

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") July 2, 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 for PWD designation 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 with her self-report dated February 13, 2013, a physician's report ("PR") and an assessor's report ("AR"), both completed on January 31, 2013 by the Appellant's family doctor who indicated that the Appellant has been her patient for 11 years and that in the preceding 12 months she had seen the Appellant 11 or more times.
2. Appellant's request for reconsideration in which she wrote that she is asking for financial help because she lives in an expensive condo, one of her parents died and the other is in his seventies. Also, she is on medications for psychiatric problems, therefore she cannot work to make the extra money she may need. The Appellant attached medication receipts from February 2013, listed her medications and dosages, and provided the name of her psychiatrist.

### *Diagnoses*

The doctor provided the following diagnoses in the PR: anxiety and severe obsessive compulsive disorder onset before 1997, and social phobia.

### *Physical Impairment*

In the PR, the doctor reported that the Appellant can walk 4+blocks unaided on a flat surface, climb 5+steps unaided, has no limitations in lifting or in remaining seated.

In the AR, the doctor reported that the Appellant is independent walking indoors and outdoors, and climbing stairs; needs periodic assistance with lifting and carrying and holding but with no details provided about the assistance.

### *Mental Impairment*

In her self-report, the Appellant wrote that she is under the care of a physician and a psychiatrist on a monthly basis for severe anxiety and severe obsessive compulsive disorder. The Appellant listed the psychiatric drugs and dosages she takes daily. She stated that her condition is very severe and she is unable to work. The Appellant provided the names and addresses for her physician and psychiatrist.

In the PR, the doctor wrote that her earliest documentation of the Appellant is from 1997, but psychiatric reports compulsions starting at age 6, ready to touch anyone who touched her, needing to [illegible], late years compulsive checking (light, stove, doors ). The doctor also wrote "general anxiety, agoraphobia and social phobia" and has been on medications more than 20 years, "functioning she is very rigid and inflexible, takes extensive time for daily tasks such as house cleaning. Unable to cope with shopping and cooking, relies on restaurant meals, unable to handle any stress". The doctor indicated that the Appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities. The Appellant also does not require any prostheses or aids for her impairment.

The doctor reported significant deficits with cognitive and emotional function in the areas of executive, emotional disturbance and motor activity but provided no additional comments.

In the AR, the doctor reported that the Appellant's ability to communicate in all areas as satisfactory. The doctor provided the following reports for the Appellant's cognitive and emotional functioning:

- Major impact to emotion; moderate impact to impulse control and executive; minimal impact to

bodily functions, insight and judgement, executive and motor activity; and, no impact to consciousness, attention/concentration, memory, motivation, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

- Adding "OCD – if not on medications excessive checking on medication' and "[illegible] if at home and no stressor, not having to leave apartment but increases with any stressors".

#### *Daily Living Activities*

In the AR, the doctor reported that the Appellant

- Independently manages all areas of personal care, basic housekeeping, shopping, medication and transportation, adding - anxiety & agoraphobia often difficult going to stores and shopping so avoids.
- Requires continuous assistance with meal planning, food preparation and cooking, adding "finds excessively stressful so relies on restaurants".
- Independently manages banking and budgeting, but needs continuous help paying rent and bills, adding - parents set her up in apartment, parents help with paying bills (e.g., property taxes), finds shopping very stressful - agoraphobia, finds cooking stressful. Often gets takeout food or relies on restaurant within 2 blocks.
- Requires periodic assistance with making appropriate social decisions – "father helps with any larger decision"; with ability to develop and maintain relationships; with interacting appropriately with others – "relies on very fixed schedule, any deviation from anxiety"; with dealing appropriately with unexpected demands.
- Is independent in her ability to secure assistance from others.
- Has marginal functioning in her immediate social network – "says friends are too stressful. If interacts with people calls my Dad for advice how to deal with people"
- Has marginal functioning in her extended social networks – "attends psychiatric support group 1x a week. No other social contact except if goes to local coffee shop".
- "Has been relying on some assistance and supervision from dad, who has recently become ill."

The doctor added "patient is functioning adequately with medication, monthly visits to psychiatrist and family physician as well as family support, but would absolutely not be able to cope with anything beyond".

#### *Help with Daily Living Activities*

In the AR, the doctor wrote that the Appellant has been relying on some assistance and supervision from her dad, who recently became ill. The doctor reported that the Appellant uses no assistance animal, prosthesis or aids.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined 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 Mental Impairment**

The Appellant submits that she is under the care of a physician and psychiatrist for severe anxiety and severe obsessive compulsive disorder. She takes medication daily. Also, the Appellant stated that because her condition is so severe she is unable to work and she relies on her father for help.

The Ministry considered the diagnoses and the reports from the Appellant's family doctor including the significant deficits in 3 areas of cognitive and social functions and the areas in which the Appellant's impairment has major, moderate and minimal impacts. It also considered the doctor's assessment of the Appellant's ability to manage her daily living activities. The Ministry acknowledged that the Appellant's mental impairments may impact her mental functioning; however, it determined that the Appellant's family physician did not provide enough evidence to indicate that she has a

severe mental impairment.

