

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “Ministry”) September 3, 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 has a severe mental or physical impairment that 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 in the opinion of a medical practitioner his 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 self-report completed on March 26, 2014.
- Physician's report and assessor's report both completed on March 24, 2014 by a doctor who indicated that he had known the Appellant for 2 weeks and had seen him between 2-10 times in the preceding 12 months.
- A November 6, 2002 psychological, vocational and learning disability assessment prepared by a registered psychologist.

2. Appellant's request for reconsideration with an August 27, 2014 written submission from his advocate. The advocate stated that the doctor previously did not reflect the degree of supervision and assistance that the Appellant's mother provides for his daily living activities. His level of functioning requires daily supervision. His mother attends his residence on an almost daily basis and accompanies him to appointments and many of his other outside activities. The advocate also wrote that the doctor added information to his original reports, as summarized below. At the hearing, the advocate indicated those additions were made sometime between August 13 and August 27, 2014 during an appointment the Appellant had with the doctor.

At the hearing, the Appellant's advocate submitted oral argument which is summarized in Part F of this decision. The advocate and the Appellant also provided the following information about the Appellant's circumstances:

- His mother stops by almost daily to check on him, to make sure he gets his nutrition and to help with his finances.
- His mother goes with him to appointments, such as the doctor's appointments. Also, his mother completed the self-report part of the PWD application because he is unable to understand and complete forms. One of the most difficult tasks for him is reading; he doesn't comprehend what he reads.
- He often calls his mother, his sister or friends for help during the day; for example, if he cannot manage a change in his meals.
- Previous doctors prescribed medications for conditions such as anxiety but he said that he avoids taking medications.

Pursuant to section 22(4) of the Employment and Assistance Act, the Panel admits this information as substantiating and being in support of evidence that the Ministry had at reconsideration.

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

The Panel has summarized the relevant evidence from the reports as follows.

Diagnoses

In the physician's report, the doctor diagnosed the Appellant as learning disabled. In August 2014, the doctor added to the physician's report that the Appellant had a previous back injury with a mild compression fracture.

Impairments

In the self-report, the Appellant's impairments are described as follows:

- Has trouble comprehending information; reading ability and spelling are affected also.
- Requires assistance with filling out forms and other legal business.
- Requires assistance to get around; i.e., reading signs, directions – gets flustered easily.
- Requires help with all kinds of directions, including getting around with ease, with legal documents, paying bills, reading instructions.
- Sense of learning new things causes lots of distress and he is more of a hands-on learner.

The following information about the Appellant is provided in the 2002 assessment:

- Communicates well orally, but at times seems not to understand or misunderstands some verbal instructions and comments.
- Has an auditory information processing problem – when he receives too much information, it does not all get through.
- Clinical profile was suggestive of having marked anxiety and tension; changes in routine, unexpected events and contradictory information likely to result in untoward stress, affecting his ability to concentrate.
- Performance on tests/assessments indicates a diagnosis of specific learning disabilities; i.e., severe reading disorder and written language learning disabilities.

The doctor, in the physician's report, described that Appellant as being learning disabled with difficulty reading and understanding. The doctor reported that the Appellant:

- Can walk 4+ blocks, can climb 5+ stairs, and has no limitations with lifting or remaining seated.
- Has difficulties with communication; i.e., reading and writing due to cognitive causes.
- Has significant deficits in the following areas of cognitive and emotional functioning: executive, language and attention/sustained concentration.

In the assessor's report, the doctor indicated the following regarding the Appellant's cognitive and emotional functioning:

- No impact in the areas of bodily functions, consciousness, impulse control, memory, motor activity, psychotic symptoms, other neuropsychological problems, and other emotional/mental problems.
- Minimal impact in the areas of attention/concentration and motivation.
- Moderate impact in the areas of insight/judgement, executive and language.
- "Learning disabled".

