

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 27, 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 her impairment is likely to continue for at least two 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,
- 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

Neither the appellant nor the ministry attended the hearing. After confirming that the appellant and the ministry were notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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 dated October 25, 2013, a physician report (PR) and an assessor report (AR) both dated October 24, 2013, and completed by a general practitioner who has known the appellant for 3 years.

The evidence also included the following:

- 1) Letter dated October 25, 2013 from the appellant to the ministry;
- 2) Handwritten note from the appellant dated March 15, 2014; and,
- 3) Request for Reconsideration dated February 22, 2014.

### **Diagnoses**

- In the PR, the appellant was diagnosed by the medical practitioner with anxiety, with onset in 2005, and oppositional defiant personality disorder since she was a child.

### **Mental Impairment**

In the PR, the appellant's physician reported that:

- In terms of health history, the "psychiatric conditions have resulted in interpersonal conflicts and loss of work; inability to get past interview stage due to her denial, aggressive manners and inability to change expectations."
- There are significant deficits with the appellant's cognitive and emotional function in the areas of emotional disturbance and motivation. The physician noted: "ongoing severe anxiety/ stress. Motivation is currently poor." Additional handwritten comments in this section have been crossed out.
- In 2007 the appellant was caught in a sporting event crowd which lead to a panic attack, SOB [shortness of breath], (illegible), palpitations, her legs gave away and she was taken to emergency at the hospital.

In the AR, the physician indicated that:

- The appellant has a good ability to communicate in all areas: speaking, reading, writing and hearing.
- There are major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, insight and judgment, attention/ concentration, and motivation.
- There is a moderate impact in the area of memory, and minimal impacts in psychotic symptoms and other emotional or mental problems.
- There are no impacts in the remaining 6 areas of the total 14 listed areas. The physician commented that the appellant "had symptoms of ADD [attention deficit disorder] [at a young age], but did make it through college."
- The appellant is assessed as requiring continuous support/supervision with 1 aspect of social functioning, namely interacting appropriately with others, and requiring periodic support/ supervision with the other 4 aspects, in particular: making appropriate social decisions, developing and maintaining relationships, dealing appropriately with unexpected demands, and securing assistance from others. The physician did not provide further comment about

the type or amount of support or supervision the appellant requires.

- The appellant has very disrupted functioning in both her immediate and extended social networks. Additional handwritten comments in this section have been crossed out.
- In the additional information, the physician wrote that the appellant is isolated with “no close friends, no money, no job.” Her denial about job expectations has resulted in “impossible job hunt- very disrupted social network.”
- Asked to describe the support/supervision required that would help to maintain the appellant in the community, the physician left this section blank.

In her self-report, the appellant wrote that:

- She is working on ‘abuse’ issues. Psychological pain, self-esteem, motivation, and she cannot move forward.
- Mentally, she is depleted, not motivated, feeling very melancholic, has periods of depression, “sometimes feeling of emptiness due to ‘loss of my mother’”, huge financial loss due to no or very little employment, feelings of not having choices, trapped feelings, feelings of treason.
- Presently “running out of gas”, sleep deprivation, yo-yo dieting, has to push herself to keep going, sometimes feelings of exhaustion.
- She is in the hands of her doctor. She has tried several medications for anxiety and for sleep that made her feel worse. Presently she takes meds when needed.

In her letter dated October 25, 2013, the appellant wrote that:

- Her lack of success in seeking employment has been mentally overwhelming for her, as well as the loss of a family member, huge financial burdens, and quality of lifestyle. It is hard coping at times, with cyber abuses all around her.
- She had crossed out sections in the reports that were for her doctor and the assessor.

In her Request for Reconsideration, the appellant added that:

- There are some errors regarding the comment that she had ADD [at a young age].
- Employability is a huge factor when it comes to mental health.

### ***Physical Impairment***

In the PR, the appellant’s physician reported that:

- The appellant does not require any prostheses or aids for her impairment.
- In terms of functional skills, the appellant is able to walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift 2 to 7 kg. (5 to 15 lbs.), and remain seated for 2 to 3 hours. The appellant noted that it is 2 to 3 hours before she starts to feel lower back pain.

In the AR, the appellant’s physician indicated that:

- The appellant is assessed as independent with all mobility and physical ability: walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.
- In the section of the AR relating to assistance provided through the use of assistive devices, none of the listed items have been indicated by the physician.

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

In the PR, the physician indicated that the appellant has not been prescribed any medication and/or treatment that interfere with her daily living activities. In the section of the report for indicating restrictions to DLA, there is a check mark indicating an unspecified restriction to use of

transportation, with a handwritten note "due to funds." Additional handwritten comments in this section have been crossed out.

In the AR, additional handwritten comments in this section have been crossed out, and the physician reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent in all tasks of all listed DLA, namely: personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation.

In her self-report, the appellant wrote that:

- Her anxiety has affected her overall well-being.

