

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision dated March 25, 2014 which found that the appellant did not meet two of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that she has a severe mental, though not a severe physical impairment that is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2*  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2*

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report ("SR") dated October 7, 2013, a physician report (PR) and assessor report (AR) dated November 19, 2013 and November 20, 2013 respectively and both prepared by the appellant's general practitioner ("GP"). The evidence before the ministry also included the appellant's Request for Reconsideration (RFR) dated March 10, 2014 and a letter prepared by the appellant's psychiatrist also dated March 10, 2014 ("the Psychiatrist Letter").

### *Diagnoses*

The appellant has been diagnosed by her GP with bipolar disorder with date of onset as 1986 and multinodular goiter (no date of onset noted). The diagnosis of bipolar disorder is shared by the appellant's psychiatrist in the Psychiatrist Letter.

### *Physical Impairment*

- In response to the question as to whether the appellant's impairment is likely to continue for two years or more the GP checks the "yes" box and comments "This is a permanent disability" but the panel notes that the GP does not specifically reference which condition this refers to.
- Functional skills reported in the PR indicated that the appellant can walk 4 or more blocks unaided and climb 5 or more steps, her limitations in lifting are unknown and the appellant is noted as having no limitation remaining seated.
- In the AR, the GP indicates that the appellant's ability to communicate by speaking, reading, writing and hearing are all good.
- The GP further indicated in the AR that the appellant is independent walking indoors and outdoors, climbing stairs, standing and lifting.

### *Mental Impairment*

- In the SR, the appellant states that she has bipolar illness with onset in 1986. She describes her impairment as affecting her sleep, her motivation and organization and that it causes her to experience mood swings, anxiety, agitation and stress.
- In the PR, the GP indicates in the health history that the appellant "suffers severe exacerbations of her mood disorder especially if she is in a stressful environment" and that as a result the appellant "requires close monitoring with respect to medications and/or hospitalizations."
- The GP further reports in the PR that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, impulse control and motor activity and added the comment that the appellant "is generally well controlled but experiences severe disability with suicidal ideation and plans when disease is exacerbated. Has been well controlled. Last issue April 20, 2012." The panel notes that the psychiatrist clarified in the Psychiatrist Letter that the last exacerbation in fact occurred in 2013. The appellant is noted in the PR as having no difficulties with communication.
- In the AR, the GP assessed major impacts to daily functioning in the following areas of cognitive and emotional functioning: emotion, impulse control, insight and judgment and attention/concentration. Further, the general practitioner noted moderate impact on language and minimal impact on executive, memory, motivation, other neuropsychological problems and other emotional or mental problems. The GP found no impact in the areas of bodily functions or consciousness. The GP further commented that the appellant has "periodic impairment when in manic phase, esp. exacerbated if placed in a stressful situation."
- In the Psychiatrist Letter, the psychiatrist provides the opinion that the appellant "suffers from a serious and persistent mental disorder, Bipolar Disorder." He goes on to describe the appellant's condition as

“lifelong” and notes that it “constitutes a severe and persistent mental impairment.”

#### *Daily Living Activities (DLA)*

- In the SR, the appellant says that she has some difficulty with DLA and states further that she has trouble with budgeting for groceries and she describes difficulty with social functioning, specifically with establishing and maintaining relationships with others.
- The GP reported in the PR that the appellant has been prescribed two different medications that interfere with her ability to perform her DLA.
- In the PR, the GP notes that the appellant is not restricted in any of her DLA other than social functioning for which she is periodically restricted. The GP describes the nature of this restriction as arising when the appellant is stressed and sleep deprived causing her to be unable to concentrate and results in her having morbid thoughts and plans. The GP comments further on the impact on the appellant’s social functioning stating that the appellant is “unable to tolerate people when exacerbation of her disease, becomes agitated, suspicious” and she concludes by noting “if severe – requires hospitalization.”
- In the AR, the GP indicated that the appellant is independent with all tasks of the DLA including personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. The appellant is also noted in the AR as being independent in all aspects of social functioning and with marginal functioning in both her immediate and extended social networks.
- In the psychiatrist’s letter, he describes the appellant as experiencing sedation due to her medications and that she is unable to function effectively until at least 8:30am when the effects of the nighttime medications begin to subside.

