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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 10, 2014, which found that the appellant did not meet three 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 the appellant's impairment was likely to continue for at least two or more years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, 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

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PART E – Summary of Facts

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

1) Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated September 4, 2013, a physician report (PR) dated Oct. 21, 2013 completed by a physician who practices with the appellant's family doctor, and an assessor report (AR) dated October 15, 2013 completed by the appellant's family doctor; and,
2) Request for Reconsideration dated Feb. 24, 2014.

Diagnoses

In the PR, the appellant was diagnosed by a general practitioner with Generalized Anxiety Disorder, (GAD), COPD, Cerebrovascular Disease, (CD), and Coronary Artery Disease, (CAD). The PR noted the appellant had been a patient of the physician's partner for many years.

Impairment

In the PR, handwritten by the physician and very difficult to read, the physician reported that:

- In terms of health history, the appellant's GAD-was refractory to treatment including attempts at several medications. He is always shaky and tremulous. He has daily constant [illegible] when interacting in public. His heart pounds and he has occasional almost daily unprovoked panic attacks. He could not work, he is unable to sustain attention/concentration and is sometimes unable to go out at all; COPD-uses Ventolin chronically, has shortness of breath on exertion and cannot do physical labour; CAD-(stents ?); and CD-Carotid Artery, new complete [illegible] 2011[illegible] but has had concentration/thinking difficulty since.
- The appellant does not require any aids for his impairment and noted that his COPD symptom of shortness of breath is "not yet requiring oxygen."
- With respect to degree and course of impairment, the physician wrote that the appellant has anxiety disorder for years which has failed multiple treatments which he expects is permanent and a sleep disorder for years for which hypnosis and meds are not helpful.
- In terms of functional skills, the physician assessed the appellant as able to walk 2 to 4 blocks unaided on a flat surface; four blocks max/short of breath, climb 5+ steps unaided, lift 7-16 kg/15-35 lbs., and remain seated with no time limitation. It is also noted there are cognitive difficulties with communication as his anxiety interferes with interpersonal communication and he is shaky and tremulous with interacting and avoids eating in public, even with family, as he is too shaky. The physician ticked the boxes indicating there are significant deficits with cognitive and emotional function, those being executive, perceptual psychomotor, emotional disturbance, motor activity and attention or sustained concentration, and commented saying anxiety low concentration, low planning/organizing, shaky nervous in public even with family and even when home alone.
- Under additional comments the doctor noted the appellant has anxiety disorder, continuous for years which severely impacts on ADL, unable to interact on a continuous basis and is unsuited in any job. Currently Sx [symptoms] severe even when he's alone. He has decreased concentration and planning and has difficulty concentrating on tasks. He is unable to do physical labour. He has years of chronic lung disease resulting in shortness of breath, which

can be expected to deteriorate in the future. He is unemployable although he would like to do odd jobs as a painter but he is too shaky and anxious/ couldn't cope.

The AR, completed by a Doctor who has known the appellant's for 30 years, indicated that:

- The appellant suffers from GAD, COPD, CAD and CD which impact his ability to manage daily living activities (DLA).
- Under ability to communicate he was assessed as good for speaking and hearing and satisfactory for reading and writing.
- In relation to mobility and physical ability it was noted he was independent for walking indoors or outdoors, climbing stairs, standing, lifting, carrying and holding with the assessor commenting that no assistive devices were needed but he is unable to sustain physical effort such as walking or climbing due to his COPD and shortness of breath.
- In relation to cognitive and emotional functioning, relating to a mental impairment, the assessor noted a major impact to emotion, moderate impact to impulse control, attention/concentration and executive functions. Minimal impact was noted to consciousness, insight and judgment, memory, motivation and motor-activity. Notably no impact was noted to bodily function including poor hygiene and sleep disturbance. Under comments the assessor noted the GAD impacts on his ability to sleep and his mood on day-to-day basis- when inability to sleep increases, it impacts on impulse control, (smoking) insight and executive function.
- The assessor noted that the appellant has not worked since a heart attack in 2010 and the decrease in his physical abilities combined with the effects of his other impairments all make it impossible to meet the demands required for employment.
- Under additional information the assessor noted the combination of physical and mental conditions are disabling, he is unable to meet the demands of employment and he is limited by his educational and mental disorder.