In her Request for Reconsideration, the appellant added that:

- She needs to know what has created her employment barriers.

### ***Need for Help***

The physician reported in the AR that:

- The help required for DLA is provided by the appellant's family.
- In the section of the report indicating assistance provided through the use of assistive devices, the physician did not indicate that any devices are used.

In her Notice of Appeal dated April 3, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that, regarding mental health, her anxiety stems from no employment and she is employable, committed and dedicated to her employers. She now has arthritis spreading due to a transit injury. She does not have 100% mobility with her hands.

### ***Admissibility of New Information***

In the appellant's Notice of Appeal, new information was provided regarding the appellant's impairment. This information provides additional detail with respect to issues referred to in the appellant's notes on the original PWD application. The panel admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the *Employment and Assistance Act*.

## 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 mental or 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) 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.

### **Severe Mental Impairment**

The appellant's position is that a severe mental impairment is established by the evidence of her anxiety and oppositional defiant personality disorder. The appellant argued her Notice of Appeal that her anxiety stems from not having employment and, in her Request for Reconsideration, that employability is a huge factor when it comes to mental health.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry stated that the general practitioner indicated that the appellant has deficits with cognitive and emotional functioning in the areas of emotional disturbance and motivation due to ongoing severe anxiety and stress. When assessing the impacts on daily functioning, the general practitioner reported that there are major impacts in 4 areas of the total 14 listed areas, namely: emotion, insight and judgment, attention/concentration and motivation. While the ministry noted that the page of the AR setting out impacts appears to include markings by two different people, the ministry accepted the information as that of the appellant's physician since he signed the report and also wrote comments on that page. The ministry stated that the general practitioner also indicated that the appellant has no difficulties with communication.

### ***Panel Decision***

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment, the ministry considers the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a prescribed professional – in this case, the appellant's physician.

In the PR, the physician who has known the appellant for 3 years diagnosed anxiety, with onset in 2005, and oppositional defiant personality disorder since the appellant's childhood. In the PR, the appellant's physician reported that the appellant's "psychiatric conditions have resulted in interpersonal conflicts and loss of work; inability to get past interview stage due to her denial, aggressive manners and inability to change expectations." In her letter dated October 25, 2013, the appellant wrote that her lack of success seeking employment has been mentally overwhelming for

her. Along with the loss of a family member, huge financial burdens, and quality of lifestyle, it is hard coping at times. In her Request for Reconsideration, the appellant added that employability is a huge factor when it comes to mental health. With regard to the evidence concerning finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The physician reported significant deficits with the appellant's cognitive and emotional function in the areas of emotional disturbance and motivation and noted: "ongoing severe anxiety/ stress." With respect to daily functioning, the physician assessed major impacts to the appellant's cognitive and emotional functioning in the areas of emotion, insight and judgment, attention/ concentration, and motivation, a moderate impact in the area of memory, and minimal or no impacts in the remaining 8 areas of the total 14 areas. The physician commented that the appellant "had symptoms of ADD [at a young age], but did make it through college." In her Request for Reconsideration, the appellant wrote that there are some errors regarding the comment that she had ADD at a young age, but the appellant did not elaborate on what she considered to be the errors. In the additional comments to the AR, the physician described the appellant's experience of a panic attack which led to her attendance at emergency in the hospital; however, this event occurred many years ago and there was no information regarding the appellant's experience of recent panic attacks.

Section 2(1)(b) of the EAPWDR prescribes two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning). The evidence indicates that the appellant is not significantly restricted with respect to decision making in that she independently manages her finances (pay rent and bills) and her medications, and also independently manages the decision-making components of the DLA of daily shopping (making appropriate choices), meal preparation (meal planning and food storage), and requires unspecified periodic support/supervision with making appropriate social decisions.

Regarding the DLA of social functioning, the physician indicated a need for continuous support/supervision with interacting appropriately with others and also that the appellant has very disrupted functioning in both her immediate and extended social networks. While the physician also reported that the appellant requires periodic support/ supervision with developing and maintaining relationships, there was no further comment about the type or amount of support or supervision the appellant requires. Asked to describe the support/supervision required that would help to maintain the appellant in the community, the physician left this section blank. In her self-report, the appellant wrote that she is "running out of gas", has sleep deprivation and "yo-yo dieting", has to push herself to keep going and sometimes has feelings of exhaustion. The appellant also wrote that she is in the hands of her doctor she has tried several medications for anxiety and for sleep that made her feel worse and she takes meds "when needed." The physician did not provide information regarding any medication prescribed to the appellant except to report that there are no medications that interfere with the appellant's ability to perform her DLA.

Given the physician's emphasis in the PR and AR on restrictions to the appellant's employability, and the lack of detail provided by the physician regarding the restrictions to social functioning, the panel finds that the ministry reasonably concluded that, overall, the evidence of impacts to the appellant's social and cognitive/emotional functioning is not sufficient to establish a severe mental impairment, pursuant to section 2(2) of the EAPWDA.

