

### PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 4 July 2014 determined that the appellant did not meet 2 of the 5 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, that his impairment is likely to continue for at least 2 years and that the appellant had a severe mental impairment but not a severe physical impairment. However, the ministry was not satisfied that the appellant's mental conditions, in the opinion of a prescribed professional, directly and significantly restricted his daily living activities (DLA) either continuously or periodically for extended periods. The ministry was also not satisfied that as a result of those restrictions, in the opinion of a prescribed professional, the appellant requires help 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 following evidence was before the ministry at the time of reconsideration:

- A 3 page PWD Application – Applicant Information dated 28 October 2013 and signed by the appellant before his physician who acted as a witness and indicating that the appellant chose not to complete the self-report.
- A 8 page Physician Report (PR) dated 31 January 2014 completed and signed by the appellant's physician indicated the following:
  - Specific diagnosis: Anxiety, Social phobia and Adult Attention Deficit Disorder (AADD).
  - Health history: The appellant has suffered from mood disorders for years. Previous depression, now anxiety which is debilitating and his anxiety can be so severe he cannot talk and cannot comprehend what he is hearing.
  - There is no indication whether the appellant was actually prescribed any medication and/or treatment that could interfere with his ability to perform DLA.
  - In terms of functional skills the appellant does not have any limitation identified other than communication where there is cognitive difficulties and where the physician reiterates that anxiety can be so severe he cannot talk and cannot comprehend what he is hearing.
  - In terms of significant deficits with cognitive and emotional functions, the physician identifies 6 areas: Executive, language, memory, emotional disturbance, motivation and attention or sustained concentration where he comments: "Yes when anxious".
  - He did not complete the section related to DLA since he also completed the assessor's report.
  - He indicated that the appellant has been his patient since 2004 and that he has seen him 2 to 10 times within the past 12 months.
- An 11 page Assessor Report also dated 31 January 2014, completed and signed by the same physician as the PR, indicating the following:
  - The appellant lives with family, friends or caregiver.
  - Severe anxiety and panic attacks are impairments that impact his ability to manage DLA.
  - The appellant's ability to communicate by speaking (with a comment "when not anxious") and hearing is good while reading and writing is satisfactory.
  - In terms of mobility and physical ability he is independent on all activities.
  - In terms of cognitive and emotional functioning, his mental impairment restricts or impacts his daily functioning for the following activities as a major impact: Emotion (inappropriate anxiety) Attention / concentration, Executive, Memory and Language. For all those items, the physician indicates "Due to anxiety when it is very active". The physician reports no impact on the other items.
  - In terms of DLA, he is independent except for the following activities:
    - He takes significantly longer than typical for going to and from stores (the physician notes: "Anxiety can cause him to be house bound"); Banking ("Anxiety prevents him from doing this"); Using public transit ("Anxiety prevents") and Ability to deal appropriately with unexpected demands ("Anxiety causes this").
    - He needs periodic support / supervision to be able to develop and maintain relationships ("Difficulty initiating new relationship").
  - He exhibits good functioning for his immediate social network but a very disrupted functioning for extended social networks, in particular "major social isolation".
  - The physician describes the support / supervision required by the appellant that would help

to maintain him in the community as: "He gets help from his parents and sister."

- The help required for DLA is provided by his family and occasionally by friends.
- There is no indication whether the appellant needs assistive devices and he does not have an assistance animal.
- The physician is the appellant's family doctor who has known him since 2004 and has seen him 2 to 10 times in the last year.
- The appellant also provided the ministry with the following documents:
  - Profile for Males: Conner's Parent Rating Scale, 1998.
  - "Psychoeducational Report", 6 pages, 1999.
  - Speech-Language Pathology Assessment Report, 4 pages, 2002.
  - Letters (3) from a Doctor in pediatrics, 2003
  - Assessment by a Child Psychiatrist, 3 pages out of 4, 2004.
  - Intake and Referral document, 2010.
  - Psychiatric assessment by psychiatrist, 2 pages, 2011.
  - Letters (3) from a psychiatrist in 2011 and 2012, about ADHD and the last letter (April 2012) indicating "active problems" as being: Social phobia and Adult attention deficit hyperactivity disorder.

