APPEAL #

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 30 January 2015 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish 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 (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

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 evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 08 October 2013. The Application contained:
   - A Physician Report (PR) dated 08 October 2014, completed by the appellant's psychiatrist who has known the appellant for 2 months and has seen him 2-10 times.
   - An Assessor Report (AR) dated 09 October 2014 completed by the same psychiatrist.
   - A Self Report (SR) completed by the appellant.

2. The appellant's Request for Reconsideration, dated 27 January 2015.

In the PR, the psychiatrist diagnoses the appellant with major depressive disorder (MDD) with onset 2013, non-insulin dependent diabetes (NIDDM) and hypertension, both with onset several years ago. The psychiatrist indicates that the appellant's impairment is likely to continue for 2 years or more, explaining that the MDD is likely to be present for an indefinite time and that the NIDDM will continue and will likely lead to increased impairment in the future.

The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue.

Severity/health history

Physical impairment

PR:
Under health history, the psychiatrist writes that the NIDDM affects energy, vision and mobility.

Under additional comments, the psychiatrist writes that the appellant has been hospitalized for his NIDDM and is developing complications – pain and vision – which affect his ADLs.

The psychiatrist does not indicate whether the appellant's height and weight are relevant to his impairment.

The psychiatrist indicates that the appellant has not been prescribed medication and/or treatments that interfere with his ability to perform DLA and that he does not require any prostheses or aids for his impairment.

As to functional skills, the psychiatrist reports that the appellant can walk 4+ blocks unaided, climb 5+ steps unaided, and has no limitations with respect to lifting or remaining seated.

Mental impairment

PR:
Under health history, the psychiatrist states that the MDD leads to

- recurrent suicidal thoughts create safety risk,
- low motivation affects activity, self care, socialization,

- low mood also affects activity, self care, socialization.

The psychiatrist indicates that the appellant has no difficulties with communication.

The psychiatrist assesses the appellant with significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, commenting that “mood and motivation are low and affect many daily activities.”

AR:
The psychiatrist assesses the appellant’s ability in speaking, reading, writing and hearing as good.

Ability to perform DLA

PR:
The psychiatrist, while not checking the boxes to specify that the appellant’s activity is restricted, indicates that the appellant has periodic restrictions in his ability to perform the following DLA: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility outside the home, and social functioning. The psychiatrist indicates that the appellant is not restricted in mobility inside the home and the use of transportation. No assessment is provided with respect to the management of finances. The psychiatrist explains “periodic” as “low motivation; low confidence; may feel ignored, left out.”

With regard to social functioning, the psychiatrist explains that the appellant “may feel left out, ignored and may avoid social interactions” and that he is “reluctant to trust others and/or request assistance.”

Regarding the degree of restrictions to DLA, the psychiatrist comments: “restriction is mild and intermittent.”

AR:
The psychiatrist reports that the appellant lives with a roommate.

Regarding mobility and physical ability, the psychiatrist assesses the appellant as independent for walking indoors, standing, lifting, and carrying and holding. The appellant is assessed as requiring periodic assistance from another person for walking outdoors (comment: “motivation limits activity”) and climbing stairs (comment: “rapidly short of breath”). The psychiatrist comments that the appellant's energy is affected by diabetes.

With regard to cognitive and emotional functioning, the psychiatrist assesses the appellant's mental impairment as having a major impact on motivation; a moderate impact on emotion and attention/concentration; a minimal impact in the areas of insight and judgment, executive, memory, and motor activity; and no impacts in the areas of bodily functions, consciousness, impulse control, language, psychotic symptoms, other neuropsychological problems, and other emotional or mental problems. The psychiatrist comments: “Low motivation and fatigue relating to MDD are major barriers to effective functioning.”

The psychiatrist assesses the assistance required for managing DLA as follows (the psychologist’s comments in parentheses):

- Personal care: independent for dressing, grooming, bathing, toileting, transfers in/out of bed and transfers on/off chair; periodic assistance from another person required for feeding self and regulating diet (requests assistance and encouragement from roommate and family).
- Basic housekeeping: independent for laundry; requires periodic assistance from another person for basic housekeeping (requires assistance from roommate).
- Shopping: independent in all aspects.
- Meals: requires periodic assistance from another person for meal planning, food preparation and cooking (requires assistance from roommate); independent for safe storage of food.
- Paying rent and bills: independent in all aspects.
- Medications: independent for taking as directed and safe handling and storage; requires periodic assistance from another person for filling/refilling prescriptions (requires reminders to roommate to take medications).
- Transportation: independent in all aspects.

The psychiatrist comments; “daily activities impaired by MDD.”