In the appellant's self-report he wrote:

- He had a heart attack in 2010 and is missing one of his main arteries. One of his carotid arteries is blocked 90%. He has a sleeping disorder, COPD and anxiety is a problem. Because of these problems he is unable to work.
- He can't work due to his illness, no sleep, difficulty breathing and because blood is not flowing to his brain properly it is very difficult to think correctly.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- The impairment directly restricts the person's ability to perform DLAs. The physician noted that there were continuous restrictions with personal self-care. (Continuous assistance defined on the form as needing significant help most or all of the time for an activity.) Also noted was that daily shopping, mobility outside the home, use of transportation and social functioning were restricted but the boxes were not ticked to note if these restrictions were either continuous or periodic. Comments on social functioning indicate he has anxiety when interacting, afraid, heart pounds, cannot think or concentrate, eyes downcast in office, panic attacks. Regarding

degree of restriction the physician comments appear to indicate the anxiety disorder causes low ability to interact/perform tasks and his COPD causes shortness of breath on exertion cannot do physical labour. Comments regarding assistance needed with DLA indicate he has difficulty shaving due to tremors but manages, he has difficulty shopping and with public interaction but manages with difficulty therefore no assistance now need but may need in future.

In the AR, the general practitioner reported that:

- The assessor indicated that in relation to personal care, basic housekeeping, meals, paying rent and bills, medications and transportation he was independent. In relation to shopping he was independent in 4 of 5 categories and was noted to need periodic assistance with making appropriate shopping choices.
- In relation to social functioning, for an identified mental impairment, the assessor left blank the top half of the page which are sections for appropriate social decisions, developing and maintain relationships, interacting appropriately with others, able to deal appropriately with unexpected demands and able to secure assistance from others. The assessor noted marginal functioning with his immediate social network, little significant participation/communication, relationships often minimal and fluctuate in quality, and also marginal functioning in extended social networks-little more than minimal acts to fulfill basic needs. In this portion the assessor made no comments in relation to support/supervision needed to help maintain the appellant in the community.

Need for Help

- Regarding aids for his impairment, the PR indicated none and further that his COPD is not yet requiring oxygen.
- Regarding assistance provided for the applicant the AR noted that help for DLA is provided by family. The assessor noted no assistive devices or assistance animals were needed.

The Hearing

Prior to the hearing, the appellant provided a two page typewritten letter from the physician who filled out the PR, with a two page questionnaire that was directed to the physician from the advocate. Also, at the hearing a statement signed by the appellant's landlords was provided and the appellant provided evidence of his impairments and their effect on him.

The ministry did not object to the admissibility of the additional documents. The panel finds the report and witness statement are evidence in support of the diagnosed medical conditions and their effects on the appellant. Further, the evidence of the appellant is also in support of the material that was before the ministry at reconsideration. Therefore, being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act*, the additional documents and the evidence of the appellant are admissible at the hearing.

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The new material from the physician resulted from a number of questions by the advocate which were answered. The first was whether the appellant had a severe physical or mental impairment, or both, when the impact on the appellant's daily life was considered? The physician responded that the appellant has both severe mental and physical impairments. As well as reiterating some of the initial information, the physician advised that with his GAD the symptoms are always present and always severe. He is always shaky and tremulous. He is constantly short of energy, unable to concentrate, has markedly impaired function, difficulty concentrating on tasks and has long term insomnia. He has daily panic attacks where he is unable to think. Many days he cannot go out. Panic attacks are unprovoked and spontaneous. His baseline functioning, because of his chronic anxiety, makes it impossible to attend to many DLAs including personal hygiene, shopping and food preparation. He cannot go to the store unless accompanied, usually by a family member, and can't remember what to buy or what is needed when he gets there. The appellant advised he showers roughly once per week and disposes of his garbage once a week.

The physician also advised the appellant has a "marked physical disability" with his COPD. He has chronic bronchodilator use, short of breath on exertion, walks very slowly and is short of breath in 1-2 blocks. When walking with someone for any distance the person must slow and wait.

The second question was whether it takes significantly longer than normal to perform DLA or does he put tasks off? The physician again commented on personal hygiene and showering once per week. He advised this is a mental impairment in that he cannot plan or execute a simple task like showering. The appellant advised the physician he can't shop on his own as he does not know what to buy. The physician expressed concern as to whether the appellant can maintain minimum household hygiene and nutritional standards noting the appellant's admission he only takes garbage out once per week.

