

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 26 June 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 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 his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 26 March 2013. The Application contained:
 - A Physician Report (PR) dated 29 September 2011, completed a general practitioner (GP) who had seen the appellant only once via a clinic and completed the form as the appellant had no GP.
 - An Assessor Report (AR) dated 19 April 2013, completed by the same GP, who by that time had seen the appellant 2 times.
 - A Self Report (SR) completed by the appellant.
2. The appellant's Request for Reconsideration dated 30 July 2013, in which the appellant requested an extension on his reconsideration.

In the PR, the GP diagnoses the appellant's impairment as anxiety, with onset approximately 12 years ago.

The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue.

Severity/health history

Physical impairment

PR:

The GP reports that the appellant has no problem with walking, and no limitations with respect to lifting or remaining seated.

AR:

Regarding ability to communicate, the GP assesses the appellant's speaking, reading, writing and hearing as good, commenting: "social anxiety."

As to mobility and physical ability, the GP assesses the appellant as independent for walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding, with the comment: "physically well."

Mental impairment

PR:

The GP reports that the appellant's anxiety/not sleeping = history of anxiety since age 18. He gets upset, shaky/sweaty, breathless, poor focus = panic. Also he doesn't like large crowds or noise. He stopped working 6/11 because of too much anxiety. He is too anxious to look for work and find a job and to go to work.

The GP reports that the appellant's impairment is likely to continue for two years or more,

commenting that he is on medication and will be going to Mental Health to see a psychiatrist to try to get help with his situation.

The GP indicates that the appellant has difficulties with communication, as he avoids talking due to his anxiety.

The GP indicates that the appellant has significant deficits with cognitive and emotional function in the area of emotional disturbance, commenting that he has significant anxiety and fear of open spaces and large crowds.

Under additional comments the GP states that the appellant's anxiety makes it difficult to have and hold down a job. With medication he can do most daily activities but work is still a problem. He is going to Mental Health to get further help.

The GP further comments that the appellant's basic problem is anxiety – long-standing. This comes and goes. When under stress it is worse – he gets panic attacks. Therefore when work gets busy he cannot cope and has to go home. As a result he loses the job. This is why he cannot hold down a job at present. He also does not like crowds.

AR:

The GP reports that the appellant's mental impairment has a moderate impact on daily functioning in the area of emotion, and minimal impact in the areas of attention/concentration and other emotional or mental problems. No impact is reported in the areas of consciousness, impulse control, insight and judgment, executive, memory, motivation, language, psychotic symptoms, or other neuropsychological problems. The GP comments that the appellant's main issue is anxiety, that he gets panic-type reactions work, and that he cannot continue to work; this prevents him from having a job. The GP notes that the appellant attended an anxiety clinic via a psychiatrist.

Ability to perform DLA

PR:

The GP indicates that the appellant's ability to perform the following DLA is not restricted: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, and management of finances.

The GP indicates that appellant's social functioning is restricted, commenting that work is a problem, that without medication he doesn't like to go out or function outside the home. The GP also mentions that the appellant finds social and work situations difficult, with panic attacks. The GP writes "With medication can do most things except work."

AR:

The GP assesses the appellant independent in performing DLA in all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. In terms of the type of assistance required the GP notes: "financial only," "counseling," and "help to get job which will suit him." The GP further comments that the appellant occasionally gets anxious, which might cause some concerns in going to shop, bank, etc.

With regard to social functioning, the GP assesses the appellant independent in making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others (noting social anxiety), dealing appropriately with unexpected demands and securing assistance from others. The GP assesses the appellant with good functioning with his immediate social network

and with extended social networks, commenting: "except on a bad day." The GP indicates that no support/supervision is required which would help to maintain him the community. The GP further comments that insomnia is an issue.

Assistance required

AR:

The GP indicates that assistance required by the appellant for DLA is provided by family qualifying this with the comment: "not much help". The GP indicates that help is required to pay for food and to get a job in which the appellant could function.

