

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) February 2, 2015 reconsideration decision in which the Ministry determined that the Appellant did not meet all of the requirements for designation as a person with disabilities (“PWD”) under Section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The Ministry found that the Appellant met the age requirement and that her impairment is likely to continue for at least two years. However, the Ministry was not satisfied that the evidence established that:

- the Appellant has a severe physical or mental impairment;
- in the opinion of a prescribed professional, the Appellant's daily living activities are directly and significantly restricted either continuously or periodically for extended periods by a severe impairment; and,
- in the opinion of a prescribed professional, 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 daily living activities.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) Section 2.

## PART E – Summary of Facts

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

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

1. Appellant's PWD application consisting of:

- Appellant's self-report dated August 7, 2014.
- A physician's report and an assessor's report both completed on August 25, 2014 by the Appellant's family doctor (hereafter "Dr. S") who indicated that the Appellant has been her patient since April 2012 and she had seen the Appellant 11 or more times in the past 12 months.
- Hospital progress note dated June 20, 2014 with a doctor's report about ligament reconstruction on the Appellant's left ankle.
- Dietician's note dated May 15, 2014 regarding Appellant's nutrition problems, weight issues and attendance in a program for eating/weight issues.
- December 6, 2013 report by a psychiatrist (hereafter "Dr. B") reviewing the onset of the Appellant's psychiatric illness, her personal and family history, her psychiatric status, diagnoses, and treatment and management.
- June/July 2014 neuropsychological evaluation report prepared by a registered psychologist and certified vocational evaluator (hereafter (Dr. L") as an employment evaluation.

2. Appellant's request for reconsideration with written submissions from her advocate and a note dated December 17, 2014 from Dr. S.

At the hearing, the Appellant's testimony about her medical conditions, how they impact her daily functioning, how she copes with the restrictions on her functioning, and how her mother helps her was consistent with her self-report and other evidence in the Ministry's record. Therefore, pursuant to section 22(4) of the *Employment and Assistance Act*, the Panel admits the Appellant's testimony as tending to corroborate and be in support of the evidence the Ministry had at reconsideration. The Panel has summarized the Appellant's testimony as well as the evidence in the record relevant to each PWD criteria at issue.

### *Diagnoses*

In the physician's report, Dr. S diagnosed the Appellant with ADHD [attention deficit hyperactivity disorder], morbid obesity, asthma, migraines, depression/anxiety, alcohol and drug abuse in remission, right rotator cuff tear, chronic left ankle pain and raised blood pressure (under investigation). Dr. S. also referred to Dr. B's psychiatric report and Dr. L's neuropsychological evaluation for further information.

Dr. B reviewed the Appellant's history of psychiatric illness, her family background, her social and developmental history, her psychiatric status and then provided the following diagnoses:

- Axis I - History of symptoms of ADHD in childhood, remission in terms of alcohol and cocaine dependence syndrome but still very, very fragile; history of bulimia.
- Axis II – reverts back to rather introvert and socially avoidant person when not experiencing

symptoms of mania or hypomania, or abusing substances.

- Axis III – Morbid obesity.
- Axis IV – Improved psychosocial circumstances over the past year; motivated by parenting her child; relatively socially isolated; her mother is her most important social support.

In her neuropsychological evaluation, Dr. L wrote, that from a mental health point of view and based on the Appellant's history and presentation at the time, the Appellant met the criteria for the following DSM- 5 diagnosis:

- Mild Alcohol Use Disorder, in reported sustained remission.
- Mild Crack Cocaine Use disorder, in reported early remission.
- An Adjustment Disorder with anxiety; ADHD combined presentation moderate.
- Probable Borderline Personality Disorder.