The third question posed was whether his level of activity is significantly reduced due to his impairment, to which the physician indicated that it was. It was stated that the appellant only moves about very slowly due to COPD and due to GAD is unable to socialize. He does not have any or many friends and occasionally sees family members. He does not go out except when he is feeling well. He will enjoy a coffee at the gas station near his home.

The fourth question posed is how often he is significantly restricted in performing DLA due to his medical conditions, to which the physician advised the restriction is daily and continuous at all times. Although his panic attacks come and go on a fairly regular daily basis, his GAD and COPD are always present.

The fifth question posed was overall does his impairment significantly restrict his ability to perform a range of DLA continuously or periodically for extended periods? The physician advised that the appellant's impairments do restrict his ability to perform DLA. Shortness of breath and fatigue impact personal care. Meal preparation is difficult as he is sometimes too anxious to prepare meals and not uncommonly will skip meals. Shopping is very difficult. He can only walk short distances before stopping to rest. Outdoors is difficult. Shortness of breath with his anxiety makes personal interactions and shopping almost impossible and as such he is accompanied by family to shop. His social functioning is quite isolated. The appellant describes no friends and occasionally sees family members. Decision making is dramatically affected and he cannot plan for himself.

The last question posed was whether as a result of the health restrictions it can be confirmed the patient requires significant help with DLAs, either by taking much longer to complete routine tasks or

needing other people for help and support. The physician advised the appellant does require significant help and that he is notably helped by his family in executing basic tasks of shopping, cleaning and financial planning. He is not able to socialize and is quite isolated. He cannot look after his personal hygiene or the cleanliness of his residence. He can't do any physical activities as shortness of breath is significant as soon as he walks. The physician was advised by the appellant that he has a helpful landlord and the physician spoke to a sister who advises the family provides ongoing support. The physician cites this PWD application as an example stating it would be impossible for the patient to even complete it without significant input and assistance.

The letter from the appellant's landlords stated, in part, that:

- they will check on him due to this health issues if they have not seen him in a day or so because they are concerned for his well-being;
- the appellant does not sleep for days on end and sometimes he shakes more than usual resulting in their suggestions he go back to the doctor;
- at times the appellant appears to strain to focus or concentrate on thoughts, he has to really think things through before he can articulate his thoughts, they will ask questions to try and help focus him;
- the appellant joins them at times for meals and they provide nutritious frozen meals for him to re-heat. Their family members will also bring food to the appellant. When he has not slept for days they want to ensure he has easy access to nutritious food. Sometimes he can't eat or drink as he is shaking;
- the appellant climbs stairs at a slow pace, often stops to catch his breath half way up, struggles for breath when he walks up stairs and when he reaches the top he is bent over trying to catch his breath;
- when walking from his trailer to their house he must stop half way to catch his breath as the driveway is on an incline;
- the appellant brings his brother shopping as he forgets what he is shopping for and has trouble focusing; and
- their mother assists the appellant with any paperwork for the ministry as he has significant anxiety with such tasks.

At the hearing, the appellant stated that:

- the two doctors that filled out the reports have been partners for about fifteen years and he has seen both of them during this time;
- the doctor who filled out the AR he sees more as that doctor has dealt with his heart condition;
- the doctor who completed the AR did not spend as much time with him as the doctor who completed the PR;
- when the doctor filled out the subsequent letter for the advocate he spent about 30 mins asking him questions;
- in relation to the GAD he can have panic attacks where his heart pounds out of control and he is shaking so bad he crouches down and stands with his feet on his hands to try and stop the shaking;
- if he has a panic attack the day is ruined and he will spend the rest of the day in bed;
- this happens fairly regularly;