The GP reports that no assistance is provided through the use of assistive devices or by assistance animal.

In his Self Report, the appellant writes:

"My disability comes in a variety of ways. These disabilities caused my daily life to be extremely hard to deal with at times. I have a hard time sleeping quite often and that causes me to be ineffective in my daily routines. I have physical symptoms from insomnia, which I already mentioned, to restlessness, fatigue, breathlessness, trembling, shaking, sweating, feeling pressure on my chest and difficulty focusing on the situations before me. At times it interferes with my work, and also sometimes getting work and keeping the job. Job interviews are also a burden at times. My anxiety and panic attacks take me down a very difficult path in my life I would greatly appreciate some financial assistance so that I can live a normal life and alleviate some of the stress that I believe is causing some of my medical condition. I also have difficulty around crowds. I am sensitive to noise and light. These are some of the disabilities in my life which cause me not to accomplish the things that I would like to in my life and to properly care for myself in the way of providing for my daily needs."

In his Notice of Appeal, dated 05 September 2013, the appellant writes that he is appealing because he is ill. His illness keeps him from holding down jobs or going out in public/large crowds. His illness gives him panic attacks, and shakes and tremors. Loud sounds are also a problem. His mind races when he has anxiety attacks. Because of this he isolates himself at times. He has struggled with this for a very long time. He also has problems sleeping and gets very bad headaches because of all of this. He writes that he really needs help.

At the hearing, the ministry stood by its position at reconsideration.

The ministry representative drew the panel's attention to the "Ministry note" in the reconsideration decision, which reads:

"When you [the appellant] have been on income assistance for the last 12 to 15 months, you may wish to consider the option of applying for the good Person's with Persistent Multiple Barriers [PPMB] category, where employability is an eligibility criterion."

The ministry representative stated that on examination of the ministry files, it appeared that the appellant was in the process of applying for PPMB status. The panel took note of this information, but advised the ministry that this recent development was not relevant to the present appeal.

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 he did not meet all the requirements in section 2 of the EAPWDA.

Specifically 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 his ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions he requires help to perform those activities.

The ministry determined that he met the 2 other criteria 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.

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 applicant. However, the starting point must be medical evidence, with the legislation requiring that a medical practitioner (in this case, the appellant's GP) 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]." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it appropriately describes the legislative intent. The cause is usually set out as a disease, condition, syndrome or even a symptom (e.g. pain or shortness of breath). A severe impairment requires the identified cause to have a significant impact on daily functioning.

Mental impairment

In the reconsideration decision, the ministry reviewed the evidence provided by the GP regarding the appellant's anxiety and its impact on daily functioning. The ministry noted that the GP has indicated that the appellant has difficulties with communication, avoiding talking due to anxiety (social anxiety), and has identified deficits with cognitive and emotional function in the area of emotional disturbance, with impacts on daily functioning assessed as moderate in the area of emotional and minimal in the areas of attention/concentration and other emotional or mental problems. The ministry also noted that the GP reports that the appellant's main issue is anxiety and that he gets panic-type reaction at work and cannot continue to work. The GP also indicates that the appellant is independent with all aspects of social functioning and has good functioning with both his immediate and extended social networks (except on bad days), though the frequency of bad days is not described. The position of the ministry is that employability is not a criterion in assessing eligibility for PWD designation and that, while acknowledging that anxiety causes some minimal to moderate impacts on the appellant's cognitive and emotional functioning, it finds that the information provided does not establish a severe mental impairment.

The position of the appellant, as set out in his Notice of Appeal is that his anxiety is so severe that he is unable to hold down a job or go out in public/large crowds. He has panic attacks, can't breathe, has tremors and is affected by loud sounds. He doesn't socialize and therefore isolates himself. He also has problems sleeping and gets bad headaches because of this. All this serves to establish that he

has a severe mental impairment.