### *Mental Impairment*

At the hearing and in her self-report, the Appellant described her disability as follows:

- Suffers from deficit hyperactivity disorder - is very easily distracted, has a very hard time completing tasks, has no organizational skills; is unable to think of the consequences of her decisions and cannot plan ahead.
- Is unable to do housework on her own as she gets distracted and very anxious, can't keep track of what she is doing so she leaves everything undone; is unable to complete tasks such as laundry – leaves clothes in the washer or dryer, can't plan meals or shop on her own; her mother comes to help clean the house and do laundry; her mother takes her shopping a few times a week and helps her plan meals for herself and her daughter.
- Is unable to manage money and makes poor decisions; has trouble with financial planning and impulse control, so her mother manages her money and takes care of most of her expenses.
- Has anxiety and anger issues, making it difficult to maintain social relationships; doesn't have insight into relationships, picks the wrong people as friends; consults with her mother about any activities or friends.
- Is now free from drugs, has stopped smoking and has lost weight.
- Has been unable to keep a job; has not been able to handle work stresses.
- Has been taking a new medication since December 2014, which has had a positive affect so that she can now complete about ½ of her tasks; this medication was recommended by Dr. L.

Dr. S provided the following information regarding the Appellant's mental impairments:

- No difficulties with communication; good ability to communicate in all areas.
- Has significant deficits with cognitive and emotional functioning in these areas: executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration.
- Degree of impacts to areas of cognitive and emotional functioning are as follows: moderate impact to bodily functions, emotion, impulse control, attention/concentration, executive and motivation; minimal impact to insight and judgment, and to memory; and no impact to consciousness, motor activity, language, psychotic symptoms, other neuropsychological problems and to other emotional or mental problems.

Dr. B provided prescriptions for mood stabilizing agents and reviewed other medication options with the Appellant. In 2013, Dr. B noted that the Appellant indicated that she was feeling better, not as wavy, spikey or blowing up extremely angry. She still felt down and frustrated, sometimes even overwhelmed and had a panic attack. The Appellant also reported being proud that she had not used

any substances since March 2012. The Appellant did not present with significant signs of psychiatric illness during the interview, was logical and coherent, and provided insightful replies. Dr. B also acknowledged difficulties maintaining contact with the Appellant because he is fully booked and follow-up appointments are made for 6-8 weeks in advance.

At the hearing, the Appellant explained that Dr. L's neuropsychological evaluation was prepared through an employment program. Dr. L conducted extensive interviews with the Appellant and her mother, and also completed several clinical and intelligence tests to provide a diagnosis as well as recommendations and possible strategies so that the Appellant would be more successful at working. Dr. L. reported that the Appellant:

- Was referred to the employment services as she was noted as having no impulse control, poor self-esteem, self-medication resulting in substance abuse, anxiety attacks, expressing emotion through anger, depression etc.
- Has the following cognitive strengths: overall intellectual abilities (IQ and General Ability) in the average range; very good verbal comprehension skills, good knowledge of general information; good ability to deal with non-verbal material to analyze situations and solve problems; good ability to perceive visual details; good visual scanning speed and efficiency; good capacity to abstract principles or categories; good memory capacity and good ability to maintain information to manipulate it.
- Has the following cognitive limitations: slower (low average) fine motor coordination resulting in slower writing; limited capacity to manage her attentional resources consistent with reported difficulty in completing multiple domestic chores; difficulties with sustained attention; weaker semantic knowledge, likely related to difficulty with organization; processing information and working memory are in the low average and average range.
- Has a current presentation congruent with a diagnosis of ADHD; that is, reporting difficulties concentrating and paying close attention to details leading to careless mistakes; being easily distracted (e.g., having to reread a paragraph several times); difficulties sustaining attention in lengthy tasks; having difficulties following through on instructions or completing tasks; being easily forgetful; tending to avoid tasks requiring sustained mental effort.

#### *Physical Impairment*

At the hearing and in her self-report the Appellant described her physical impairments as follows:

- Has damaged ligaments in both ankles, causing a lot of pain and limiting mobility; had ligament reconstruction on left ankle; takes pain medication.
- Can't be on her feet for longer than ½ an hour; ankles still get really swollen and painful.
- Obese and finds it difficult to lose weight because pain in ankles makes exercise impossible; physical condition is very poor.

Dr. S described the severity of the Appellant's impairments as follows:

- Chronic pain in ankle; mobility issues.
- Can walk unaided 2-4 blocks on a flat surface; can climb 5+ steps unaided; can lift 15-35 lbs.; experiences quite significant limitations in these activities – if does them repetitively will end up with periods where she is not able to walk much or do any heavy lifting.
- Independently manages walking indoors and standing; needs periodic assistance walking outdoors – only able to walk [illegible]; needs periodic assistance climbing stairs – stops frequently to rest.