#### *Need for Help*

- In the SR, the appellant stated that she receives help from “family, friends and professionals.” She says that her mother helps her with grocery shopping, picking up medication, advice, moral support and driving her to doctor’s appointments. She states further that her father provides financial support to her.
- In the PR, the GP did not indicate that the appellant requires an assistive device.
- The GP did not report in the AR what the appellant’s living situation is nor did she indicate whether the appellant receives assistance from other people or through the use of assistive devices.

In the RFR the appellant states that she is taking two types of medication which make her tired and that she can’t function in a full time job. She notes that she finds it challenging concentrating for more than 1 hour and that she becomes sleepy in a job that requires sitting. She says that she has experienced a lot of stress in relationships with men and is unable to cope with stress.

At the hearing, the appellant confirmed that she was diagnosed with bipolar disorder in 1986 and that she has a hard time socially and in other areas of her life. She stated that she has difficulty following through with things from beginning to end and that she does not sleep properly which in turn causes her to have difficulty functioning during the day. The appellant stated that her medications make her tired, that she is tired throughout the day and particularly after 2pm.

In response to questions, the appellant stated that she has difficulties with social functioning and in particular has problems keeping friends especially when they tell her what to do which she has a low tolerance for. The appellant stated that she sometimes has trouble focusing while reading and had to recently drop out of a course. The appellant stated that she has difficulty with impulse control as she will purchase items that she wants but does not need. The appellant stated that the worst thing that happens on a daily basis is that she tends to lose her temper rather than trying to work things out.

The appellant further responded to questions stating that she receives some help from a family member with shopping; her mother will drive her to the store on weekends as the appellant does not own a car. The appellant stated that it can sometimes be overwhelming doing things by herself and if her family member is not available, she will walk to a closer store and make fewer purchases each trip. The appellant stated further that she does receive some monthly financial help from another family member.

In response to a question, the appellant stated that her multinodular goiter condition is caused by her bipolar medication and causes a little bit of pain in her neck which is currently mild to moderate in nature.

The panel finds that the appellant's oral testimony did not raise any new conditions or information beyond that before the minister at the time the reconsideration decision was made and was related to that in the PWD application. The panel therefore admits the appellant's oral evidence as oral testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment Assistance Act*.

The ministry relied on its reconsideration decision. At the hearing, the ministry stated that the evidence supported a finding that the appellant suffered from a severe mental impairment but explained that there was not enough information to find that the appellant's DLA were, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry stated that the evidence in the PR and AR demonstrated a slight or moderate impact and that the AR noted the appellant to be independent in all tasks of DLA.

In response to a question, the ministry reiterated that the appellant need not demonstrate restrictions in all DLA but that multiple DLA need to be significantly restricted and that section 2(2)(b)(i) of the *EAPWDA* must be satisfied. The ministry further stated that if, for example, only one task of DLA is just moderately restricted, it would not meet the legislative criteria.

In response to a question, the ministry stated that in determining restriction of DLA, in the case of a person with a severe mental impairment the factors in section 2(1)(b) of the *EAPWDR* are to be considered and not just physical type activities.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), 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 does not have a severe physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

### Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) and (b) of the *EAPWDR* defines DLA for a person who has a severe 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.

In her Notice of Appeal dated March 31, 2014, the appellant states that she has a severe mood disorder diagnosed in 1986, that she cannot hold down a job to support herself and that she becomes sleepy after taking her medication.

### **Severity of impairment**

Section 2(2)(a) of the *EAPWDA* is clear that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

In the Reconsideration Decision, and confirmed at the hearing of this matter, the ministry has found that there is evidence to support a finding that the appellant is at least 18 years of age and that she has a severe mental impairment that will continue for two years or more.