Panel findings

The panel notes that the GP has identified the appellant's impairment as anxiety causing a restriction in his ability to function effectively, primarily with regard to being able to hold down a job. For an impairment to be a "severe impairment" under the legislation, section 2 of the *EAPWDA* requires that the minister must be satisfied that the evidence demonstrates restrictions to a specified degree in certain specified areas of daily functioning. The legislation reads that for PWD designation, the minister must be satisfied that "the person has a severe mental or physical impairment that directly and significantly restricts the person's ability to perform [prescribed] daily living activities and as a result of those restrictions, the person requires help [an assistive device, the significant help or supervision of another person, or the services of an assistance animal] to perform those activities." As ability to search for, accept or continue in employment is not listed as one of prescribed DLA, the panel finds that the ministry reasonably held that employability is not a factor in assessing eligibility for PWD designation.

On reviewing the evidence unrelated to employment factors, the panel notes that the GP has identified some restrictions to the appellant's social functioning, with difficulties in speaking and that without medication he does not like to go out or function outside the home. However, the GP notes that with medication he can do most things except work. While the GP has assessed the appellant's anxiety as having a moderate impact on daily functioning, the commentary provided relates to employability. The GP also assesses the appellant as independent – not requiring support or supervision – in all listed areas of social functioning and reports good functioning for his relationships with both his immediate and extended social networks. Considering the evidence provided, the panel finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

Physical impairment

In the reconsideration decision, the ministry noted that the GP has reported that the appellant has no problems with walking and no limitations with lifting and remaining seated and that in assessing his mobility and physical ability the GP reports that the appellant is independently able to perform all activities, writing "Physically well." The appellant has not provided any evidence or adduced any argument in support of establishing a severe physical impairment. Considering that the GP has assessed the appellant independent with respect to all DLA requiring physical effort, the panel therefore finds that the ministry reasonably determined that a severe physical impairment had not been established.

Significant restrictions in the ability to perform DLA.

The position of the ministry is that, while acknowledging that the appellant has certain limitations that result from his medical condition, the information does not establish that the appellant's impairments significantly restrict DLA either continuously or periodically for extended periods. The ministry again noted that employability is not a criterion in assessing eligibility for PWD designation, pointing out that employability is however a factor in assessing PPMB qualification. The appellant's position is that his anxiety significantly restricts his ability to perform many DLA,

particularly in the area of social functioning, as well as in DLA where he might encounter large numbers of people, such as when shopping or doing banking.

Panel findings

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, which is not established in this appeal. This DLA criterion must also be considered in the broader context of the legislation, which provides that the minister may designate a person as a person with disabilities "if the minister is satisfied that" the criteria are met, including this one. In exercising the discretion conferred by the legislation, it is reasonable that the minister would expect that the opinion of a prescribed professional be substantiated by information that would satisfy the minister that the direct and significant restrictions in the ability to perform DLA, either continuously or periodically for an extended period, are validated.

The panel notes that the GP has assessed the appellant independent in all DLA applicable to a person with a severe physical or mental impairment, including moving about indoors and outdoors. With these DLA, the only restriction the GP notes is that the appellant "occasionally gets anxious, which might cause some concerns in going to shop, bank, etc." With respect to the DLA applicable to a person with a severe mental impairment – making decisions about personal activities, care or finances and relating to, communicating or interacting with others effectively – as noted above, the GP assesses the appellant independent – not requiring support or supervision – in all listed areas of social functioning and as having good functioning with his relationships with both his immediate and extended social networks. On the basis of these assessments, the panel finds the ministry was reasonable in determining that this criterion had not been met

Help with DLA

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

The appellant's position that he requires financial help because his anxiety precludes him from working.

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 help must also be in the form of the use of an assistive device, the significant assistance or supervision of another person or the services of an assistance animal. The need for financial assistance is not a consideration under the legislation. 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. The panel therefore confirms the ministry's decision.