

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 17, 2014 which found that the appellant did not meet three of the five 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 and that his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the applicant information dated August 25, 2014 and a typed self-report dated June 27, 2014, a physician report (PR) and an assessor report (AR) both dated August 21, 2014 and completed by a general practitioner who has known the appellant since March 2010.

The evidence also included:

- 1) Note dated January 31, 2013 to the general practitioner from a surgeon; and,
- 2) Request for Reconsideration dated November 25, 2014 with submissions prepared by an advocate on the appellant's behalf and attached documents, namely:
 - Information sheets for DSM IV-TR criteria for generalized anxiety disorder and major depressive disorder;
 - Excerpts from the court decision in *Hudson v. EAAT, 2009 BCSC 1461*;
 - Copy of the ministry's original Denial Decision Summary;
 - Undated letter with the general practitioner's responses to various questions, stamped received by the ministry on December 8, 2014.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with major depressive disorder (onset 2014), anxiety disorder (onset 2014), chronic seizure disorder, chronic neck pain (onset 2014), and carpal tunnel (onset 2013).

Physical Impairment

In the PR, the general practitioner reported that:

- In terms of health history, the appellant has "chronic neurological and mental health issues."
- The appellant does not require any prosthesis or aid for his impairment.
- In terms of functional skills, the appellant can walk 4 or more blocks unaided, can climb 5 or more steps unaided, lift 7 to 16 kg. (15 to 35 lbs.), and has no limitation with remaining seated.

In the AR the general practitioner indicated that:

- The appellant is assessed as being independent in all areas of mobility and physical ability, namely: with walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. The general practitioner commented with respect to carrying and holding: "may cause some neck discomfort."
- No assistive devices are indicated in the section of the AR relating to assistance provided.

In his self-report, the appellant indicated that:

- He suffers from abdominal hernia, seizures, chronic headaches, carpal tunnel, and chronic neck pain (going to see a specialist).
- He is not comfortable sitting for very long and he has difficulty wearing pants due to his hernia.
- He is unable to walk very far due to pain.
- He is unable to grasp or grip objects due to carpal tunnel.
- He has difficulty bending down or lifting/carrying due to his health conditions.

- He has difficulty going up and down stairs or ramps.

In the note dated January 31, 2013, the surgeon referred to neuropathic pain but the balance of the note, for the most part, is illegible.

Mental Impairment

In the PR, the general practitioner reported:

- In terms of health history, the appellant has failed therapy for depression, anxiety.
- The appellant has no difficulty with communication.
- The appellant has significant deficits with cognitive and emotional function in the areas of executive, memory, emotional disturbance, motivation and attention/concentration, with no further commentary added.
- In the additional comments to the PR, the general practitioner wrote: "seizure disorder/ mental health issues."

In the AR, the general practitioner indicated that:

- The appellant has a satisfactory ability to communicate in speaking, reading and writing and good hearing.
- There are two major impacts to the appellant's cognitive and emotional functioning in the areas of emotion and attention/concentration. Moderate impacts are assessed to insight and judgment, executive, memory, motivation, and other emotional or mental problems. There is a minimal impact to impulse control, and no impacts to the remaining 6 areas of functioning. The general practitioner wrote: "depression/ anxiety/ concentration/ focus/ memory issues."
- With respect to social functioning, the appellant is assessed as being independent in making appropriate social decisions and requiring periodic support/supervision with developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. There was no explanation or description of the degree and duration of the support/supervision required.
- The appellant has marginal functioning in both his immediate and extended social networks.
- Asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner wrote: "therapy, counseling mental health issues."

In his self-report, the appellant indicated that:

- He gets in a depressed mood because he does not see a bright future for himself with his health conditions and their financial situation. He feels that he is not adequately providing for his family.
- He has a difficult time getting up in the morning because he does not have the motivation.
- He needs to take medication daily to control his seizures, his medication dosage has been increased, and he sometimes forgets to take his medication.

In the undated letter, the general practitioner indicated that:

- Asked if, in his opinion, the appellant has a severe mental or physical impairment that directly and significantly restricts his ability to perform daily living activities continuously or periodically for extended periods, the general practitioner crossed out the yes or no response and wrote: "significant depression, currently not on therapy."

The information sheet for DSM IV-TR criteria for generalized anxiety disorder includes a description of excessive anxiety about a number of events or activities, occurring more days than not for at least 6 months. The anxiety, worry or physical symptoms cause clinically significant distress or impairment in social or occupational functioning.