Daily Living Activities

In the physician's report, the doctor noted that the Appellant has not been prescribed any medication or treatments that interfere with his ability to perform daily living activities. The doctor reported that the Appellant:

- Independently manages personal self care, meal preparation, basic housework, daily shopping, mobility inside/outside the home, and use of transportation.
- Is continuously restricted in management of medications, management of finances and social functioning; for social functioning, wrote: "reading and writing dysfunction".
- Needs assistance with financial planning, review of documents and explanations.

In the assessor's report the doctor reported that the Appellant:

- Has good ability in speaking and hearing, and poor ability in reading and writing – "learning disabled".
- Independently manages walking indoors/outdoors, climbing stairs, standing, lifting, and carrying and holding; all areas of personal care, basic housekeeping, meals and

transportation.

- Independently manages going to/from stores and carrying purchases home; needs continuous help with reading prices/labels, making appropriate choices and paying for purchases- “learning disabled”.
- Needs continuous assistance with all areas of paying rent and bills – “learning disabled”.
- Needs continuous assistance with filling/refilling prescriptions; periodic assistance with taking medications as directed – “learning disabled”; independently manages safe handling and storage of medications.
- “Requires ongoing assistance from his mother”.
- For social functioning, is independent in making appropriate social decisions, developing and maintaining relationship, interacting appropriately with others, and securing assistance from other; needs periodic support/supervision with dealing appropriately with unexpected demands.
- Has good functioning with his immediate social network, and marginal functioning with his extended social network.

Help with Daily Living Activities

In the physician’s report, in the section for restrictions to daily living activities, the doctor wrote that the Appellant needs assistance with financial planning, review of documents and explanation. In the assessor’s report, the doctor wrote that the Appellant gets assistance from his mother with reviewing documents and planning. In the August 2014 additions to the assessor’s report, the doctor wrote in the section for daily living activities: “mother assists on an ongoing basis” and “requires ongoing assistance from his mother”. However, the doctor provided no details about which activities the Appellant’s mother helps him with.

The doctor did not complete the assistive device portion of the assessor’s report and indicated that the Appellant does not have an assistance animal. In the physician’s report, the doctor reported that the Appellant does not require any aids for his impairment.

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 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 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 the reasonableness of the Ministry’s decision under the PWD criteria at issue in this appeal.

Severe Physical Impairment

The Panel notes that there is no diagnosis of any current physical health conditions and no evidence of any physical functioning limitations. Therefore, the Panel finds that the Ministry reasonably determined that the evidence does not establish a severe physical impairment.

Severe Mental Impairment

The Appellant’s advocate submitted that the evidence establishes the Appellant has a severe mental impairment. In addition to the diagnosis of a learning disability, the doctor reported significant deficits

to areas of cognitive and emotional functioning, as well as impacts to the Appellant's daily functioning especially with activities requiring executive, language, reading and attention/concentration abilities. Also, the Appellant requires ongoing assistance from his mother with many tasks.

In its reconsideration decision, the Ministry indicated that it reviewed the information in the PWD application and the information submitted with the request for reconsideration. The Ministry determined that the information provided does not demonstrate either a severe impairment or significant restriction in the Appellant's ability to perform daily living activities.

The Panel's Findings

The diagnosis of a serious medical condition does not in itself establish a severe impairment. To satisfy the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment restricts daily functioning. This includes evidence from the Appellant as well as from a prescribed professional, such as the doctor who completed the reports.

The doctor diagnosed the Appellant as learning disabled, and added "reading and writing" in various sections of his reports. The doctor also noted that the Appellant has significant deficits with cognitive and emotional functioning in the areas of executive, language and attention/sustained concentration. The Appellant indicated that he has trouble with comprehending information, with reading generally, and with filling out or understanding forms. He needs help with planning, with paying bills and with any written instructions.