With respect to social functioning the psychiatrist assesses the appellant as requiring periodic support/supervision for making appropriate social decisions (can be quite avoidant of social interaction when depressive symptoms are severe), ability to develop and maintain relationships, ability to deal appropriately with unexpected demands (can easily become overwhelmed with unexpected demands), and ability to secure assistance from others (reluctant to request help); and independent for interacting appropriately with others.

The psychiatrist describes the impact of the appellant's mental impairment on his immediate and extended social networks as marginal functioning.

The psychiatrist comments that when depressive symptoms increase, the appellant neglects his diabetes management, which creates significant health risk. She adds that the appellant has been suicidal and is at risk for relapse of suicide.

<u>Help provided/required</u>

PR:
The psychiatrist writes that the appellant requests assistance from his roommate for ADLs and needs regular emotional support from his mother for safety.

AR:
For assistance provided by other people for social functioning, the psychiatrist writes that the appellant requires encouragement, support and assistance from his roommate and family.

The psychiatrist indicates that the appellant is provided assistance by family, health authority professionals, and friends. She comments that the appellant requires regular emotional support from his mother with depression and suicidal thinking and frequent emotional support from a close friend. The appellant is currently receiving psychiatric treatment.

Regarding assistance provided through the use of assistive devices, the psychiatrist marks “N/A.”

<u>Self report</u>

APPEAL #

In his SR, the appellant writes:

> "When I was between 11-13 yrs. old I was diagnosed as being manic-depressive. I have done fine on my own up until the last few years, but recently my depression has worsened, mood swings become more severe, self-esteem, motivation and confidence in myself are almost nonexistent. Lately, just leaving my bedroom has been a challenge as has social interactions. I found during my most severe downward mood swings I have had thoughts of suicide, question myself as to why I should continue to try (living). Even some daily activities are something I find myself having to force myself to do."

The appellant goes on to list some issues he has experienced:

1. Thoughts of suicide.
2. Shutting himself in from the world.
3. Severe mood swings (from ridiculously happy to fits of crying).
4. Extreme loneliness.
5. Loss of sleep.
6. Daily duties and not wanting to do them – showering & hygiene, eating, taking his diabetes medications/other medications as well, socializing (even via his computer), going out on errands, and filling his prescriptions.
7. Anxiety/panic attacks – over living conditions/health in general, financial worries, employment woes.
8. Fitness levels have taken a major decline and health and well-being have become increasingly poor.

In his Request for Reconsideration, the appellant's submission provides no new information regarding his impairments and goes to argument (see Part F, Reasons for Panel Decision, below).

In his Notice of Appeal, dated 18 February 2015, the appellant writes:

> "Both my diabetes and hypertension contribute negatively to my major depressive disorder. Depression of this magnitude also negatively impacts my physical ability. Often when the depression become severe walking 4+ blocks or climbing 5+ stairs becomes impossible. [The psychiatrist] indicated this in her report.
> As indicated by [a national mental health organization], *"A major depressive disorder – usually just called depression – is different from the "blues. Someone experiencing depression is grappling with feelings of severe despair over an extended period of time. Almost every aspect of their life can be affected, including their emotions, physical health, relationships and work."*
> My major depressive disorder continues to negatively affect my physical health, relationships and ability to work. I'm seeking disability status so that I might get the personal help and assistance I need."

At the hearing, the appellant referred to the quote in his Notice of Appeal from the national mental health organization, stating that the passage clearly describes the impact on his life of his MDD. He noted that he needed the help of his roommate to prepare the submission, as he was in no mental condition to do it on his own. The reason for his PWD application is that he is trying to get all the help he needs – he has been losing sleep over the issue. He has had no luck trying to get help from any of the advocacy organizations because they have long waiting lists. His mood is further reduced by the recent return to another country of a friend with whom he had become quite close. He has a lot of

stress because of his health conditions and his financial situation. He is frightened by suicidal thoughts returning and having to deal with them.

The appellant explained that his MDD sometimes leads to him being overwhelmed and reluctant to leave his home – this is why he asked for a teleconference hearing rather than appearing in person. He rarely goes out and his roommate will often do the shopping for him. His room "looks like it has been struck by hurricane" and his roommate will help him tidy it up.

The appellant said that while he could walk 4+ blocks on a flat surface, he has difficulty walking 2 blocks uphill, having to stop several times to catch his breath. He gave his weight and stated that he was also depressed about how much overweight he is and the effect of this on his health. He mentioned that his weight situation led to other restrictions in his ability to do physical activities.

The appellant stated that he would not be alive today without the help of his mother. She lives in another city and he talks to her by telephone at least once a week – she is always there for him when he needs emotional support.

In answer to questions, he stated that he is taking two types of mood stabilization medications and two prescription drugs for his diabetes. He is no longer seeing the psychiatrist as the health authority program's 8 – 12 visit limit has been reached.

