

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of April 8, 2014, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s 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 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.

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 information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report [dated November 10, 2013], and a physician's report ("PR") and assessor's report ("AR") signed by the appellant's psychiatrist [both dated November 27, 2013].

The panel reviewed the evidence as follows:

Mental Impairment

- In the PR the psychiatrist diagnosed the appellant with "psychotic depression, moderate", with onset in 2004. In the Health History portion of the PR the psychiatrist noted that the appellant hears voices from time to time most days, that his condition has improved with medication, that his motivation remains poor, and that he spends a lot of time at home.
- The psychiatrist noted that "Increasing his medications will reduce his symptoms and improve his level of functioning. The patient is currently comfortable with the dosages and effects of his medications."
- In the PR the psychiatrist noted that the appellant has "mild" cognitive deficits that cause difficulty with communication. He explained that the appellant is "easily distractable sometimes and focus can be poor."
- In the PR the psychiatrist indicated that the appellant has significant deficits with cognitive and emotional functioning in terms of emotional disturbance (*his depression is moderate*), motivation (*his motivation is somewhat low*), and attention or sustained concentration (*attention span notably impaired*).
- The psychiatrist commented that the appellant "will not do well with cognitive therapy as he is not well motivated."
- In the AR the psychiatrist described the appellant's impairments as "He hears voices at night. He has depression and he shakes frequently." He reported the appellant's ability to communicate as "satisfactory" with respect to speaking and reading, and "good" with respect to writing and hearing.
- In the AR the psychiatrist indicated the appellant's impairment causes moderate impacts to 2 of 14 categories of cognitive and emotional functioning: The remaining 12 categories had minimal or no impacts. The psychiatrist commented that "Because of his anxiety attacks he may behave in a polite manner in public by avoiding contact with people. He has not displayed aggressive behaviour."
- In his self-report the appellant wrote that he always hears something speaking in his head, but he doesn't know what it means. He reported that he spends "most" of his time staring into the closet, feeling as though something very heavy is tying him down.
- In his oral testimony the appellant stated that he takes 3 to 4 medications a day and that sometimes he doesn't know where he is after he takes his medications.
- He sees his psychiatrist once a month for counselling.

Physical Impairment

- In terms of physical functional skills, the psychiatrist indicated in the PR that the appellant has no limitations with respect to walking unaided on a flat surface, climbing stairs, lifting, or remaining seated.

- In the AR the psychiatrist reported that the appellant is independent in terms of walking indoors and outdoors, climbing stairs, standing, and lifting/carrying/holding.
- In his self-report the appellant wrote that he experiences headaches, dizziness and muscle pain/stiffness which affect his ability to perform DLA. He reported feeling weak, tired, always shaking, and being very dehydrated. The appellant feels these physical impacts are side effects of his medications, but wrote that he is afraid to inform his psychiatrist because the psychiatrist will likely want to increase the dosages of the medications.
- In his oral testimony the appellant stated that his medications have caused him to gain weight. They also give him headaches, and make him feel tired so that he can't do much all day. About 2 weeks ago his psychiatrist increased the dosages to help him sleep. His muscles ache and sometimes he can't put on his jacket because his shoulder hurts.

DLA

- In the PR the psychiatrist noted that the appellant's medications interfere with his ability to perform DLA. He noted that one medication may cause daytime drowsiness from time to time.
- In the AR the psychiatrist indicated that the appellant independently manages all aspects of the DLA of *personal care, basic housekeeping, daily shopping, managing medications, and use of transportation*.
- The psychiatrist reported that the appellant requires periodic assistance with two aspects of *meal preparation* (food preparation and cooking) and two aspects of *managing personal finances* (banking and budgeting). The appellant independently manages the other aspects of these DLA.
- In terms of *social functioning*, the psychiatrist reported the appellant as being marginally functional with both immediate and extended social networks. He indicated the appellant independently makes appropriate social decisions, but that he needs periodic support/supervision with other aspects of social functioning.
- In response to a question from the panel, the appellant said that the help he receives with banking and budgeting is that his friend or sister will give him a ride to the bank. His sister helps him to count his money. His mother and sister cook meals for him and do his laundry.

Help

- The psychiatrist indicated that the appellant requires no prostheses or aids for his impairment, and that he does not have an assistance animal.
- The psychiatrist commented that the appellant's family helps him occasionally to perform complex DLA, and that they occasionally help "as needed e.g. meals and companionship".

Admissibility of New Information

In his oral testimony the appellant provided new information regarding his impairment. This information provides additional detail with respect to issues addressed in the original PWD application. Accordingly, the panel has 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 s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and submitted no new information.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not have a severe physical or mental impairment, and that in the opinion of a prescribed professional the appellant's impairments do not directly and significantly restrict him from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

EAPWDA:

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.

EAPWDR section 2(1):

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

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

Severe Mental Impairment

The appellant's position is that his psychotic depression, with accompanying symptoms, constitutes a severe mental impairment.

The ministry's position, as set out in its reconsideration decision, is that as the psychiatrist has reported at most moderate impacts to cognitive and emotional functioning, the evidence does not

establish a severe mental impairment.