The information sheet for DSM IV-TR criteria for major depressive disorder includes a description of the condition as presenting 5 or more of a list of symptoms during the same 2-week period and representing a change from previous functioning. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Daily Living Activities (DLA)

In the PR, the general practitioner indicated that:

- In terms of health history, the appellant has “difficulty performing IADLs and ADL’s.”
- The appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities.

In the AR, the general practitioner reported that:

- The appellant is independent with moving about indoors and outdoors.
- The appellant is independent with all tasks of the DLA personal care, basic housekeeping, shopping, paying rent and bills, and managing transportation.
- On the page of the AR listing the DLA personal care, basic housekeeping and shopping, the general practitioner wrote: “independent.”
- Regarding managing medications, the appellant uses an assistive device with all tasks, namely filling/refilling prescriptions, taking as directed and safe handling and storage. The general practitioner wrote: “depression, memory, concentration issues” but did not identify the particular assistive device used by the appellant.

In his self-report, the appellant indicated that:

- He is in a great deal of pain and has difficulty to perform his DLA but he has no choice to do them because his family depends on him. His wife also has a disability.
- His disability makes it difficult for him to do the following activities: personal care (bathing, getting in and out of furniture including his bed, having motivation) , meals (food preparation, cooking, remembering to eat regular and healthy foods), remember to take his medications, housekeeping (motivation to do housekeeping, laundry), shopping (going to and from stores, carrying purchases home), move about indoors and outdoors (going up and down stairs, walking), make decisions and plan ahead, and ask for help when he needs it.
- He lacks the motivation to perform DLA.

In the undated letter, the general practitioner indicated that:

- Asked to identify DLA that are restricted continuously, the general practitioner circled only social functioning. In his explanation, the general practitioner wrote: “depressed mood, significant anxiety, decreased motivation, hopelessness, decreased concentration, attention. Symptoms cause clinically significant distress or impairment in social, occupational functioning.
- Asked if, in his opinion, the appellant requires help to perform these activities as result of these restrictions, the general practitioner crossed out the yes or no response and wrote: “at times requires assistance.”

- Asked to explain what kind of help the appellant gets or what activities the appellant is unable to do, the general practitioner wrote: "currently requires help with mental health issues. I will refer to psychiatry."
- Asked whether, in his opinion, the appellant should be entitled to PWD benefits from the ministry, the general practitioner wrote: "No comment. I feel that patient can (illegible) function if he complies with recommendations."

Need for Help

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant's family and friends assist him. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not indicate any of the listed devices or describe the device used by the appellant.

In his self-report, the appellant indicated that:

- He does not have anyone he can turn to for support with DLA because his wife also has a disability.
- They do not have any family here or any friends to support them.

In his Notice of Appeal dated December 23, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he should be eligible for PWD.

The ministry relied on its reconsideration decision as summarized at the hearing.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant does not have a severe mental or physical impairment based on the information provided and that his daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. Also, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

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;

"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(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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.

Severe Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of pain due to his chronic neck pain and carpal tunnel and seizures as a result of his chronic seizure disorder. The advocate wrote in the submission that the appellant's narrative must be considered as part of the application and significant weight must be placed on the evidence of the appellant unless there is a legitimate reason not to do so, on the basis of the court decision in *Hudson*.

The ministry's position is that the appellant's functional skill limitations are not significantly restricted and are more in keeping with a mild degree of physical limitation. The ministry stated that the general practitioner reported that the appellant is independent in all aspects of mobility and physical ability. The ministry stated that there is not sufficient information to establish that the appellant has a severe physical impairment.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An "impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively.

To assess the severity of an impairment the ministry must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which the ability to perform DLA is restricted. In making its determination the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from a "prescribed professional" – in this case, the general practitioner.

The general practitioner, who had known the appellant since March 2010, diagnosed the appellant with chronic neck pain which started in 2014 and carpal tunnel with an onset in 2013 as well as chronic seizure disorder. In his self-report, the appellant wrote that he suffers from abdominal hernia which makes him uncomfortable to sit for very long. He also suffers from seizures, chronic headaches, carpal tunnel which makes him unable to grasp or grip objects, and chronic neck pain and that he is going to see a specialist. The appellant wrote that he is unable to walk very far due to pain, he has difficulty bending down or lifting/carrying due to his health conditions, and that he has difficulty going up and down stairs or ramps.

While the appellant expressed that he experiences difficulty with his physical functioning, when the

general practitioner assessed the appellant's functional skills, he reported in the PR that the appellant can walk 4 or more blocks unaided, can climb 5 or more steps unaided, lift 15 to 35 lbs., and has no limitation with remaining seated. In the PR, the general practitioner reported that the appellant does not require any prosthesis or aid for his impairment. Further, in the AR the general practitioner indicated that the appellant is independent in all areas of mobility and physical ability, namely: with walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding. The general practitioner commented with respect to carrying and holding: "may cause some neck discomfort. No assistive devices are indicated by the general practitioner in the section of the AR relating to assistance provided to the appellant.