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- he only sleeps about one or two hours per night;
- he lives in a travel trailer that is 20 feet long and eight feet wide;
- he lives in the trailer on his landlord's property, they knew him before these disabilities and know how it has affected him and they "look after him"; without them, he would have been "in a really tight spot" lots of times;
- his COPD requires him to use Ventolin at least four times a day and he carries it in his pocket and will use whenever needed;
- he has no energy, it would take him a full day to plan, sweep and then wash the floor in his trailer after which he would "be wiped out" and have to lie down and it is almost too much even to think about doing it;
- he cannot walk four blocks, when he came to the hearing walking from the parking lot to the building required him to use his puffer;
- if walking up a hill he has to plan this and must take his puffer with him;
- can be around some people but would not eat in public as the shaking is embarrassing;
- since the problem with this carotid artery he cannot think clearly and since then his mental functioning has had problems;
- he struggles with nervousness every day;
- his brother will usually take him shopping, his landlords and their family help him with paperwork and check on him all the time;
- his sister sometimes takes him to appointments;
- since the heart attack he has had problems with the shaking sometimes can't even hold a cup;
- the bad days when he can't even go out could be two or three times a week or even for several days at a time;
- sometimes he forgets to eat, for example just making a hot dog, remembering to heat the hot dog, then get the bread, and then sit down to eat is difficult but he can sometimes get that far but then, twenty minutes later, he may have forgotten to eat the hot dog;
- people check on him almost daily;
- his landlords' family helped him get his social assistance in the first place and it took about three times to fill out the application; and
- he can't recall if the AR report was filled out when he met with the doctor

The advocate argued that the appellant has both a severe mental and physical impairment that directly and significantly restricts his DLAs for which assistance is required. The advocate acknowledged that the PR and AR were significantly different in their findings. The advocate submitted that the reconsideration officer incorrectly noted that one doctor had filled out both the AR and PR and that this is significant as the decision should have reviewed the evidence and determined which one was to be preferred. The advocate also submitted that once one considered the new evidence, if admissible, that the new information from the doctor, the landlords and the appellant met all the legislated criteria for PWD.

The ministry argued that based on the information that was before the reviewing officer at reconsideration the reports did not establish the necessary criteria for a PWD designation. The AR report, filled out by a doctor who knows the appellant well, indicated minimal impact and no real effect on the appellant's DLA. In relation to preferring one doctor over the other she suggested the ministry

would look at all the evidence and make a decision based on the whole picture. The ministry did not have to choose the evidence of one doctor over the other.

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PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD) as he 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 did not have a severe mental or physical impairment, that his daily living activities (DLA) were 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 required 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.

Severe Impairment

The appellant's position is that a severe physical impairment is established by the total evidence especially the new evidence before the tribunal. The ministry's position is that the reconsideration decision was correct.

The diagnosis of a medical condition is not itself determinative of a severe impairment. To assess the severity of an impairment one must consider the nature of the impairment and its impact on the appellant's ability to manage his DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA. The ministry describes this approach when it defines the word "impairment" in the PR as being "a loss or abnormality of psychological, anatomical or physiological structure or function causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration." This definition is not set out in legislation and is not binding on the panel, but in the panel's view it describes the legislative intent.

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

Severe Physical Impairment

The medical practitioners, both physicians who have known the appellant for many years, diagnosed the appellant with COPD, CAD and CD. The physicians noted that the physical symptoms are shortness of breath on physical exertion such that walking at length or climbing stairs causes difficulties. This was confirmed by the appellant at the hearing. It is noted that in these tasks he is independent, but it can take longer and he cannot go far. Further, although he is unable to sustain physical effort such as walking or climbing due to his COPD and shortness of breath, no assistive devices or help are currently needed for these tasks.

Although in the new material the physician stated the appellant has both severe mental and physical disabilities, it is noted the physician emphasized the impact from the appellant's mental impairment and also stated the appellant has a "marked physical disability" with his COPD, which is not as strong in its description. He has chronic bronchodilator use, short of breath on exertion, walks very slowly and is short of breath in 1-2 blocks. When walking with someone for any distance the person must slow and wait. The reconsideration decision found that although these impairments may impact his physical functioning, evidence of a severe physical impairment had not been provided. Even taking into account the new evidence supplied at the hearing, the panel finds that it is a reasonable conclusion that there is not sufficient information to confirm that the appellant has a severe degree of physical impairment. The panel finds that the ministry acknowledged that the appellant has a physical impairment that impacts his functioning and reasonably determined that he is largely independent with his mobility and physical abilities. The panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant argues that all of the evidence establishes that he has a severe mental impairment. The ministry argues the material before the reconsideration officer did not establish a severe impairment.

