

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) June 10, 2014 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities (“PWD”) designation because he did not meet all the requirements for PWD designation in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. Based on the information provided, the Ministry was not satisfied that the Appellant’s severe mental impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and,

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

The Ministry was satisfied that the Appellant has reached 18 years of age and that, in the opinion of a medical practitioner, his severe mental impairment is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 2.

PART E – Summary of Facts

For its reconsideration decision, the Ministry had the following evidence:

1. Appellant's PWD application consisting of:

- A physician's report ("PR") and an assessor's report ("AR"), both completed on February 12, 2014 by the Appellant's family doctor who indicated that the Appellant had been his patient for about 9 months and he had seen the Appellant between 2-10 months in that period.

2. Appellant's request for reconsideration with:

- A letter dated June 4, 2014 from the Appellant's family doctor; and,
- A psychological and vocational assessment completed on October 16, 2013 by a registered psychologist regarding the Appellant's employability.
- An EMG study report dated December 26, 2013 by another doctor regarding the Appellant's physical conditions and psycho-somatic symptoms.

The Panel has summarized the evidence relevant to the two PWD criteria at issue in this appeal:

Diagnoses and description of the Appellant's mental health conditions.

In the PR, the Appellant's doctor diagnoses him with depression, anxiety and a neurological disorder. The doctor described the Appellant's conditions as severe anxiety and depression. He also has psycho-somatic symptoms, primarily numbness in his left hand. The doctor also noted that the Appellant has extremely low self-esteem and paranoia. In the June 2014 letter, the doctor wrote that the Appellant has a complex presentation of numbness in his left hand which is a psycho-somatic illness and this effectively makes him unemployable.

Daily living activities

In the PR, the doctor indicated that the Appellant has not been prescribed any medication and/or treatments that interfere with his/her ability to perform daily living activities. The doctor also wrote that with his symptoms the Appellant is very unlikely to be employable.

In the AR, the doctor wrote that the Appellant feels low, lacking motivation and has low self-esteem. Generally his daily living activities are not impaired. In addition, the doctor reported the following impacts:

- Good ability to communicate in all areas (speaking, reading, writing, hearing).
- Independently able to manage all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation.
- Independently able to make appropriate social decisions.
- Needs continuous support/supervision with developing and maintaining relationships – "has been unable to maintain any relationships".
- Needs continuous support/supervision with interacting appropriately with others – "socially he finds difficult to interact".
- Needs continuous support/supervision with dealing appropriately with unexpected demands – "unable to cope with uncertainty".
- Has good functioning with his immediate social network and marginal functioning with his extended social network.

In the psychological assessment, the psychologist reported that in terms of activities of daily living, the Appellant stated that:

- He helps with household chores occasionally (e.g., cooking alongside his mother.
- He currently drives.
- He is becoming increasingly involved in his community and social activities, including taking dancing lessons and attending events at the local arts and community centre, and occasionally attends a religious centre.
- He sometimes goes to social events with his brother.
- He likes to read, especially self-help books.

Help with daily living activities

In the AR, for help required, the doctor wrote that the Appellant "already attends counseling and self-help group". The doctor also wrote that the Appellant's parents help him with finances as well. In the section for assistive devices, the doctor wrote "N.A"; that is, not applicable. The doctor reported that no assistance is provided by assistance animals.

In his Notice of Appeal, the Appellant wrote that his doctor did not give enough information about his issues. He stated that he has social anxiety and when his anxiety and depression increase, his left fingers get worse. He is left handed. The Appellant also wrote that he is taking two medications for anxiety and depression, and he goes to physiotherapy. The Appellant stated that he has mental and emotional pain damaging his left fingers.

At the hearing, the Appellant said that his doctor did not provide enough information about his conditions. The doctor who completed the PWD application replaced a doctor the Appellant had for many years. The Appellant also described his social anxiety and depression, and how those conditions affect his left fingers. He said his social anxiety holds him back from going to dances, but he goes about once a month. He also said that he takes medications and he goes for mental health counselling. The Appellant also stated that he cooks sometimes, but his mother does most of the cooking, his parents support him financially, he is able to look after his personal care and he generally walks to his doctor's office. He takes his medications at night so that he can drive the next day. The Appellant also referred to the psychologist's October 2013 assessment to confirm that he cannot work.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the information in the Notice of Appeal and the Appellant's oral testimony as substantiating and being in support of the evidence that the Ministry had at reconsideration.

At the hearing, the Ministry reaffirmed its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because he did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant's severe mental impairment, in the opinion of a prescribed professional: (i) directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions he requires help to perform those activities.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:
 2 (2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either (A) continuously, or (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.
- (3) For the purposes of subsection (2),
 - (a) a person who has a severe mental impairment includes a person with a mental disorder, and
 - (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires (i) an assistive device, (ii) the significant help or supervision of another person, or (iii) the services of an assistance animal.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

- 2 (1) For the purposes of the Act and this regulation, "daily living activities" ,
- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals; (ii) manage personal finances; (iii) shop for personal needs; (iv) use public or personal transportation facilities; (v) perform housework to maintain the person's place of residence in acceptable sanitary condition; (vi) move about indoors and outdoors; (vii) perform personal hygiene and self-care; (viii) manage personal medication, and
 - (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances; (ii) relate to, communicate or interact with others effectively.

The Panel will consider each party's position regarding the reasonableness of the Ministry's decision under the two applicable PWD criteria at issue in this appeal.

Restrictions to Daily Living Activities

The Appellant submits that his severe impairment restricts his ability to manage daily living activities, but his doctor did not provide enough information about the restrictions. Also, he is unable to work. In its reconsideration decision, the Ministry wrote that it relies on the assessments from the Appellant's doctor. Based on all of the information provided by the Appellant and the doctor, the Ministry determined that there is not enough evidence to establish that the Appellant's impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

The Panel's Findings

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion that the Appellant's severe mental impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. Daily living activities are defined in section 2(1) of the EAPWDR and are also listed in the PR and in the AR for the doctor to assess. The Panel notes that a registered psychologist prepared a psychological and vocational assessment, which dealt with factors affecting the Appellant's employability rather than his eligibility for PWD designation. Therefore, the Panel gives more weight to the evidence from the Appellant's doctor, whose reports were also more recent, as the prescribed professional in this case. As for finding work and/or working, the Panel notes that employability is not a criterion for determining eligibility for PWD designation in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

The doctor who completed the PR and the AR reported that the Appellant independently manages all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. Only in 3 areas of social functioning does the Appellant need continuous support or supervision. In addition, the Appellant has good functioning with his immediate social network and marginal functioning with his extended social network. The doctor added that the Appellant already attends counselling and self-help groups. Therefore, based on the doctor's reports, the Panel finds that Ministry reasonably determined that there is not enough evidence to establish that the Appellant's impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant submitted that he needs help with daily living activities. The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot determine that significant help is required from other persons. It noted that the doctor indicated that the Appellant did not require the use of any assistive devices or an assistance animal.

The Panel's Findings

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional confirming that, because of direct and significant restrictions in his ability to manage daily living activities, the Appellant requires help with those activities.

With respect to this PWD criterion, the doctor reported only that the Appellant needs continuous support/supervision with 3 areas of social functioning, but the doctor did not indicate what type of support/supervision is needed. The doctor only wrote that the Appellant already attends counseling and self-help groups, and that his parents help with finances as well. Based on the evidence from the doctor, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help to manage his daily living activities.

Conclusion

Having reviewed and considered all of the evidence and the 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. Therefore the Panel confirms that decision.