With his request for reconsideration dated 2 July 2014, the appellant indicated that the previous decision was made before he got a letter from his physician and included that letter with his request:

- Letter from the appellant's physician dated 20 June 2014 stating that the appellant's impairments are expected to continue for 2 years and that the appellant reports he experienced bad anxiety on a daily basis.

In his Notice of Appeal dated 17 July 2014 the appellant indicated he is unable to leave the house alone or even make a phone call if he know it will involve interacting with strangers – he may have a panic attack or emotional breakdown if asked to do this alone and even if someone is present, he cannot recall most of the conversation. He has trouble remembering to take his medication and has to be told when to take a shower, brush his teeth and other things.

At the hearing the appellant's mother testified that the appellant often had panic attacks and when he was in a store, for example, and needed to ask someone a question or interact, he would rather leave the store. Likewise when involved in a telephone conversation, he may simply disagree because he does not understand. He cries and shakes quite often and it is very difficult. If someone tells him to do something, he does not understand and will not remember – it is important to show him how to do things and he may cry if he doesn't understand. He had a part time job in the past because the employer knew how to deal with him and his father was employed at the same place but now he is unemployed because this previous position was for seasonal work. In terms of laundry, he made a video of his mother doing laundry that he has to watch each time he does his laundry because he cannot remember how the washing machine works and how to do it. He can cook for himself but he has to have cooked the specific meal with his mother first so that she can show him how to do so. He testified that he had a driver's license. His mother was disappointed by the doctor's letter dated 20 June 2014 as she expected him to provide more information based on their detailed discussion at the appointment; the physician called them to attend this appointment in response to a ministry letter but they don't know what was on that letter and she had not seen the physician's response until she received the reconsideration decision.

In its reconsideration decision, the ministry considered the opinion of another physician (Dr. H.) regarding the appellant's mobility and physical abilities as well as major impacts on cognitive and emotional functions. Dr. H. was not the doctor who completed the PR and the AR and no reports or documentation from Dr. H was included in the appeal record and the ministry could not find any such report or letter in their file at the hearing. The appellant's mother testified that they had never heard of that Dr. H. and that the appellant had not seen him. The panel also noted that the physician letter of 20 June started by "Thank you for your letter requesting further information on this patient. I will answer the questions in the order you have posed them:" but the ministry could not provide any copy of that letter, nor a summary of what it requested.

The panel determined the additional oral and documentary evidence was admissible under s. 22 of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration and provided confirmation of what was then available.

In terms of the evidence presented at reconsideration, the panel makes the following findings:

- Since there is no report or letter or any record of an opinion or other information from Dr. H. and in the absence of any evidence of him having seen or met the appellant, the panel gives no weight to his evidence in the reconsideration decision and notes that this evidence was already before the reconsideration officer through the appellant's physician in his PR and AR and it was no different than what Dr. H. reportedly provided.
- The panel also notes that in the absence of the letter or even a mention of what the questions were to the appellant's physician that prompted him to reply in his letter dated 20 June, the panel finds that this information lacks context.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant has not met all of the eligibility criteria for designation as a PWD because it was not satisfied that the appellant had a severe mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods resulting in the need for help to perform DLA was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry determined that the age requirement had been met and that the appellant has a severe mental impairment that will last for 2 years.

The criteria for being designated as a person with disabilities (PWD) are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR, which are set out below.

Section 2 of the EAPWDA states:

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;

"**health professional**" repealed

"**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 of the EAPWDR provides further clarification:

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.

The ministry acknowledges that the appellant meets 3 of the conditions for PWD designation in that he is at least 18 years of age, his impairment is likely to continue for 2 years or more and that he has a severe mental impairment. However, the ministry argues that he does not meet the 2 other criteria.