Considering all of the evidence including the appellant's independent mobility and independent physical functioning, with the exception of a slight limitation to the appellant's lifting ability, the panel finds that the ministry reasonably determined that there is not sufficient evidence to establish that the appellant has a severe physical impairment under Section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that he suffers from major depressive disorder, anxiety disorder, and chronic seizure disorder. The advocate wrote in the submission that the appellant's narrative must be considered as part of the application and significant weight must be placed on the evidence of the appellant unless there is a legitimate reason not to do so, on the basis of the court decision in *Hudson*. The advocate wrote that the DSM IV has strict criteria for diagnosing conditions such as major depressive disorder and anxiety disorder and should be considered as severe mental impairments. The advocate pointed out that the doctor indicated that the appellant has significant deficits in 5 areas of cognitive and emotional function. The advocate wrote that the doctor indicated that the appellant's condition has a moderate impact on 5 areas of functioning and a major impact on 2 areas of functioning.

The ministry's position is that there is insufficient evidence to establish that the appellant has a severe mental impairment. The ministry argued that the general practitioner reported that the impacts to cognitive and emotional functioning are mostly moderate with two major impacts on emotion and attention/concentration, and there are a number of aspects with no impact at all. The ministry argued that the evidence demonstrates that the appellant is able to make decisions about personal activities, care and finances and he is able to relate to, communicate and interact with others adequately.

Panel Decision

The general practitioner diagnosed the appellant with major depressive disorder and anxiety disorder which both started in 2014, and chronic seizure disorder. In the undated letter, the general practitioner crossed out the yes or no response to the question whether the appellant has a severe mental or physical impairment that directly and significantly restricts his ability to perform daily living activities continuously or periodically for extended periods, and the general practitioner wrote: "significant depression, currently not on therapy." In the PR, the general practitioner reported that, in terms of health history, the appellant has failed therapy for depression, anxiety. Asked in the undated letter whether, in the general practitioner's opinion, the appellant should be entitled to PWD benefits from the ministry, the general practitioner wrote: "No comment. I feel that patient can (illegible) function if he complies with recommendations." While the advocate argued that the DSM IV has strict criteria for diagnosing conditions such as major depressive disorder and anxiety disorder and these conditions should be considered as severe impairments, the evidence of the general practitioner is

that the appellant is not currently compliant with the recommended treatments and this may be at least part of the cause of impacts from the conditions.

In his self-report, the appellant wrote that he gets in a depressed mood because he does not see a bright future for himself with his health conditions and financial situation. He has a difficult time getting up in the morning because he lacks motivation. He needs to take medication daily to control his seizures, his medication dosage has been increased, and he sometimes forgets to take his medication. In the AR, the general practitioner indicated that there are two major impacts to the appellant's cognitive and emotional functioning in the areas of emotion and attention/concentration. Moderate impacts are assessed to insight and judgment, executive, memory, motivation, and other emotional or mental problems and there is a minimal impact to impulse control. The general practitioner wrote: "depression/ anxiety/ concentration/ focus/ memory issues."

Considering the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), the evidence does not establish that the appellant is significantly restricted in either. In his self-report, the appellant wrote that his disability makes it difficult for him to do the following activities: personal care (bathing, getting in and out of furniture including his bed, having motivation) , meals (food preparation, cooking, remembering to eat regular and healthy foods), remember to take his medications, housekeeping (motivation to do housekeeping, laundry), shopping (going to and from stores, carrying purchases home), move about indoors and outdoors (going up and down stairs, walking), make decisions and plan ahead, and ask for help when he needs it. However, the general practitioner specifically wrote "independent" on the page of the AR listing the DLA personal care, basic housekeeping and shopping. With respect to decision making, the general practitioner reported in the AR that the appellant is independent in the decision-making components of the DLA of daily shopping (making appropriate choices), and meal preparation (meal planning and food storage). The general practitioner also reported in the AR that the appellant is independent with making appropriate social decisions and he independently manages his finances (banking, budgeting, pay rent and bills) and uses an unidentified assistive device to manage his medications (taking as directed and safe handling).