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 one must consider 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 psychiatrist.

The psychiatrist has described the mental impairment as being "moderate" and its impacts on cognitive and emotional functioning as being "mild" or "moderate". In terms of functional skills the psychiatrist noted the appellant's communication skills as being "good" or "satisfactory", though he can be easily distracted and can lose focus. The psychiatrist indicates that the medications are causing an improvement in the appellant's symptoms.

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 he independently manages his finances (pay rent and bills - except for getting a ride to the bank from his friend or his sister) and his medications. Based on the evidence in the AR, he also independently manages the decision-making components of the DLA of *daily shopping* (making appropriate choices), *meal preparation* (meal planning and food storage), and *social functioning* (making appropriate social decisions).

With respect to the DLA of *social functioning*, there is evidence to indicate that the appellant is isolating himself to some extent. However, there is no evidence before the panel as to what sort of support or supervision the appellant may require except that his family provides him with companionship. The psychiatrist's evidence indicates that the appellant remains functional (albeit marginally) in respect of his immediate and extended social networks.

Considering the evidence as a whole, the panel concludes that the ministry reasonably determined that it does not demonstrate a severe mental impairment.

Severe Physical Impairment

The appellant's position is that the side effects of the medications he is taking constitute a severe physical impairment.

The ministry's position, as set out in its reconsideration decision, is that the assessments provided by

the psychiatrist confirm that the appellant does not have a physical impairment.

Panel Decision

The psychiatrist did not diagnose a physical impairment. The psychiatrist's evidence from the PR is that the appellant is unrestricted in terms of walking, climbing stairs, standing, and sitting. His evidence in the AR is consistent with this.

The appellant reports that he is significantly impaired by headaches, fatigue, shaking, muscle pain, and a feeling of heaviness. He feels that many of these physical symptoms are caused by the medications. The appellant's evidence indicates that he has been reluctant to fully report the physical side-effects of the medications to the psychiatrist for fear that the psychiatrist will increase the dosage of the medications. While the psychiatrist has acknowledged that the medications do have some impact on the appellant's ability to manage DLA by causing drowsiness from time to time, he has not confirmed the other physical impacts identified by the appellant. While the panel acknowledges these impacts, they cannot be given significant weight without some evidence from the psychiatrist as to their severity.

As discussed in more detail in the subsequent section of this decision under the heading Significant Restrictions to DLA, any physical limitations resulting from the appellant's impairments do not appear to have translated into significant restrictions in his ability to manage his DLA independently. For the foregoing reasons, the panel has concluded that while the appellant does have some physical health issues, the ministry reasonably determined that the evidence falls short of establishing that he has a severe physical impairment as contemplated by the legislation.

Significant Restrictions to DLA

The appellant's position is that his DLA are significantly restricted. He stated that he is limited both physically and mentally and that he relies on friends and family to assist with many of his DLA.

The ministry's position is that the psychiatrist has provided no evidence as to the type, frequency, or duration of any assistance required by the appellant. The ministry argued that there is not enough evidence to confirm that his impairment significantly restricts DLA either continuously or periodically for extended periods.

Panel Decision

In the panel's view, the evidence is consistent in indicating that the appellant is not significantly restricted with respect to the following 7 of the 10 prescribed DLA – *personal self-care, daily shopping, management of medications, use of transportation, basic housekeeping, moving about indoors and outdoors, and decision-making.*

With respect to *social functioning*, based on the analysis provided above under the discussion of severe mental impairment, the panel concludes that the evidence does not demonstrate a significant restriction.

Regarding the DLA of *management of finances*, the appellant's evidence is that the help he receives

in this area is primarily with respect to getting a ride to the bank. While the AR indicates that the appellant requires periodic assistance with budgeting, there is no evidence before the panel describing the frequency, duration, or extent of such assistance.

With respect to the DLA of *meal preparation*, the evidence indicates that the appellant receives periodic assistance from his family "as needed" with food preparation and cooking, but there is no evidence to describe the frequency, duration, or extent of such assistance.

In the panel's view, the evidence does not establish on the balance of probabilities that the appellant's ability to manage his DLA is significantly restricted as contemplated by the legislative scheme. Accordingly, the panel concludes that the ministry reasonably determined that the appellant's ability to manage his DLA independently is not significantly restricted either continuously or periodically for extended periods.

Help with DLA

The appellant's position is that he relies on help from friends and family to perform his DLA.

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

Panel Decision

On the evidence, the panel cannot conclude that the help provided to the appellant by his friends or family constitutes "the significant help or supervision of another person" that is required by s. 2(3)(b)(ii) of the EAPWDA.

There is no evidence to indicate that the appellant requires an assistive device, or that he has an assistance animal.

For these reasons, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by s. 2(3)(b) of the EAPWDA.

Conclusion

The panel acknowledges that the appellant's medical conditions have some impact on his ability to function. However, having reviewed and considered all of the evidence and the relevant legislation, the panel concludes that the ministry's decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.