In the PR, the appellant was diagnosed by a general practitioner with GAD. The PR noted the appellant had been a patient of the physician's partner for many years. The report stated the appellant's GAD was refractory to treatment and he is always shaky and tremulous. He has difficulties interacting in public. His heart pounds and he has almost daily panic attacks. He could not work; he is unable to sustain attention/concentration and is sometimes unable to go out at all. The physician wrote that the appellant has had anxiety disorder for years which he expects is permanent and a sleep disorder for years. It is noted there are cognitive difficulties with communication as his anxiety interferes with interpersonal communication; he avoids eating in public, even with family, as he is too shaky. The physician also indicated there are significant deficits with cognitive and emotional function; those being executive functions such as planning, organizing, sequencing; perceptual psychomotor function; emotional disturbance such as depression and anxiety; motor activity such as goal oriented activity, agitation; and, attention or sustained concentration. Under additional comments the doctor noted the appellant's anxiety disorder severely impacts his ADL, he is unable to interact on a continuous basis and is unsuited in any job. His symptoms are severe even when he is alone and he has low concentration and planning and has difficulty concentrating on tasks. The physician states the appellant's impairment directly restricts his ability to perform DLAs. The physician noted that there were continuous restrictions to personal self-care. (Continuous

assistance defined on the form as needing significant help most or all of the time for an activity.) Also noted was that daily shopping and social functioning was restricted.

The new evidence from the physician stated that the appellant has a severe mental impairment. The physician advised that with his GAD the symptoms are always present and severe. Due to GAD he is unable to socialize; he has few friends and occasionally sees family members. He does not go out except when he is feeling well. He is constantly short of energy, unable to concentrate, has markedly impaired function, difficulty concentrating on tasks and has long term insomnia. He has daily panic attacks where he is unable to think. Many days he cannot go out. Panic attacks are unprovoked and spontaneous. The physician advised the restriction is daily and continuous at all times. Although his panic attacks come and go on a fairly regular daily basis, his GAD is always present. His baseline functioning, because of his chronic anxiety, makes it impossible to attend many DLA including personal hygiene, shopping and food preparation. He cannot go to the store unless accompanied, usually by a family member, and can't remember what to buy or what is needed when he gets there.

The AR indicated that in relation to cognitive and emotional functioning, relating to a mental impairment, there was a major impact to emotion, moderate impact to impulse control, attention/concentration and executive functions. Minimal impact was noted to consciousness, insight and judgment, memory, motivation and motor-activity. Notably no impact was noted to bodily function including poor hygiene and sleep disturbance. Under comments the assessor noted the GAD impacts his ability to sleep and his mood on a day-to-day basis, and when the inability to sleep increases, it impacts impulse control, insight and executive function. The assessor noted that the appellant has not worked since a heart attack in 2010 and that his physical abilities combined with his other impairments all make it impossible to meet the demands required for employment. Under additional information the assessor noted the combination of physical and mental conditions are disabling, he is unable to meet the demands of employment and he is limited by his educational and mental disorder.

As pointed out by the advocate, the PR and the AR give two very different pictures. Although the reviewing officer in the reconsideration decision thought one doctor filled out both reports, the decision noted that the ministry was not clear why the physician provided extensive narrative on the mental impairments but assessed the majority of the cognitive and emotional functioning as having no impact, minimal impact and moderate impact on cognitive and emotional functioning. It would appear this is due to the opinion of two different physicians. The issue becomes how does one assess the two differing opinions from the physicians that were dealing with the appellant?

The panel placed more weight on the evidence in the PR as the report was consistent throughout and was also consistent with the evidence in the physician's further letter, the statement by the appellant's landlords, and the appellant's own evidence. A close review of what the AR writer states, calls into question the consistency of his report. For example the physician, when ticking boxes under mobility and physical ability, states that the appellant is independent in all categories and ticks no further boxes, even those noting the activity take significantly longer. However, in the same section under comments, he states the appellant is unable to sustain physical effort such as walking or climbing.

Under cognitive and emotional function, the doctor has ticked no impact to bodily functions, which includes sleep disturbance, yet on the same page he states the GAD impacts his ability to sleep and his mood daily. He further notes inability to sleep causes problems with things such as impulse control. In relation to social functioning, the top half of the page is not completed at all; he has not ticked any boxes for the six categories set out therein, such as interacting with others and developing

and maintaining relationships. However, on the bottom half of the page he states that the appellant has marginal functioning with his immediate social network and his extended social networks. Nowhere throughout the report, where space is provided to indicate assistance is needed with individual tasks, does the physician state assistance is needed. Yet in Part D, under assistance provided, the physician has indicated that the help required for DLA is provided by family.

