

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 5, 2014 which found that the appellant did not meet two 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 she has a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- 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 Person With Disabilities (PWD) Application comprised of the applicant information dated July 2014, a physician report (PR) and an assessor report (AR) both dated July 3, 2014 and completed by a psychiatrist who has known the appellant since July 2010.

The evidence also included the following:

- 1) Pharmacy information sheets regarding several medications, including mood stabilizers, antidepressants, anxiety and bipolar medication;
- 2) Undated letter from the appellant;
- 3) Undated Request for Reconsideration document signed by the psychiatrist who completed the PR and the AR;
- 4) Letter dated April 29, 2011 from student aid BC advising the appellant that her permanent disability status has been approved; and,
- 5) Request for Reconsideration dated October 31, 2014.

Diagnoses

In the PR, the appellant was diagnosed by the psychiatrist with mood disorder, bipolar disorder, generalized anxiety disorder and panic disorder with onset in May 2010, with a comment added by the psychiatrist: "these are genetically transmitted disorders and pt [patient] likely had it all her life."

Daily Living Activities (DLA)

In the PR, the appellant's psychiatrist reported that:

- In terms of health history, the appellant's "...disorders are severe. Bipolar has mood fluctuations, sleep disturbances, racing thoughts, difficulties concentrating and making decisions, agitation, fluctuations in self-esteem. She has panic attacks which prevent her from leaving her home. She has not been able to keep part-time jobs for more than a few months before being fired for not being able to follow instructions, poor social and communication skills."
- The appellant has been prescribed medications that interfere with her DLA as "the medications can have side effects of sedation, which may lead to tardiness and unable to work."
- Regarding the degree and course of impairment, the psychiatrist wrote that the appellant "has lifelong, chronic fluctuating disorders. She is on medications and has been for 4 years but has continued to experience relapses."
- The appellant has cognitive difficulties with communication, described as: "when she decompensates, she has difficulty communicating."
- A note attached to the PR reads: "In my original application, the page (E- Daily Living Activities) was not filled out. I was mistaken and used it as a worksheet for my letter. Please excuse me." The checklist indicates that the appellant is periodically restricted with the DLA of personal self care, meal preparation, management of medications, basic housework, daily shopping, and management of finances. The appellant is also restricted with social functioning but there is no indication of the extent of the restriction. The appellant is not restricted with mobility inside and outside the home or with use of transportation.

- In the additional comments, the psychiatrist wrote that due to exacerbations in her disorders, the appellant has presented to the emergency room. “In the future, there is a strong possibility for psychiatric hospitalization.”

In the AR, the psychiatrist indicated that:

- The appellant has a good ability to communicate in all areas.
- The appellant is independent with moving about indoors and outdoors.
- The appellant is independently able to perform every task of the listed DLA, namely: personal care, basic housekeeping, shopping, meals, paying rent and bills, managing medications and use of transportation.
- The appellant is independent in 3 aspects of social functioning, including interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. The appellant requires periodic support/ supervision in making appropriate social decisions and developing and maintaining relationships.
- The appellant’s level of functioning with her immediate and extended social networks is marginal and the psychiatrist wrote that the appellant “is able to manage when she is stable.”

In the undated Request for Reconsideration document signed by the psychiatrist, it is reported that:

- The reason that the psychiatrist indicated (in the original PWD application) that the appellant is entirely independent in her DLA is due to the fact that the appellant’s disability is a mental disorder and the questions appear to be based on physical disability.
- The appellant experiences a range of difficulties on a daily basis.
- Since the appellant came into her care in 2010, she has not had a significant period of remission and has been having her medications constantly adjusted for the past 5 years in order to find what combination will work best for her.
- Although the appellant’s symptoms are managed by her medications as best as possible, they cannot be eliminated entirely.
- Although the appellant experiences periods of stability where she is able to function sufficiently, she is never symptom-free and experiences her disorder on a daily basis.
- Her periods of instability (referred to as “decompensation”) have thus far outweighed her periods of stability since she first came into her care in 2010.
- While she stated that the appellant is “able to manage when she is stable”, she has more periods of instability than of stability.
- When the appellant decompensates, she has troubles with maintaining personal hygiene, eating and preparing meals, completing laundry and basic housekeeping, managing her funds, remembering to take her medications, making appropriate social decisions, and maintaining relationships and thus requires periodic support from her family and boyfriend.
- The appellant’s parents will often make meals for her to keep frozen and she has been known to rely on her boyfriend for help with daily tasks and has most recently required his immediate aid when she was feeling like self-harming.
- The appellant’s family keeps in contact with her daily to monitor her symptoms as she periodically requires her parents to keep her at their home under supervision where they can care for her when she is unable to.
- The appellant’s medications can be sedating which directly affects the scope of her abilities.
- She indicated that mobility outside the home and use of transportation are not restricted since mobility aids and/or prosthesis are not applicable. However, the appellant has been previously unable to leave the house due to severe anxiety and panic attacks that are co-morbid with her

bipolar disorder.

