision as to whether or not she would take medication.

The physician indicates the appellant has not been prescribed medications which interfere with her ability to perform DLA "but the possibility of [name of medication] exists."

The physician indicates that the appellant does not require any prosthesis or aids for her impairment.

The physician is unsure whether the appellant's impairment will continue for 2 years or more, commenting "can't really say; this depends on outcome of visits with psychiatrist and how patient responds to medications, whether medications are prescribed or whether the patient follows through with any prescription."

AR:

The physician states that her "attention/concentration + insight into health situation is questionable and on the whole appears, from a GP point of view, rather poor."

SR: The appellant states that:

- Her symptoms have existed throughout her childhood and adult life, although her diagnosis

was not until March 2012.

- Activities as short as two hours exhaust her and most days she can barely get out of bed.
- She has great difficulty concentrating on the tasks at hand.
- She spends the majority of her time in bed, sometimes sleeping too much or too little.
- She has limited financial resources and is impulsive with her spending.
- She has severe difficulty with her memory and often loses items and has difficulty reaching deadlines.
- She will be seeing a psychiatrist but feels she will always require constant assistance from her family.
- She experiences debilitating migraines which can last for days for which she takes over-the-counter pain medications. These contribute to her need to sleep for extended periods.
- She has racing thoughts, crippling migraines, impulses and cannot get out of bed. She is in the second year of this illness and it is likely to continue.

Physical impairment

Functional skills

PR:

The physician reports that the appellant has no restrictions with respect to walking, climbing stairs, lifting or remaining seated.

Mental impairment

Ability to communicate

PR: No difficulties reported

Cognitive and emotional deficits

PR: The appellant has significant deficits with the following cognitive and emotional functions: executive, memory, emotional disturbance, motivation, impulse control and attention or sustained concentration.

Cognitive and emotional functioning impacts on daily functioning

AR:

Moderate impact on:

- Bodily functions
- Consciousness
- Emotion
- Impulse Control
- Attention/Concentration
- Executive
- Memory
- Motivation

Major impact on Insight and Judgement

Ability to perform DLA

AR:

Mobility and physical ability

- Independent

Personal Care

- Continuous assistance required for feeding herself and regulating diet. The physician reports "mother provides meals."

Basic Housekeeping

- Continuous assistance required for laundry and basic housekeeping. The physician commented "If mother not available, doesn't attend to basic cleanliness, eating well + preparing foods. Often sleeps the whole day."

Shopping

- Periodic assistance required for paying for purchases.

Meals

- Continuous assistance required for meal planning, food preparation, cooking and safe storage of food. "Mother does this for her."

Pay Rent and Bills

- Periodic assistance required for banking and budgeting; continuous assistance required for pay rent and bills.

Social functioning:

- Periodic support/supervision required for making appropriate social decisions, ability to develop and maintain relationships, and ability to secure assistance from others. She requires continuous support/supervision for her ability to interact appropriately with others and ability to deal with unexpected demands.
- The physician commented "I believe these symptoms could improve with appropriate drug therapy and psychotherapy."
- The appellant has marginal functioning when dealing with her immediate and extended social networks.

Help required to perform DLA

- The physician noted that the appellant requires help from a "psychiatrist, medication, counseling e.g. cognitive behavioural therapy." She also receives help from family and friends.
- In her SR, the appellant writes that "my mother performs all of my DLA's ie: cooking, cleaning,

shopping.”

As additional information the physician opined that insight and motivation on the part of the appellant are important. As well, the appellant will see a psychiatrist familiar with her condition.

The physician commented on the difficulty in diagnosing the appellant's condition and reiterated the importance of insight and motivation. The appellant requires continual support to get her on the right path and keep her there. Stress factors must be minimized.

In her Request for Reconsideration, the appellant states that further medical documentation was to follow, however none is contained in the appeal record. Similarly in her Notice of Appeal, the appellant highlights the need to obtain information from her psychiatrist, however no information was provided.

At the Hearing

The appellant was not in attendance at the hearing. After confirming that the Appellant was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The ministry did not provide additional evidence.