The ministry stood by its position at reconsideration, pointing out that, in the PR the psychiatrist, while indicating that most DLA were periodically restricted, had not indicated that the activities were actually restricted. .

The appellant acknowledged that, as the ministry pointed out, there were errors in the reports prepared by the psychiatrist – he was so anxious to send the application in that he did not review it before putting it in the mail.

The panel finds that the appellant's testimony regarding his weight and resulting physical restrictions is not in support of the evidence before the ministry at reconsideration, as no reference to his weight was made in the PR, AR or SR or his Request for Reconsideration. The panel will therefore not admit this testimony as evidence.

The panel finds that the information provided in the appellant's Notice of Appeal and in the balance of his testimony at the hearing is in support of the information and records before the ministry at reconsideration, as it is consistent with and tends to corroborate the information provided in the PWD application. Accordingly, the panel admits this evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because he did not meet all the requirements in section 2 of the EAPWDA. Specifically the ministry determined that the information provided did not establish 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 determined that he met the 2 other criteria in *EAPWDA* section 2(2) set out below.

The following section of the *EAPWDA* applies to this appeal:

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.

The following section of the EAPWDR applies to this appeal:

2 (1)For the purposes of the Act and this regulation, "daily living activities",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, **"prescribed professional"** means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

The panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable PWD criteria at issue in this appeal.

Severity of impairment

Mental impairment

The position of the appellant is that he has been diagnosed with MDD – Major Depressive Disorder. As noted by his psychiatrist, his "mood and motivation are low and affect many daily activities." This is consistent with the quote in his Notice of Appeal from the national mental health organization that "Almost every aspect of their [those diagnosed with MDD] life can be affected, including their emotions, physical health, relationships and work." The appellant argues that the information provided by his psychiatrist clearly establishes that he has a severe mental impairment.

In the reconsideration decision, the ministry notes that the psychiatrist indicated that the appellant has deficits with cognitive and emotional functioning in the areas of emotional disturbance and motor activity. In assessing the impacts of his cognitive and emotional functioning, the psychiatrist indicated that there is a major impact with motivation due to them DDD, moderate impacts with emotion and attention or sustained concentration and minimal impacts in four other areas. The ministry also notes that the psychiatrist has not identified any difficulties with communication. The position of the ministry is that, based on the information provided by the psychiatrist, there is not enough evidence to establish a severe mental impairment.

Panel findings

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 one 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. The legislation makes it clear that the determination of severity is at the discretion of the minister, taking into account all of the evidence. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a medical practitioner and a prescribed professional– in this case, the psychiatrist.

The legislation requires that for PWD designation, the minister must be “satisfied” that the person has a severe mental or physical impairment. For the minister to be “satisfied” that the person’s impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided presents a clear and complete picture of the nature and extent of the impacts of the person's medical conditions on daily functioning.

Under Health History in the PR, the medical practitioner is asked to indicate the severity of the medical conditions relevant to the person's impairment – how does the medical condition impair this person? In this section, the psychiatrist states that the MDD leads to recurrent suicidal thoughts with a resulting safety risk; low motivation affects activity, self care and socialization; and low mood also affects activity, self care and socialization. However, no detailed description, even by example, is provided as to how, how often, for how long and to what degree the low motivation and low mood affect specific areas of activity, self care and socialization. The psychiatrist has provided similar general comments elsewhere in the PR and AR. For instance, in assessing the impacts of cognitive and emotional functioning in the AR, the psychiatrist assesses a major impact on motivation and moderate impacts on emotion and attention/concentration, with the comment that “low motivation and fatigue related to MDD are major barriers to effective functioning,” without describing the nature and extent and in what specific areas of daily functioning these barriers arise.

Regarding social functioning, where the impacts of a mental health condition are relevant to the determination of severity of impairment, the psychiatrist assessed the appellant as requiring periodic support/supervision in four areas, and commented that he “can be quite avoidant of social interaction when depressive symptoms are severe,” without indicating the frequency or duration of such severe symptoms, and that he “can become overwhelmed with unexpected demands.” However the psychiatrist did not include a description of the degree and duration of support/supervision required. (See also the discussion below on significant restrictions in the ability to perform DLA.)

The panel notes that when asked to provide additional comments regarding the degree of restriction in the ability to perform DLA, the psychiatrist wrote: “restriction is mild and intermittent.”

Taking into account the above comment regarding mild and intermittent restriction in the ability to perform DLA, the assessment of only one major impact and two moderate impacts out of 13 listed areas of his mental health impairment on daily functioning and the lack of detail in describing how the appellant's MDD affects daily functioning, the panel finds that the ministry was reasonable in determining that there is not enough evidence to establish a severe mental impairment.