#### *The Panel's Findings*

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. What is important is evidence of how and the extent to which a medical condition restricts daily functioning. The EAPWDA provides that the determination of the severity of impairment is based on whether the Minister, taking into account all of the evidence including that of the Appellant, is satisfied that the Appellant has a severe impairment. That legislation is also clear that the fundamental basis for that assessment is the evidence from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's daily functioning.

The Appellant's family doctor diagnosed her with anxiety, severe obsessive compulsive disorder and social phobia. That doctor reported that the Appellant is under her monthly care and that of a psychiatrist, as well as having family support. In addition, the doctor reported significant deficits to cognitive and emotional functioning in 3 areas and major to minor impacts in 6 areas of such functioning. With respect to the impacts of these conditions on the Appellant's ability to function on a daily basis, her family doctor reported that the Appellant can independently manage all areas of personal care, basic housekeeping, shopping, medication and transportation. Although, the doctor indicated that the Appellant needs continuous assistance with meals, the doctor also stated that the Appellant relies on restaurants or takeout food. Regarding the impacts of the Appellant's condition on her social functioning, the doctor provided information about how the Appellant's father helps with larger decisions. Also, even though the Appellant has marginal functioning in her social network, the doctor indicated that she is able to secure assistance from others and attends support groups. The Appellant stated that she is in the care of a doctor and psychiatrist, and is on medications so she cannot work to make the extra money she may need. The Panel notes that employability is not a criteria in determining eligibility for PWD designation under section 2(2) of the EAPWDA. Therefore, based on the evidence, the Panel finds that the Ministry reasonably determined that the Appellant and her family doctor did not provide enough evidence to establish that she has a severe mental impairment.

#### **Severe Physical Impairment**

The Panel finds that the Appellant's family doctor provided no diagnoses of any physical health condition and no impacts to the Appellant's ability to manage daily living activities from any physical impairment. In fact, the doctor reported the Appellant's physical functioning as good, including being able to walk 4+blocks unaided on a flat surface, to climb 5+steps unaided, and having no limitations in lifting or in remaining seated. The Appellant also is independent walking indoors and outdoors, and climbing stairs. No information was provided about what type of periodic assistance the Appellant needs with lifting, and carrying and holding. Also, the Appellant provided no submissions with respect to any physical impairments. Therefore, the Panel finds that the Ministry reasonably determined that the information provided does not establish that the Appellant has a severe physical impairment.

#### **Restrictions to Daily Living Activities**

The Appellant submitted that her impairment restricts her ability to manage daily living activities. She is unable to manage meals and has difficulty dealing with shopping or unexpected demands. According to her doctor, she also has difficulty paying bills and shopping. The Appellant submits that she relies on her father, her doctor and psychiatrist and her support group.

The Ministry reviewed the information provided by the Appellant's family physician regarding her ability to manage daily living activities and the help she receives from family. The Ministry also noted the doctor's comment that the Appellant functions adequately with medication, monthly medical visits and family support. Based on the information provided by the family physician the Ministry found that there is not enough evidence to establish that the Appellant's impairments directly and significantly restrict daily living activities either continuously or periodically for extended periods.

#### *The Panel's Findings*

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that the Appellant's severe impairment directly and significantly restricts her ability to manage daily living activities. The Appellant's family physician of 11 years is the prescribed professional. That physician reported that the Appellant needs continuous assistance only with meals and paying rent and bills. She manages meals from restaurants and take out, and her father helps with rent and bills. However, the Appellant independently manages all other areas of daily living, including personal care, basic housekeeping, shopping, medication and transportation. The doctor reported only that going to stores is stressful. In addition, although the doctor indicated that the Appellant needs periodic assistance with some aspects of social functioning for which she receives help from her father, the Appellant is independent in her ability to secure assistance from others and she does attend a psychiatric support group once a week. Based on this information from the Appellant's doctor, the Panel finds that the Ministry reasonably determined that there is not enough evidence to establish that the Appellant's impairments directly and significantly restrict her ability to manage daily living activities either continuously or periodically for extended periods.

#### **Help with Daily Living Activities**

The Appellant submitted that she needs continuous assistance with meal planning, food preparation and cooking, and with paying rent and bills. Her father helps with paying bills. She is also under the monthly care of a physician and a psychiatrist, as confirmed by her doctor. 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.

#### *Panel's Findings*

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional to confirm that because of her restrictions the Appellant requires help with her daily living activities. The Appellant's doctor only reported that the Appellant has been relying on some assistance and supervision from her dad, who recently became ill, and she is supported by monthly visits to her doctor and psychiatrist. The doctor also indicated that the Appellant uses no assistive aids or assistance animals. Based on this evidence from the doctor, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant needs significant help to perform daily living activities and also because direct and significant restrictions in the Appellant's ability to perform daily living activities were not 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 that decision.