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 it had not been established that in the opinion of a medical practitioner the appellant's impairment will continue for at least two years. Further, 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 determined that she met the age criterion in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

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.

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.

Impairment Lasting Two Years

The appellant argued that she is in the second year of her symptoms and it is probable that they will continue for a further two years.

The ministry's position was that this criterion had not been met, referring to her physician's comment regarding the likelihood of the impairment lasting two or more years: "can't really say; this depends on outcome of visits with psychiatrist and how patient responds to medications, whether medications are prescribed or whether the patient follows through with any prescription."

In the absence of an opinion from a medical practitioner that her impairment is likely to last two or more years, the panel finds that ministry was reasonable to find this criterion was not met.

Severity of impairment

For PWD designation, the legislation requires that a severe mental or physical impairment be established. The determination of the severity of impairment is at the discretion of the minister, taking into account all the evidence, including that of the appellant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner (in this case, the appellant's physician) identify the impairment and confirm that impairment will continue for at least two years.

In the discussion below concerning the information provided regarding the severity of the appellant's impairments, the panel has drawn upon the ministry's definition of "impairment." This definition consists of "cause" and "impact" components: "impairment is a loss or abnormality of psychological, anatomical or physiological structure or function [the cause] causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration [impact]." The cause is usually set out as a disease, condition, syndrome or even by a symptom (e.g. pain). A severe impairment requires the identified cause to have a significant impact on daily functioning.

Physical impairment

In the reconsideration decision, the ministry found that there was no evidence to establish a severe physical impairment, noting an absence of a diagnosis of such an impairment and the lack of restrictions in functional skills. The panel finds this a reasonable conclusion.

Mental impairment

The appellant argues that her condition is a severe impairment in that she is subject to racing thoughts, crippling migraines, impulses and cannot get out of bed. Her mother must attend to her DLA.

The position of the ministry is that, while the physician identified a severe impairment regarding working, his assessment was that her bipolar type II condition was moderate. While she has many moderate impacts on cognitive functioning, communication was good and there was only one major impact: insight/judgement. The potential help from a psychiatrist was noted. The physician's comments that her condition was severe were only with respect to working.

The panel finds the ministry was reasonable in its conclusion that a severe mental impairment had not been established. With a major impact on daily functioning reported for only one of fourteen listed aspects of cognitive and emotional functioning and with treatment in prospect and not yet begun, the ministry was reasonable in not making a determination in this respect based on an untreated condition. As well, the PWD designation does not relate to a person's ability to work but rather their ability to perform DLA. The physician's comment regarding severity was limited to the appellant's ability to work.

Significant restrictions in the ability to perform DLA

The ministry noted that periodic or continuous help was required for certain DLA: feeding self, regulating diet, laundry, basic housekeeping and meals, paying for purchases, rent and bills and that support/supervision is required for all areas of social functioning, however that the appellant's physician felt the latter could improve with appropriate drug therapy.

The appellant's position is that she is directly and significantly restricted in a number of DLA and that her mother must perform these tasks as she is often bed-ridden with fatigue.

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 that is likely to continue for at least two years (criteria which the panel has found the ministry reasonable in not finding established) and be in the opinion of a prescribed professional. This does not mean that other evidence should not be factored in, but the legislative language makes it clear that the prescribed professional's opinion is fundamental to the ministry's determination as to whether it is "satisfied" that this criterion is met.

The panel finds that, given a lack of information to make a finding of severity combined with the reported potential for successful treatment by the appellant's psychiatrist, the ministry was reasonable to conclude that the statutory test with respect to DLA restrictions was not met.

Whether help to perform DLA is required

The position of the ministry is that, as it had been established that DLA are not significantly restricted, it cannot be determined that significant help is required from other persons.

The appellant's position is that she relies on ongoing help from her mother. The physician commented "If mother not available, doesn't attend to basic cleanliness, eating well + preparing

foods. Often sleeps the whole day," and that the appellant requires help from a "psychiatrist, medication, counseling e.g. cognitive behavioural therapy." She also receives help from family and friends.

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.