Regarding the DLA of social functioning, the appellant is assessed in the AR as requiring periodic support/ supervision from another person with developing and maintaining relationships, interacting appropriately with others and securing assistance from others. The general practitioner did not provide a description in the AR of the degree and duration of the support/supervision required. In the undated letter, the general practitioner indicated that social functioning is continuously restricted. In his explanation, the general practitioner wrote: "depressed mood, significant anxiety, decreased motivation, hopelessness, decreased concentration, attention. Symptoms cause clinically significant distress or impairment in social, occupational functioning." Asked if, in his opinion, the appellant requires help to perform [aspects of social functioning] as result of these restrictions, the general practitioner wrote: "at times requires assistance." In the PR, the general practitioner reported that the appellant has no difficulty with communication and, in the AR, that he has a good or satisfactory ability to communicate in each area.

Given the absence of significant impacts assessed to the appellant's mental functioning and the undefined periodic restrictions to social functioning, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under Section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that his physical and mental impairments directly and significantly restrict his ability to perform DLA on an ongoing basis to the point that he requires the significant assistance of another person. The advocate wrote that the appellant's doctor provided a letter of support. The advocate wrote that the wording of the application questions are focused on physical limitations and the wording "independent" does not necessarily mean not disabled; a person with a disability can still be independent.

The ministry's position is that the information from the prescribed professionals does not establish that the appellant's impairments significantly restrict his DLA either continuously or periodically for extended periods of time. The ministry argued that the majority of DLA are performed independently and there is insufficient detail provided by the prescribed professional regarding the assistive device used to manage medications and the degree and duration of the periodic support/supervision required for 4 of the 5 aspects of social functioning.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner is the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, the prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner reported that the appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform DLA. The appellant wrote in his self-report that he needs to take medication daily to control his seizures and his medication dosage has been increased, but he does not assert that the medications have an impact on his ability to perform his DLA. The appellant stated that his disability makes it difficult for him to do the following activities: personal care (bathing, getting in and out of furniture including his bed, having motivation), meals (food preparation, cooking, remembering to eat regular and healthy foods), remember to take his medications, housekeeping (motivation to do housekeeping, laundry), shopping (going to and from stores, carrying purchases home), move about indoors and outdoors (going up and down stairs, walking), make decisions and plan ahead, and ask for help when he needs it. The appellant wrote that he lacks the motivation to perform DLA. In the PR, the general practitioner indicated that the appellant has "difficulty performing IADLs and ADL's."

However, in the AR, the general practitioner reported that the appellant is independent with moving about indoors and outdoors and with all tasks of the DLA personal care, basic housekeeping, shopping, paying rent and bills, and managing transportation. Regarding the DLA of managing medications, the general practitioner indicated that the appellant uses an assistive device with all tasks and wrote: "depression, memory, concentration issues," but did not identify the particular assistive device used by the appellant. In his self-report, the appellant wrote that he is in a great deal of pain and has difficulty performing his DLA but he has no choice to do them because his family depends on him.

In the AR, the appellant is assessed as being independent in making appropriate social decisions and requiring periodic support/supervision with developing and maintaining relationships, interacting

appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The general practitioner did not provide any commentary to explain or describe the degree and duration of the support/supervision required. Asked to describe the support/supervision required by the appellant that would help to maintain him in the community, the general practitioner wrote: "therapy, counseling mental health issues."

In the undated letter, the general practitioner indicated that the appellant's social functioning is continuously restricted, described as: "depressed mood, significant anxiety, decreased motivation, hopelessness, decreased concentration, attention. Symptoms cause clinically significant distress or impairment in social, occupational functioning." Asked if, in his opinion, the appellant requires help to perform these activities as result of these restrictions, the general practitioner wrote: "at times requires assistance." Asked to explain what kind of help the appellant gets or what activities the appellant is unable to do, the general practitioner wrote: "currently requires help with mental health issues. I will refer to psychiatry." Asked whether, in his opinion, the appellant should be entitled to PWD benefits from the ministry, the general practitioner wrote: "No comment. I feel that patient can (illegible) function if he complies with recommendations."

Considering the evidence of the general practitioner, as the prescribed professional, in the PR, AR and the undated letter, the panel finds that the ministry reasonably concluded that the evidence is insufficient to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, thereby not satisfying the legislative criterion of Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that his combined physical and mental impairments significantly restrict his daily living functions to a severe enough extent that significant assistance is required and he uses an assistive device to manage his medications.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The ministry stated that no assistive devices are required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the AR, the general practitioner reported that, with respect to the assistance provided by other people, the appellant's family and friends assist him. In the section of the AR for identifying assistance provided through the use of assistive devices, the general practitioner did not indicate any of the listed devices or describe the device used by the appellant for managing his medications. In his self-report, the appellant wrote that he does not have anyone he can turn to for support with DLA because he wife also has a disability and they do not have any family here or any friends to support them. The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and 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, and therefore confirms the decision.