- Although she reported that the appellant's communication (specified as speaking, reading, writing and hearing) is "good" as she is able to speak, read, write and hear. However, when the appellant decompensates, she has difficulty in conversation as she experiences racing thoughts, i.e. thoughts that are highly disorganized, fleeting, and difficult to express.

In the undated letter from the appellant, she wrote:

- Bipolar Type II and panic disorder affect her greatly on a daily basis. Accomplishing the simplest of daily tasks such as taking a shower and leaving the house requires extreme amounts of energy and some days she is not able to accomplish either.
- It has been 5 years of constant medicine changes and the medications are still not working as they should. During the medicine changes, she has experienced an inability to control her behavior, in particular from unexplained bouts of rage. She has lost people close to her because of her inability to control her behavior.
- Her case is unique because she is a "rapid cyler" and while others experience a few large-scale changes in their moods over the span of a year, she has been known to change moods up to a maximum of 3 times a day during a bad spell. In a single day, she can become angry, agitated and uncontrollably antsy to being unable to stop crying, feeling hopelessly depressed and sluggish and then feeling elated, energetic, speaking rapidly and starting multiple projects at once. It has taken her several weeks to finish this letter because she is going through a rough patch.
- Her condition has no cure and cannot be completely controlled by medicine.

Need for Help

The psychiatrist reported in the AR that the appellant lives alone and assistance is provided by her family.

In her Notice of Appeal dated December 16, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- Her mental disability restricts her DLA and she requires assistance with her DLA. She feels that her mood disorder is being discriminated against because there is significant evidence to support her claims.
- She does not have a physical disorder and she feels that her mental disorder is being discriminated against because it is periodic and complex, even though the ministry claims to support the periodic nature of some mental illnesses.
- She needs her mother to attend the hearing with her to properly verbalize her situation.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry stated that:

- It appears that the undated Request for Reconsideration document signed by the psychiatrist was not considered at reconsideration.
- The reconsideration decision questioned who completed Part E- Daily Living Activities and did not accept it as information from the psychiatrist and stated that "no additional information was submitted by your physician regarding the impacts to your DLA to be considered in your Request for Reconsideration."
- The undated Request for Reconsideration provides additional information from the psychiatrist relating to the appellant's ability to perform her DLA, which can be considered.

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 PWD designation, 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 has a severe mental impairment but her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, 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.

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe mental impairment.

Restrictions in the ability to perform DLA

The appellant's position is that her mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, namely her parents and boyfriend.

The ministry's position is that the information from the prescribed professional does not establish that the appellant's severe mental impairment significantly restricts her DLA either continuously or periodically for extended periods. The ministry argued that the psychiatrist reported that the appellant is independent in all aspects of her DLA and there was no indication that they take the appellant significantly longer to perform. The ministry argued that while the psychiatrist indicated that the appellant requires periodic assistance with making appropriate social decision and developing and maintaining relationships, no information is provided on how often the appellant requires assistance and she is independent in the remainder of her social functioning. The ministry argued that it is not clear who completed the page from the PR 'Part E- Daily Living Activities' and, therefore, no additional information was submitted by the psychiatrist regarding the impacts to the appellant's DLA to be considered at reconsideration.

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 her DLA, continuously or periodically for extended periods. In this case, the psychiatrist 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, a 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 psychiatrist reported in the PR that the appellant has been prescribed medications that interfere with her DLA, described as side effects of sedation, which may lead to tardiness and being unable to work. In the AR, the psychiatrist indicated that the appellant has a good ability to communicate in all areas, she is independent with moving about indoors and outdoors, and is independently able to perform every task of the listed DLA, namely: personal care, basic housekeeping, shopping, meals, paying rent and bills, managing medications and use of transportation. The psychiatrist also indicated that the appellant is independent in 3 aspects of social functioning, including interacting appropriately with others, dealing appropriately with unexpected

demands, and securing assistance from others. The appellant requires periodic support/ supervision in making appropriate social decisions and developing and maintaining relationships. The appellant's level of functioning with her immediate and extended social networks is marginal and the psychiatrist wrote that the appellant "is able to manage when she is stable."

While the ministry stated that it is not clear who completed the page in the PR relating to restrictions to DLA, the psychiatrist referred to her assessment in the PR page in the Request for Reconsideration document, stating that she indicated that "mobility outside the home" and "use of transportation" are not restricted since mobility aids and/or prostheses are not applicable. The panel, therefore, considered the additional page from the PR as evidence of the psychiatrist as a prescribed professional. The psychiatrist reported that the appellant is periodically restricted with the DLA of personal self care, meal preparation, management of medications, basic housework, daily shopping, and management of finances. The appellant is also restricted with social functioning but there is no indication of the extent of the restriction. The appellant is assessed as 'not restricted' with mobility inside and outside the home or with use of transportation. In the Request for Reconsideration document, the psychiatrist added that the appellant has been unable to leave the house due to severe anxiety and panic attacks

At the hearing, the ministry stated that it appeared that the undated Request for Reconsideration document signed by the psychiatrist had not been considered by the ministry at reconsideration since the ministry found that no further information had been provided by the psychiatrist. The panel notes that the contents of the document are also not referred to in the ministry decision. In the document, the psychiatrist explained that the reason she indicated in the AR that the appellant is entirely independent in her DLA is because the questions appear to be based on physical disability whereas the appellant has a mental impairment. The psychiatrist provided further information that the appellant experiences a range of difficulties on a daily basis and that, since the appellant came into her care in 2010, she has not had a significant period of remission.

