

## PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) August 5, 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’s severe mental impairment, 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 that, in the opinion of a medical practitioner, her 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

The Appellant did not appear at the hearing. The Panel confirmed that notice of the hearing was provided to the Appellant and then, in accordance with section 86(b) of the Employment and Assistance Regulation, proceeded with the hearing in her absence.

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

1. Appellant's March 24, 2014 PWD application consisting of:

- A physician's report completed on February 26, 2014 by a doctor (hereafter "Dr. L") who indicated that the Appellant has been her patient since 2008 and she had seen the Appellant 2-10 times in the past 12 months
- An assessor's report completed on March 4, 2014 by a nurse practitioner (hereafter "NP") who indicated that she has known the Appellant for 5 years and had seen the Appellant 2-10 times in the last year. The nurse practitioner added that the Appellant has seen her regularly during outreach clinics.
- A psychiatry consult dated February 18, 2014 completed by a psychiatrist (hereafter "Dr. N").

2. Appellant's July 30, 2014 request for reconsideration in which she provided a written statement and also submitted a letter from Dr. N

3. Letter dated July 30, 2014 to the Ministry from Dr. N.

Because the Appellant did not appear at the hearing, the Panel will consider her request for reconsideration statement to be her position in this appeal. The Ministry relied on and reaffirmed its reconsideration decision.

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 physician's report, Dr. L had diagnosed the Appellant with mood disorder, anxiety and depression. The more updated diagnoses of the Appellant's conditions are in the July 20, 2014 letter from Dr. N, the psychiatrist; that is, major depressive disorder - recurrent, severe; posttraumatic stress disorder - chronic and severe; social anxiety disorder; and, alcohol use disorder. Dr. N also wrote that the Appellant dislikes being on pills if at all possible, was not motivated to try counseling at that time and is concerned about how the depression is affecting her functioning and energy.

### *Daily Living Activities*

The Appellant described her daily functioning limitations as follows:

- Tried to go to work one day and had a hard time leaving the house. Her anxiety about leaving and throughout the day was hard. She does not have the energy to go out and she finds that she cannot be in public for too long. She has missed two really important medical appointments and a different doctor won't see her.
- Has a really hard time going to sleep when she needs to.
- Finds it hard to socialize with anyone.
- Is finding it hard to keep up with her own housework, cooking and cleaning.

In the physician's report, Dr. L provided the following information about the Appellant's ability to manage daily living activities:

- Has not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities.
- Has very poor sleep which affects her ability to function during the day.
- Due to her depressed mood, lacks motivation, concentration and this affects her memory.
- Answered yes to the question whether the Appellant's impairment directly restricts her ability to perform daily living activities.
- Next to the list of daily living activities in part E of the report, boxes for "yes" are checked off, crossed out and also boxes for "no" are checked off next to personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and management of finances. There are no explanations for these changes.
- Management of medications is restricted periodically – "forgetful".
- Social functioning is restricted periodically.
- For the explanation for "periodic" the doctor added "severely impaired at times, especially under stress". "Her social functioning is impaired by her depression & anxious mood."
- Degree of restriction – "moderate to severe".

In the assessor's report, the NP reported the impacts of the Appellant's impairments as follows:

- Has good ability to communicate in all areas (speaking, reading, writing, and hearing).
- Independently manages walking indoors/outdoors and climbing stairs, but takes significantly longer with all three – "fatigue"; independently manages lifting, and carrying and holding.
- Low mood impacts all daily activities; severe insomnia, poor appetite, very low energy.
- Independently manages all areas of personal care, paying rent and bills - "has direct payment of rent/utilities", medications and transportation.
- Independently manages laundry and basic housekeeping, needs periodic assistance with both and they take significantly longer – "poor motivation, some support from mother".
- Independently manages all areas of shopping; going to/from stores and carrying purchases home take significantly longer.
- Independently manages all areas of meals; meal planning, food preparation and cooking take significantly longer.
- Needs periodic assistance with all areas of social functioning.
- Has marginal functioning with her immediate social network – "tends to isolate self", and with her extended social network.