**Severe Physical Impairment**

While the appellant did not directly advance a position that she has a severe physical impairment, the appellant made a note in the PR that after 2 to 3 hours of sitting she starts to feel lower back pain. The appellant also wrote in her Notice of Appeal that she now has arthritis which is spreading and she does not have 100% mobility with her hands.

The ministry's position is that there is not enough information from the general practitioner to confirm that the appellant has a severe physical impairment. The ministry stated that, in terms of functional assessment, the general practitioner indicated that the appellant can walk 4 or more blocks unaided, climb 5 or more stairs unaided, lift between 5 to 15 lbs. and remain seated for 2 to 3 hours. The ministry stated that it is unclear why the appellant can only lift 5 to 15 lbs. and remain seated for 2 to 3 hours based on the diagnoses provided by the general practitioner. The ministry stated that the general practitioner reported that the appellant is independent in all aspects of mobility and physical abilities.

***Panel Decision***

The physician has not diagnosed the appellant with a physical health condition. In terms of functional skills, the physician reported in the PR that the appellant is able to walk 4 or more blocks unaided on a flat surface, climb 5 or more steps unaided, lift 5 to 15 lbs., and remain seated for 2 to 3 hours. The appellant noted that after 2 to 3 hours she starts to feel lower back pain and also wrote in her Notice of Appeal that she has arthritis which is spreading and she does not have 100% mobility with her hands. The physician, however, has not indicated a diagnosis of arthritis or reported a cause for the appellant's pain. In the AR, the appellant is assessed as independent with all mobility and physical ability: walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. Given the absence of a diagnosis of a physical impairment and no evidence of a need for assistance or the use of an assistive device with any aspect of mobility or physical ability, 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.

**Restrictions in the ability to perform DLA**

The appellant's position is that her physical and mental impairments directly and significantly restrict 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 the evidence from the general practitioner is not sufficient to confirm that the appellant's impairments directly and significantly restrict her ability to perform DLA either continuously or periodically for extended periods. The ministry pointed out that the section of the PR for indicating restrictions to DLA was completed by the appellant as she indicated a restriction to the use of transportation "due to funds" and this is not the evidence of a prescribed professional. The ministry stated the appellant's general practitioner indicated that she is independent in a majority of her DLA and, for those aspects that require periodic assistance, there is no indication of how often assistance is required.

***Panel Decision***

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 her DLA, continuously or periodically for extended periods. In this case, the appellant's physician is the prescribed professional. DLA are defined in section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments either continuously or periodically for extended periods.

In the appellant's circumstances, her physician reported in the AR that the appellant is independent with moving about indoors and outdoors as well as with all tasks of most of her DLA, namely personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. The ministry's position is that the section of the PR indicating a restriction to the use of transportation, with a handwritten note "due to funds," was added by the appellant and this was not disputed by the appellant on this appeal. The panel finds that the ministry reasonably determined that this handwritten note is not the evidence of the appellant's physician.

With respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the evidence indicates that the appellant is not significantly restricted with respect to decision making. The physician reported in the AR that the appellant independently manages her finances (pay rent and bills) and her medications and the decision-making components of the DLA of daily shopping (making appropriate choices) and meal preparation (meal planning and food storage), and requires unspecified periodic support with making appropriate social decisions as part of her social functioning.

Regarding the DLA of social functioning, the physician indicated a need for continuous support/supervision with interacting appropriately with others, and periodic support/ supervision with developing and maintaining relationships, with no further comment about the type or amount of support or supervision the appellant requires. The physician indicated that the appellant has very disrupted functioning in both her immediate and extended social networks and the additional handwritten comments in this section have been crossed out. In her letter dated October 25, 2013, the appellant wrote that she had crossed out sections in the reports that were for her doctor and the assessor to fill out. In the additional information to the AR, the physician wrote that the appellant is isolated with no close friends, no money, no job and her denial about job expectations has resulted in impossible job hunt, "very disrupted social network." In the absence of further detail regarding the support or supervision required, and considering the physician's comments in both the PR and the AR about the impacts to the appellant's employability, which is not a criterion in PWD designation, the panel finds that the ministry reasonably determined that the extent of the restrictions to the appellant's social functioning are not clear.

The panel finds that the ministry reasonably concluded that the appellant is independent with performing almost all of her DLA and there is not enough evidence from the prescribed professional to establish that the appellant's impairments significantly restrict her ability to manage DLA either continuously or periodically for extended periods, as required under section 2(2)(b)(i) of the EAPWDA.

### **Help to perform DLA**

The appellant's position is that she requires the significant assistance of another person 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.

The evidence of the physician, as a prescribed professional, is that the help required with DLA is provided by the appellant's family. 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 help 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 therefore confirms the decision.