### **Severe Physical Impairment**

The appellant's position is that she has a physical condition, multinodular goiter, which causes her pain in the neck that is currently mild to moderate in nature. The ministry's position is that it does not have enough information from the GP to confirm that the appellant has a severe physical impairment.

### ***Panel Decision***

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 or her DLA as evidenced by functional skill limitations, the restrictions to DLA, and the degree of independence in performing DLA.

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.

The medical practitioner in this matter, the appellant's GP, diagnosed the appellant with multinodular goiter but

the panel notes that there is no date of onset provided nor is there any further comment on this condition anywhere else in the PWD application either by the GP or the appellant herself. While the appellant commented that this condition causes her pain, she described it as mild to moderate. The functional skills reported in the PR indicate that the appellant can walk four or more blocks unaided and climb 5 or more steps unaided, remain seated without limitation. The appellant's lifting limitations are listed as not known by the GP. In the AR, the general practitioner assessed the appellant as independent with all aspects of mobility and physical ability.

Based on this evidence, the panel finds that the ministry reasonably determined that the appellant's current level of physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the *EAPWDA*.

### **Restrictions In the ability to perform DLA**

The appellant's position is that her severe mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person.

The ministry's position is that there is not enough evidence from the GP to confirm the appellant's impairments directly and significantly restricts her DLA continuously or periodically for extended periods. The ministry argued that the appellant is able to manage the majority of her DLA independently.

### ***Panel Decision***

Section 2(2)(b) of the *EAPWDA* requires that in the opinion of a prescribed professional, a person's DLA are directly and significantly restricted by their severe impairment either continuously or periodically for extended periods.

The appellant states in the SR that she has "some difficulty with daily activities" and provides examples of having difficulty budgeting and with social functioning. This was reiterated at the hearing as the appellant commented that it can sometimes be overwhelming for her to do things by herself and that she has some challenges with social functioning and impulse spending.

In the PR, the appellant's GP indicates that she is independent in all DLA other than social functioning which is described as periodic in nature. The GP comments further that when the appellant is stressed and sleep deprived she is unable to concentrate and has morbid thoughts and plans. She describes the impact on the appellant's social functioning as being unable to tolerate people when her condition is exacerbated and that she become agitated and suspicious. In the AR, the appellant is assessed by her GP as independent with all aspects of DLA including those relating to social functioning set out in section 2(1)(b) of the *EAPWDR* and applicable to a person with a severe mental impairment and she adds the comment "As long as [the appellant] has a stable environment and close monitoring by trusted caregiver (physician) she functions well. Any changes in her care and environment are likely to precipitate a relapse."

In the Psychiatrist Letter, the appellant's psychiatrist notes that the medications that the appellant takes leave her unable to properly function until at least 8:30am and that throughout the day the medication limits her energy and her ability to concentrate. The psychiatrist also clarifies that the appellant's last exacerbation of her illness was in 2013.

While the panel notes the appellant's evidence that doing things by herself can sometimes be overwhelming, the panel finds that the ministry reasonably concluded that there is not enough evidence from the prescribed professional to establish that the appellant's severe mental impairment significantly restricts her ability to

manage her DLA either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of section 2(2)(b)(i) of the *EAPWDA*.

### **Help to perform DLA**

The appellant's position is that she requires the assistance of a family member to perform DLA.

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

### **Panel Decision**

Section 2(2)(b)(ii) of the *EAPWDA* requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the PR, the GP indicates that the appellant does not require any prostheses or aids for her impairment and similarly in the AR, the GP provides no comment as to whether the appellant requires assistance from other people or through the use of assistive devices or assistance animals with DLA.

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires significant help or supervision of another person to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the *EAPWDA*.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence, and the panel therefore confirms the decision pursuant to section 22(2)(a) of the *Employment and Assistance Act*.