Also of note, in this portion of the AR, the physician states the appellant has not worked since 2010 and that his medical conditions make it impossible to meet employment requirements. Under additional information, the physician again notes that the combination of physical and mental conditions make it so he can't meet the physical demands of employment and he is further limited by educational and mental disorder. The physician seems to have completed the report with the approach of assessing the appellant's employability. 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. As such, the panel puts more weight on the PR report and the update provided by the writer of the PR.

The reconsideration decision, which incorrectly concluded the AR and PR where written by the same person, found no severe mental impairment, stating the appellant was independent in all DLA, except personal care, and that no assistance was needed for social functioning. However, the panel has before it new evidence that was not considered, along with the PR report to which the panel gives more weight.

As stated above, the new material from the PR physician, states that the appellant has a severe mental impairment. The GAD symptoms are always present and severe. He is always shaky and tremulous and unable to socialize. He has few friends and occasionally sees family members. He does not go out except when he is feeling well. He is constantly short of energy, unable to concentrate, has markedly impaired function, difficulty concentrating on tasks and has long term insomnia. He has daily panic attacks where he is unable to think. Panic attacks are unprovoked and spontaneous and on many days he cannot go out. The physician advised the restriction is daily and continuous at all times. Although his panic attacks come and go on a fairly regular daily basis, his GAD is always present. His baseline functioning, because of his chronic anxiety, makes it impossible to attend many DLA including personal hygiene, shopping and food preparation. He cannot go to the store unless accompanied, usually by a family member, and can't remember what to buy or what is needed when he gets there.

This evidence is supported by the evidence of the appellant and the landlords. The appellant stated he can have panic attacks where his heart pounds out of control and he is shaking so bad he crouches down and stands with his feet on his hands to try and stop the shaking; if he has a panic attack the day is ruined and he will spend the rest of the day in bed; bad days when he can't even go out could be two or three times a week or even for several days at a time; he only sleeps about one or two hours per night; he can be around some people but would not eat in public as the shaking is embarrassing; since the problem with this carotid artery his mental functioning has had problems; he struggles with nervousness every day; his brother will usually take him shopping, his landlords and their family help him with paperwork; sometimes he forgets to eat; and, people check on him almost daily.

The landlords' evidence was that they will check on the appellant due to his health issues if they have not seen him in a day or so; the appellant does not sleep for days on end; the appellant appears to

strain to focus or concentrate on thoughts; the appellant joins them at times for meals and they provide nutritious frozen meals for him to re-heat; their family members will also bring food to the appellant; the appellant brings his brother shopping as he forgets what he is shopping for and has trouble focusing; and their mother assists the appellant with any paperwork for the ministry as he has significant anxiety with such tasks.

Based on all of the evidence of the PR and the physician's additional letter, which was not before the reconsideration officer, as confirmed in portions by the appellant and his landlords, the panel finds that the ministry unreasonably determined that the appellant does not have a severe mental impairment. As such, the ministry determination on this issue is unreasonable.

Restrictions in the ability to perform DLA

The appellant's position is that his severe impairment directly and significantly restricts his ability to perform DLA and he requires the significant assistance of another person for DLA. The ministry's position is that the evidence of the prescribed professionals as a whole does not establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods of time.

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. DLA are defined in section 2(1) of the EAPWDR. At least two of the listed DLA must be so impacted to meet the legislated criteria.

The evidence of the physician is as set out in the PR, as well as the additional letter. The physician reported that the impairment directly restricts the appellant's ability to perform DLA. The physician noted that there was continuous assistance required for personal self-care. Also noted was that daily shopping, mobility outside the home, use of transportation and social functioning were restricted, but the boxes were not ticked to note if these restrictions were either continuous or periodic. Comments on social functioning indicate the appellant has anxiety when interacting, afraid, heart pounds, cannot think or concentrate, eyes downcast in office, panic attacks. Regarding degree of restriction, the physician's comments appear to indicate the anxiety disorder causes low ability to interact/perform tasks. Comments regarding assistance needed with DLA indicate he has difficulty shaving due to tremors but manages, he has difficulty shopping and with public interaction but manages with difficulty, therefore no assistance was needed but may needed in future.

