

**PART C – Decision under Appeal**

The decision being appealed is the Ministry of Social Development and Social Innovation (the "Ministry") May 28, 2014 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because she 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 has a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions she requires help to perform those activities.

The Ministry was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her 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

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the EAA.

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

1. Appellant's PWD application consisting of:

- Her self-report dated January 30, 2014.
- A physician's report and an assessor's report both completed on January 20, 2014 by the Appellant's doctor who indicated that she had seen the Appellant 2-10 times in the past 12 months, had seen her since December 2013, but the Appellant had been in the clinic's practice since 2009.

2. Appellant's May 16, 2004 request for reconsideration with a statement from the Appellant dated May 20, 2004.

In her notice of appeal, the Appellant wrote that her depression, anxiety, panic attacks and inability to focus and concentrate have taken over all aspects of her life. They also affect her ability to perform daily functions.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits the statements in the notice of appeal as being consistent with and in support of evidence that was before the Ministry at the time of reconsideration.

For this appeal, the Ministry relied on its reconsideration decision.

The Panel has summarized the relevant evidence as follows.

### Diagnoses

In the physician's report, the doctor diagnosed the Appellant with depression. The doctor also wrote that the Appellant's impairment/diagnoses is likely chronic but it can be minimized with medication, counseling and exercise.

### Physical Impairment

The Appellant provided no information about any physical impairments. The doctor, in the physician's report, provided the following information about the Appellant's physical functioning:

- Can walk unaided on a flat surface for more than 4 blocks.
- Can climb more than 5 steps unaided.
- Has no limitations with lifting or with remaining seated.

### Mental Impairment

In her self-report and reconsideration statement, the Appellant described her disability as follows:

- Has various mental illnesses, is chronically depressed, has panic attacks, has mood swings and often feels anxious; panic attacks are brought on by flash backs about incidents when she was younger, which she described in her reconsideration statement.
- Suffers from impulse control brought on by her anxiety attacks.
- Is unable to focus and concentrate for too long, leading her to make irrational decisions that

affect her well being; suffers from grandiosity, hostility, racing speech, unfocused speech, hopelessness, agitation, lack of motivation, poor hygiene, poor grooming, obsessive compulsiveness and lack of self awareness..

- Hard to take care of herself when she is always depressed and tired.
- Usually gets severely depressed at least one week out of a month.
- Has been on medication for over 15 years.

The doctor provided the following information in her reports about the Appellant:

- The Appellant states that she is unable to concentrate, has mood swings, fatigue and occasional anxiety, occasional sleep disturbance and decreased interest.
- Has no difficulties with communication.
- Has significant deficits with cognitive and emotional function in the following areas: emotional disturbance, motivation, impulse control – “occasional”, motor activity – “occasional”, and attention or sustained concentration.
- Is on medication for this and will be initiating counseling next week.
- For cognitive and emotional functioning, her impairment has a major impact to attention/concentration and to motivation; moderate impact to emotion, impulse control and executive; and, no impact to bodily functions, consciousness, insight and judgement, memory, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

#### Daily Living Activities

The Appellant described the impact of her disabilities as follows:

- Gets severely depressed at least one week a month leaving her unable to take care of her daily personal hygiene.
- Has a significant impact on her quality of life and makes it hard to maintain relationships with family and friends.
- Finds it hard to talk to people about the incidents in her childhood.
- Daily life and ability to perform daily living tasks is severely impacted.
- Inability to focus and concentrate, lack of motivation, conditions listed above result in poor hygiene, poor grooming.
- When things get really bad, a friend comes to help out with house cleaning, meal preparation, grocery shopping and budgeting.

In the physician's report, the doctor reported that the Appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities. In the assessor's report, the doctor provided the following information about the Appellant:

- Occasional mental impairment (decreased energy, decreased motivation) to get self ready in the morning.
- Has good ability to communicate in all areas; i.e., speaking, reading, writing and hearing.
- Is independent in all aspects of mobility and physical ability: that is, walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.
- Independently manages all areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation.
- Independently manages all aspects of social functioning, except that she needs periodic assistance with dealing appropriately with unexpected demands – “occasionally needs to call a friend.”

- Has good functioning with her immediate and extended social networks.

*Help with Daily Living Activities*

The doctor wrote that the Appellant will be starting counseling and occasionally needs to call a friend for help with dealing with unexpected demands. The doctor also wrote "N/A" [not applicable] in the section for assistance provided by other people. The sections in the AR for reporting the use of assistive devices or an assistance animal were left blank. The Appellant wrote that, when things get really bad, a friend comes to help with house cleaning, meal preparation, grocery shopping and budgeting.