Dr. N described the impacts of the Appellant's impairments on her functioning as follows:

- Sleep is a major issue varying from 2-9 hours at night and sometimes days without sleep resulting in worsening of fatigue.
- Despite successful abstinence from alcohol for months, the Appellant's major depressive disorder has resulted in a further decline in functioning in the last few months.
- Missed multiple medical appointments and tried to return to a prior job unsuccessfully due to increase in depression and anxiety under the stress of leaving the house, and taking on past work.
- Sleep, appetite, energy, concentration and communication are affected by major depression with social isolation, anhedonia and hopelessness.
- Has a history of difficulty with compliance with medication due to ambivalence regarding medications and attention/memory problems.

*Help with Daily Living Activities*

Dr. L wrote that the Appellant is struggling with caring for her children due to her mood and needs extra help.

The NP noted that family help the Appellant, her parents support her, and community service agencies provide assistance. Also the Appellant needs the following help: ongoing counseling, bus pass, recreation centre pass for herself and her children. She also needs food; her parents are providing food and free babysitting. The Appellant does not have an assistance animal and for equipment or devices, the NP wrote "N/A"[not applicable].

Dr. N wrote that counseling for depression and anxiety could be helpful, but the Appellant is not motivated to try it; concurrent disorder treatment might be attempted.

## 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's severe mental impairment, 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 reasonableness of the Ministry's decision with respect to the two PWD criteria at issue in this appeal.

### **Restrictions to Daily Living Activities**

The Appellant's position is that her severe mental impairments restrict her ability to function; for example, she has difficulty leaving her house and socializing with anyone, taking care of her house and cooking, and making it to her appointments.

In its reconsideration decision, the Ministry wrote that it is satisfied that the Appellant has a severe mental impairment, but it was not satisfied that the information demonstrates that her severe impairment, in the opinion of a prescribed professional, significantly restricts her ability to perform

daily living activities either continuously or periodically for extended periods.

#### *The Panel's Findings*

Section 2(2)(b) of the EAPWDA requires a prescribed professional's opinion confirming that the Appellant's severe mental 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 physician's and assessor's reports. The prescribed professionals in this case are Dr. L., Dr. N the psychiatrist and the nurse practitioner.

It is not clear from Dr. L's report how restricted the Appellant is in her ability to manage daily living activities, except for managing medications and social functioning, which Dr. L reported are periodically restricted. The only detail from the doctor is that the Appellant is severely impaired at times, especially under stress, and that she is forgetful about her medications and her social functioning is impaired by her depression or anxious moods.

The NP reported that, with the exception of social functioning, the Appellant independently manages all her daily living activities, including those requiring cognitive abilities such as making appropriate shopping choices, planning meals and managing her medications. For basic housekeeping, the Appellant is independent, but she also needs periodic assistance and takes longer, with poor motivation and support from her mother. As for social functioning, the NP reported that the Appellant needs periodic support or supervision. However, in the areas of social functioning, neither Dr. L nor the NP provided any details about how much support or supervision the Appellant needs or how often. The NP only added that the Appellant tends to isolate herself in her immediate social network.

Although Dr. N wrote that the Appellant's major depressive disorder has resulted in a further decline in functioning in the last few months, Dr. N provided no specifics about such a decline or which daily living activities are restricted and to what extent. Therefore, when the combined information from the three prescribed professionals is considered, the Panel finds that the Ministry reasonably determined that the information does not demonstrate that the Appellant's severe mental impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods

#### **Help with Daily Living Activities**

The Appellant's position is that she needs help from family, from counseling services and from community service groups.

The Ministry's submitted that the information did not establish that the Appellant's needs the significant help of another person, any assistive devices or an assistance animal. Also, its 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. As noted above, none of the prescribed professionals provided details about how often or the extent of help or supervision the Appellant needs with

managing daily living activities. Only general information was provided that the Appellant needs and receives help from her parents, and that she needs ongoing counseling and help from community service agencies. Therefore, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant needs significant help to manage her 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.