In his subsequent letter the physician stated the appellant on many days cannot go out. Panic attacks are unprovoked and spontaneous. His baseline functioning, because of his chronic anxiety, makes it impossible to attend to many DLAs including personal hygiene, shopping and food preparation. He cannot go to the store unless accompanied, usually by a family member, and can't remember what to buy or what is needed when he gets there. He advised this is a mental impairment in that he cannot plan or execute a simple task like showering. The physician expressed concern as to whether he can maintain minimum household hygiene and nutritional standards. This is corroborated by the landlords' evidence. In relation to social functioning, the physician stated that due to GAD the appellant is unable to socialize. He has few friends and occasionally sees family members. In relation to how often he is significantly restricted in performing DLAs due to his medical conditions, the physician advised the restriction is daily and continuous at all times. Although his panic attacks come and go on a fairly regular daily basis, his GAD is always present. In relation to whether his

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impairment significantly restricts his ability to perform a range of DLA continuously or periodically for extended periods, the physician advised that his impairments do restrict his ability to perform DLA. Meal preparation is difficult as he is sometimes too anxious to prepare meals and will skip meals. Shopping is very difficult. Shortness of breath with his anxiety makes personal interactions and shopping almost impossible and as such he is accompanied by family to shop. His social functioning is quite isolated. The appellant describes no friends and occasionally sees family members. Decision making is dramatically affected and he cannot plan for himself.

In the PR the physician initially noted, and this was accepted by the ministry in the reconsideration decision, that the appellant was continuously restricted in personal self-care. The question that remains is whether he is continuously restricted or periodically restricted in any other of the categories? The PR stated that daily shopping, mobility outside the home, use of transportation and social functioning were restricted. However no boxes were ticked to indicate if these were either continuously or periodically restricted. The subsequent report from the physician states that baseline functioning, because of chronic anxiety, makes it impossible to attend to many DLA including shopping and food preparation. For those DLA that relate to a person who has a severe mental impairment, namely: (i) making decisions about personal activities, care or finances and (ii) relating to, communicating or interacting with others effectively, the physician described significant impacts. In the PR, the physician reported that the appellant's anxiety disorder severely impacts ADL, that he is unable to interact on a continuous basis. His social functioning is quite isolated. The appellant describes no friends and occasionally sees family members. Decision making is dramatically affected and he cannot plan for himself. The physician described assistance needed by the appellant with executing basic tasks such as financial planning. In relation to how often he is significantly restricted in performing DLA, the physician advised the restriction is daily and continuous at all times. This is corroborated by the evidence of the landlords and the appellant.

The panel finds that the evidence confirms that the appellant is continuously and significantly restricted in personal self-care, meal preparation, daily shopping, and social functioning. As such, the ministry determination that there is not enough evidence to establish the impairment directly and significantly restricts DLA continuously or periodically for extended periods was unreasonable based on all of the evidence.

Help to perform DLA

The appellant's position is that he requires the significant assistance of other persons to perform DLA. The ministry's position was that the medical evidence did not establish assistance was needed.

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.

In the subsequent letter from the PR writer the last question posed was whether as a result of the health restrictions it can be confirmed the patient requires significant help with DLAs, either by taking much longer to complete routine tasks or needing other people for help and support. The physician advised the appellant does require significant help and that he is notably helped by his family in executing basic tasks of shopping, cleaning and financial planning. He is not able to socialize and is

quite isolated. He cannot look after his personal hygiene or the cleanliness of his residence. The physician was advised by the appellant that he has a helpful landlord and the physician spoke to a sister who advises the family provides ongoing support. The physician cites this PWD application as an example stating it would be impossible for the patient to even complete it without significant input and assistance.

The evidence of the landlords is corroborative. They will often provide meals to the appellant and they will also check on him to ensure he is okay. Their family members will also help him with things such as paperwork. The appellant's family members assist him with shopping and other appointments. It is quite apparent from all the evidence that the appellant receives the ongoing help or supervision from other people. He requires this for personal self-care and meals, daily shopping and for social functioning. Based on all the evidence, including the evidence presented at the hearing, and the greater weight given to the evidence of the PR, the panel finds the ministry unreasonably determined that the evidence did not establish that the significant help and supervision of other people was necessary to assist the appellant with DLA and as such the ministry determination on this issue is unreasonable.

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 is not reasonably supported by the evidence, and therefore rescinds the decision.