*Severe physical impairment:*

The ministry argued that based on the PR and AR, there is no evidence of any severe limitations in terms of mobility and physical abilities and that the appellant is independent in all those aspects, thus failing to establish a severe physical impairment.

The appellant did not provide any specific evidence that would show severe physical impairment. The medical evidence provided by the appellant's physician did not disclose any specific physical impairment – the diagnosis clearly supports mental impairment, not physical - and the panel finds the ministry reasonably determined that there is not enough evidence to show that the appellant has a severe physical impairment.

*Daily Living Activities (DLA):*

The ministry argued that while the medical practitioner indicated the appellant took significantly longer going to stores, at the bank and using public transit due to anxiety, no information is provided on how much longer it takes but he reports the appellant is independent for all his other DLA. In terms of unexpected demands and maintaining relationships, the ministry argued that there is no evidence showing how often he needs assistance while he is independent with the remainder of social

functions other than the extended social network where he has very disruptive functioning. Consequently, the ministry argued that the evidence does not confirm that the appellant's mental impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

The appellant argued that the physician who did the PR and the AR did not completely reflect the appellant's condition and its impact on his DLA. In fact, the appellant argued that there are a number of DLA that he cannot perform without the assistance of another known person, for instance: going shopping, making phone calls, completing application forms, taking his medication, personal hygiene (in particular when to take a shower, brushing teeth), cooking and doing laundry. Further, the appellant argued that his anxiety is such that he often cannot talk to strangers and if he does, he cannot understand what he is told.

In terms of DLA, the panel notes that the legislation clearly determines that it is the opinion of a prescribed professional that prevails when assessing whether the severity of the impairment directly and significantly restricts the person's ability to perform DLA either continuously or periodically for extended periods. While the appellant described his situation is a much different light than what appears in the PR and the AR, the panel notes that the physician's information came mainly from the appellant and his parents, plus the information on file. Yet, the physician describes the appellant as being independent for the vast majority of his DLA including personal care, basic housekeeping (laundry), meals and medications. The panel also notes that when there are restrictions, the physician does not provide any timeframe – only that it happens when he is anxious and that "patient reports that he experiences bad anxiety on a daily basis". When the physician reports that it takes longer for the appellant to perform a DLA, he doesn't indicate how much longer and when periodic support / supervision is needed, he doesn't indicate its degree and duration other than mentioning "He gets help from his parents and sister".

Although there is an inconsistency between the appellant and his mother's testimony and the opinion of the medical practitioner, the legislation requires that the determination of the severity of the impact on the DLA be based on the opinion of the medical practitioner and finds the ministry reasonably determined the appellant had not established that his severe mental impairment directly and significantly restricted his ability to perform DLA either continuously or periodically for extended periods.

*As a result of those restrictions, help required to perform DLA:*

The ministry argued that since DLA are not significantly restricted, it cannot be determined that significant help is required from other persons and that no assistive devices are required nor an assistance animal.

The appellant argued that he needed help to perform some of his DLA as mentioned above and that he could not perform some of them if he did not have that assistance.

While the evidence shows that the appellant needs help in certain circumstances, the panel finds the ministry reasonably determined it was not the result of significant restriction to perform his DLA as provided by s. 2(2)(b)(i) of the EAPWDA but that they are the result of his general condition and impairment.

Thus, the panel finds the ministry reasonably determined the appellant did not meet the legislative test of the need for help arising from significant restrictions to perform DLA either continuously or periodically for extended periods.

*Conclusion:*

The panel comes to the conclusion that the ministry reasonably determined the appellant does not have a severe physical impairment. Although the appellant has a severe mental impairment, the prescribed professional (appellant's physician) did not establish that this impairment directly and significantly restricted his ability to perform DLA either continuously or periodically for extended periods and that, as a result of those restrictions, he required help to perform those activities under s. 2(2) of the EAPWDA. Consequently, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.