In the assessor's report, however, the doctor noted no major impacts to any areas of cognitive and emotional functioning, only moderate impact to insight/judgement, executive and language, and only minimal impact to attention/concentration and motivation. Also, the doctor provided no details about how the reported impacts affect the Appellant's daily functioning; he just added "learning disabled". In the physician's report, the doctor did note that for some activities requiring cognitive abilities and/or reading and writing abilities, the Appellant needs continuous assistance, such as with paying rent/bills, reading prices and labels, and paying for purchases. However, again the doctor added only "learning disabled".

As for social functioning, the doctor noted in the physician's report that this activity is continuously restricted, adding "reading and writing dysfunction". However, in the assessor's report, the doctor reported that the Appellant is independently able to manage all areas of social functioning except for needing periodic support/supervision with dealing appropriately with unexpected demands. As for any details about help with social functioning, the doctor added that the Appellant gets help from his mother with reviewing documents and planning. The Appellant also has good functioning with his immediate social network.

The Panel acknowledges that the information provided demonstrates that the Appellant experiences difficulties with various daily tasks because of his learning disability. However, when the evidence is considered as a whole, the Panel finds that the Ministry reasonably determined that the evidence does not establish a severe mental impairment.

Restrictions to Daily Living Activities

The Appellant's position is that his learning disability significantly restricts his ability to manage those

daily living activities which require planning or executive abilities, concentration, motivation, and reading and writing abilities. The doctor reported that he needs continuous assistance with several activities.

The Ministry's position is that the information from the prescribed professional does not establish that the Appellant's impairment significantly restricts the Appellant's 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 or physical 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 physician's and assessor's reports. The prescribed professional in this case is the doctor who completed these two reports.

The Panel notes that there are some inconsistencies in the doctor's reports, as well as, the information that the Appellant provided. In the physician's report, the doctor indicated that management of medications, management of finances and social functioning are continuously restricted. The only additional information the doctor provided "reading and writing dysfunction". In the assessor's report, the doctor reported that the Appellant needs continuous assistance with paying rent/bills and with some aspects of shopping requiring reading and cognitive abilities, but added only "learning disabled". For medications, the doctor reported that the Appellant only needs continuous assistance with filling/refilling prescriptions, but periodic help with taking them as directed and no help with safe handling and storage. At the hearing, however, the Appellant stated that he avoids taking medications. Also, there is no information from the doctor about any medications that the Appellant may be taking. Therefore, it is not clear whether the Appellant does in fact need any help with medications or what kind of help he would need.

The reports regarding impacts to social functioning are also not consistent. In the assessor's report, the doctor noted continuous restrictions in this daily living area. But then in the physician's report, the doctor noted that the Appellant independently manages all areas of social functioning, except for needing periodic support/supervision with dealing appropriately with unexpected demands. The doctor added only that the Appellant gets assistance from his mother with reviewing documents and planning. In August 2014, although the doctor added that the Appellant needs ongoing assistance from his mother, the doctor provided no details about which tasks such assistance is needed for.

The doctor also reported that the Appellant manages many areas of daily living activities independently, including all aspects of self-care, meal preparation, basic housework, and mobility inside and outside the home. Therefore, when the whole of the doctor's evidence is considered, the Panel finds that the Ministry reasonably concluded that the evidence does not demonstrate that the Appellant's impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Appellant's position is that the doctor confirmed that he needs ongoing or continuous assistance from his mother with many daily tasks, including planning, finances, and shopping. His sister and

friends also help with tasks such as meal changes.

The Ministry's position is that because the evidence does not establish that daily living activities are significantly restricted, it cannot determine that the Appellant requires significant help from other persons. Also, it noted that the information from the doctor did not establish that the Appellant requires any assistive devices, the significant help of another person 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.

As discussed above, the doctor did report that certain activities are continuously restricted or require continuous assistance. The doctor also reported that the Appellant needs and gets ongoing assistance from his mother. However, the doctor provided no details about which activities that help is needed or provided for. The only information provided by the doctor is that help is given for financial planning, review of documents and explanations.

Based on the evidence from this prescribed professional, 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 all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore the Panel confirms that decision.