## 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 she did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions she 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 applicable PWD criteria at issue in this appeal.

### **Severe Mental Impairment**

The Appellant submitted that her depression, anxiety, panic attacks, inability to focus and concentrate, and other illnesses have taken over all aspects of her life and severely impact her ability to function.

In its reconsideration decision, the Ministry acknowledged that the Appellant may have deficits with mental functioning. However, the Ministry found that the doctor did not provide enough evidence for the Ministry to determine that the Appellant has a severe mental impairment.

***The Panel's Findings***

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. To satisfy the requirements in section 2(2) of the EAPWDA, evidence of how and the extent to which a medical condition restricts daily functioning must be considered. This includes the evidence from the Appellant and from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's ability to manage the daily living activities listed in section 2(1) of the EAPWDR.

The Appellant described several mental health conditions, including chronic depression, anxiety attacks, inability to focus and concentrate, impulsiveness, mood swings which severely impact her functioning. Also, she wrote that her inability to focus and concentrate and her lack of motivation result in poor hygiene and poor grooming. When things get really bad, a friend comes to help out with house cleaning, meal preparation, grocery shopping and budgeting. She has been on medication for 15 years, but this was not confirmed by the doctor.

The doctor diagnosed the Appellant with depression, and added that the Appellant stated that she is unable to concentrate, has mood swings, fatigue, decreased interest, occasional anxiety and occasional sleep disturbance. The doctor also reported significant deficits in the Appellant's cognitive functioning in 5 areas, but impulse control and motor activity are noted as "occasional". In the cognitive and emotional functioning part of the assessor's report, the doctor reported major impacts only to attention/concentration and motivation, with moderate impacts in 3 areas and no impact in 9 areas. With respect to any effects on the Appellant's daily functioning, the doctor reported that the Appellant manages all aspects of daily living activities independently, notably personal care, medications, paying rent and social functioning, which all require mental abilities. The Appellant needs periodic assistance only with dealing appropriately with unexpected demands. Therefore, based on the evidence, especially from the doctor, the Panel finds that the Ministry reasonably determined that there was not enough evidence to find that the Appellant has a severe mental impairment.

**Severe Physical Impairment**

The Panel notes that there is no diagnoses of any physical health condition and no information from the Appellant regarding any physical impairment. Also, the doctor reported that the Appellant has good physical functioning and independently manages all areas of mobility and physical ability. Therefore, the Panel finds the Ministry reasonably determined that the evidence did not demonstrate a severe physical impairment.

**Restrictions to Daily Living Activities**

The Appellant submitted that her conditions severely impact her daily life and ability to manage daily tasks.

The Ministry wrote that it relies on the medical opinions and assessments provided by the doctor when determining PWD eligibility. The doctor indicated that the Appellant independently manages all daily living activities, except for needing periodic assistance with dealing appropriately with unexpected demands. Based on the information provided, the Ministry found that there was not enough evidence to establish that the Appellant's impairment directly and significantly restricts her daily living activities continuously or periodically for extended periods.

*The Panel's Findings*

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that the Appellant's severe mental or physical impairment directly and significantly restricts her 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. In this case the Appellant's doctor is the prescribed professional.

The Appellant stated that her impairments severely impact her ability to do daily tasks. However, the Appellant's doctor reported that the Appellant manages all daily living activities independently, except for occasionally needing to call a friend when dealing with unexpected demands. She also has good functioning with her immediate and extended social networks. Therefore, based on the evidence from the doctor, the prescribed professional, the Panel finds that the Ministry reasonably determined that there was not enough evidence to establish that the Appellant's impairment directly and significantly restricts her ability to manage daily living activities continuously or periodically for extended periods.

**Help with Daily Living Activities**

The Appellant stated that, when things get really bad, a friend comes to help with house cleaning, meal preparation, grocery shopping and budgeting.

The Ministry noted that the doctor did not indicate that the Appellant needs either assistive devices or an assistance animal. 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.

*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 her ability to manage daily living activities, the Appellant requires help with those activities. Help in relation to a daily living activity is defined in section 3 of the EAPWDA as an assistive device, the significant help or supervision of another person or the services of an assistance animal.

The doctor reported only that the Appellant is starting counseling and occasionally needs to call a friend when dealing with unexpected demands. Therefore, based on the evidence from the doctor and because the Ministry reasonably determined that the evidence does not establish that daily living activities are directly and significantly restricted either continuously or periodically for extended periods, the Panel finds that the Ministry reasonably found that the requirements in section 2(2)(b)(ii) of the EAPWDA were not met.

**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.