Physical impairment.

The position of the appellant is that while his main concern is his MDD, this condition compromises his ability to deal with his NIDDM and hypertension, which, as the psychiatrist explained, affects his energy, vision and mobility. He submits that this establishes that he has a severe physical

impairment.

In the reconsideration decision, the ministry noted that the psychiatrist has assessed the appellant is able to walk 4+ blocks unaided, climb 5+ stairs, with no limitations with lifting or remaining seated. Regarding his mobility and physical ability, the psychiatrist indicated that the appellant requires periodic assistance with walking outdoors as motivation limits this activity and climbing stairs due to shortness of breath; however no information is provided on how often he requires assistance. The remainder of his mobility and physical abilities is independent. The position of the ministry is that there is not enough evidence to establish a severe physical impairment.

Panel findings

The appellant has been diagnosed with NIDDM (diabetes) and hypertension. In the Health history section of the PR, the psychiatrist wrote that the appellant's NIDDM "affects energy, vision, mobility." While in the AR, the psychiatrist indicates that walking outdoors requires periodic assistance from another person, this is a result of "motivation limits activity," due to MDD, not because of his physical diagnoses. The psychiatrist also indicated that the appellant requires periodic assistance from another person for climbing stairs as he is "rapidly short of breath." No further information is provided as to how, how often, and to what extent the appellant's NIDDM and hypertension affects his energy, vision and mobility. The panel also notes that in the PR the psychiatrist wrote that the degree of restriction to the appellant's ability to perform DLA is "mild and intermittent restrictions".

Considering the above evidence and that the psychiatrist indicated that the appellant is able to walk 4+ blocks unaided, climb 5+ stairs and has no limitations as to lifting or remaining seated, the panel finds that the ministry was reasonable in determining that there was not enough evidence to establish a severe physical impairment..

Significant restrictions in the ability to perform DLA.

The position of the appellant is that the psychiatrist's reports show that with his MDD, which also contributes to his difficulty in managing his NIDDM and hypertension, his ability to perform DLA is significantly restricted, particularly in the area of social functioning.

The position of the ministry is that, while acknowledging that the appellant has serious medical issues, considering all of the information provided by the psychiatrist, the ministry does not have enough evidence to confirm that his impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods.

Panel findings

The legislation – section 2(2)(b)(i) of the *EAPWDA* – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's psychiatrist. This doesn't mean that other evidence shouldn't be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that the prescribed professional's evidence is fundamental to the ministry's determination as to whether it is "satisfied".

Section 2(1) of the EAPWDR lists the DLA to be considered. Of particular relevance to this appeal are those relating to social functioning applicable to a person with a severe mental impairment, as set out in paragraph (b), namely make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively. In the AR, for these DLA the psychiatrist – the prescribed professional – assesses the appellant as requiring periodic support/supervision for making appropriate social decisions, ability to develop and maintain relationships, ability to deal appropriately with unexpected demands and ability to secure assistance from others. The psychiatrist provides some commentary (e.g. for making appropriate social decisions "can be quite avoidant of social interactions when depressive symptoms severe") and that he "requires encouragement, support and assistance from roommate and family." However, as noted above under severity of mental impairment, no information is provided that describes the degree and duration of the support/supervision required. The psychiatrist describes as marginal functioning how the appellant's mental impairment impacts his relationships with his immediate and extended social networks, but no explanation is provided as to how this marginal functioning is manifested.

As to the other DLA applicable to a person with a severe mental or physical impairment, the psychiatrist assesses the appellant as independent in most sub-activities listed in the AR, except for requiring periodic assistance from another person for feeding self and regulating diet, basic housekeeping, meal planning and food preparation and cooking, and filling prescriptions. The psychiatrist provides some commentary, such as that the appellant requires assistance from his roommate or family. While the psychiatrist notes that "daily activities are impacted by MDD," no information is provided as to how frequently the periodic assistance is required.

Again, the panel notes general commentary in the PR relating to the overall ability to perform DLA: "mild and intermittent restrictions."

Based on the foregoing, and considering that a severe mental or physical impairment had not been established, the panel finds the ministry was reasonable in determining that there was not enough evidence from the prescribed professional to establish that the criterion set out in 2(2)(b)(i) of the *EAPWDA* had been met.

Help with DLA

The appellant's position is that he requires the help of his roommate for his managing his DLA around the home and the ongoing support from his mother as he struggles with MDD.

The ministry's position is that as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

Panel findings

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either continuous or periodic for extended periods. While the evidence is that the appellant benefits from the help of his roommate for tasks around the home and the support of his mother for dealing with his MDD, the panel finds that the ministry reasonably determined that since it has not been established

that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.