The psychiatrist wrote that when the appellant decompensates, she has troubles with maintaining personal hygiene, eating and preparing meals, completing laundry and basic housekeeping, managing her funds, remembering to take her medications, making appropriate social decisions, and maintaining relationships and thus requires periodic support from her family and boyfriend. The appellant wrote in her undated letter that bipolar Type II and panic disorder affect her greatly on a daily basis and some days accomplishing the simplest of daily tasks such as taking a shower and leaving the house seem to require extreme amounts of energy and she is not able to accomplish either. The psychiatrist wrote that the appellant has been unable to leave the house due to severe anxiety and panic attacks that are co-morbid with her bipolar disorder. In the Request for Reconsideration document the psychiatrist also wrote that the appellant's parents will often make meals for her to keep frozen and the appellant has relied on her boyfriend for help with daily tasks. The appellant's family keeps in contact with her daily to monitor her symptoms as the appellant periodically requires her parents to keep her at their home under supervision where they can care for her when she is unable to.

With respect to 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 psychiatrist reported that the appellant is significantly restricted with both when she decompensates. With respect to decision making, the psychiatrist reported in the health history of the PR, that the bipolar disorder results in mood fluctuations, sleep disturbances,

racing thoughts, difficulties concentrating and making decisions, agitation, and fluctuations in self-esteem. In the AR, the psychiatrist reported that the appellant requires periodic support/supervision with making appropriate social decisions, has troubles with managing her funds/ finances (banking, budgeting, pay rent and bills) and her medications (remembering to take as directed).

Regarding the DLA of social functioning, the appellant is assessed in the AR as requiring periodic support/supervision with developing and maintaining relationships, and being independently able to interact appropriately with others, and to secure assistance from others. In the PR, the appellant's psychiatrist reported that the appellant has "not been able to keep part-time jobs for more than a few months before being fired for not being able to follow instructions, poor social and communication skills." In the appellant's undated letter, she wrote that it has been 5 years of constant medicine changes and during the medicine changes, she has experienced an inability to control her behavior, in particular from unexplained bouts of rage. She has lost contact with people close to her because of her inability to control her behavior. In the PR, the psychiatrist reported that the appellant has cognitive difficulties with communication, described as: "when she decompensates, she has difficulty communicating." The psychiatrist wrote further in the Request for Reconsideration document that although she reported in the AR that the appellant's communication is "good" as she is able to speak, read, write and hear, when the appellant decompensates, she has difficulty in conversation as she experiences racing thoughts, i.e. thoughts that are highly disorganized, fleeting, and difficult to express.

Regarding the extent of the appellant's periodic restrictions, the psychiatrist wrote in the Request for Reconsideration document that the appellant's periods of instability, or "decompensation," have outweighed her periods of stability since the appellant came into her care in 2010. The psychiatrist clarified that while she stated that the appellant is "able to manage when she is stable," the appellant has "more periods of instability than of stability." In the additional comments to the PR, the psychiatrist wrote that due to exacerbations in her disorders, the appellant has presented to the emergency room and "...in the future, there is a strong possibility for psychiatric hospitalization."

Considering the additional information provided by the psychiatrist regarding the extent of periodic restrictions to the appellant's DLA, which was not previously considered by the ministry, the panel finds that the ministry did not reasonably conclude that there is insufficient evidence from the prescribed professional to establish that the appellant's impairment significantly restricts her ability to manage her DLA either continuously or periodically for extended periods, under Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA, namely her parents and her boyfriend.

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 from other persons. The ministry stated that the appellant does not require an assistive device or the services of an assistance animal.

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.

The panel finds that the evidence of the appellant's psychiatrist, as the prescribed professional, establishes that the appellant requires periodic assistance from her family and boyfriend for several aspects of DLA for extended periods of time. The psychiatrist reported in the AR that the appellant's family provides the assistance required with DLA, which is further elaborated in the Request for Reconsideration document. The appellant's parents will 'often' make meals for her, and the appellant's boyfriend helps with daily tasks. Her family periodically assists her with maintaining personal hygiene, eating and preparing meals, completing laundry and basic housekeeping, managing her funds, remembering to take her medications, making appropriate social decisions, and maintaining relationships. The appellant's family also keeps in contact with her daily to monitor her symptoms. The panel finds that the ministry's determination that the evidence does not show that the appellant requires the significant help of another person to perform DLA was not reasonable.

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 not reasonably supported by the evidence, and therefore rescinds the decision. Therefore, the decision is overturned and the appellant is successful on her appeal.