- Needs periodic assistance with lifting, and with carrying and holding; due to pain in ankle and shoulder needs people to help carry heavy bags/objects.
- Morbid obesity – awaiting surgery.

#### *Daily Living Activities*

Dr. S reported that the Appellant had not been prescribed any medications and/or treatments that interfere with her ability to perform daily living activities and the Appellant is able to manage daily living activities as follows:

- Independently manages all areas of personal care, managing medications and transportation.
- Needs periodic assistance with laundry and basic housekeeping.
- For shopping - independently manages reading prices/labels and paying for purchases; needs periodic assistance with going to/from stores – taken by mother; needs periodic assistance with making appropriate choices – makes inappropriate choices when planning meals; needs periodic assistance carrying purchases home.
- Independently manages food preparation, cooking, safe storage of food; needs periodic assistance with meal planning – mom helps with weekly meal planning.
- Independently manages banking, and paying rent and bills; needs periodic assistance with budgeting – mom helps weekly with budget.
- For social functioning – independently manages how to interact appropriately with others and securing assistance from others.
- Needs periodic support/supervision with making appropriate social decisions – runs all social invitations past her mother to help make decision.
- Needs periodic support/supervision with developing and maintaining relationships – has difficulty maintaining friendships; discusses with her mother.
- Needs periodic assistance with dealing appropriately with unexpected demands – doesn't deal well with unexpected change or demands.
- Has marginal functioning in her immediate and extended social networks.

#### *Help with Daily Living Activities*

Dr. S reported that the Appellant does not require any prostheses or aids for her impairment, or an assistance animal. Dr. S also indicated that the Appellant needs:

- Help with shopping 80% of the time.
- Help with making shopping choices 90% of the time.
- Help with carrying purchases 90% of the time.
- Help with laundry and basic housekeeping 70% of the time.
- For areas of social functioning, often needs input from her mother.

The Appellant stated that without her mother's regular help she would not be able to cope with managing her housework, shopping, planning for meals, going to appointments and dealing with social functioning demands. Her mother is her main support, helping daily in many situations by providing common sense, questioning decisions and helping her think of the consequences of her decisions and actions. Also, the Appellant stated that Dr. L recommended that she work with an occupational therapist.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, which determined that the Appellant was not eligible for PWD designation because she did not meet all the requirements in section 2(2) of the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the Appellant's circumstances.

### **Applicable Legislation**

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

*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 each of the criteria at issue in this appeal.

### **Severe Mental Impairment**

The Appellant submitted that she has a severe mental impairment affecting her ability to manage daily living tasks. She is severely impacted by a number of very significant cognitive and emotional functions, as confirmed by diagnoses from three medical professionals and their assessments.

In its reconsideration decision, the Ministry indicated that it reviewed the information from the Appellant's doctor and the 2013 reports from the psychiatrist, as well as from the Appellant.

### *The Panel's Findings*

The diagnosis of a serious medical condition or a medical professional's statement that a condition or an impairment is severe does not in itself establish a severe impairment for the purposes of satisfying the criteria for PWD designation. To meet the requirements in section 2(2) of the EAPWDA, there must be evidence of how and the extent to which an impairment directly restricts daily functioning and the ability to manage the daily living activities defined in section 2(2)(b) of the EAPWDR. Such evidence includes information from the Appellant as well as from medical or prescribed professionals.

The Appellant described how she has been unable to keep a job. The Panel notes that, in contrast to the Canada Pension Plan disability legislation and the province's Person with Persistent Multiple Barriers legislation, the ability to work and/or find work are not criteria for designation as a PWD and qualifying for disability assistance under this province's EAPWD legislation.

The three medical professionals who completed the reports described the Appellant's conditions as ADHD, depression/anxiety, and alcohol and drug abuse in remission. In her assessments, Dr. S, the Appellant's family doctor since April 2012, referred to the reports from Dr. B and Dr. L. The Panel notes that Dr. S's reports about impacts to the Appellant's cognitive and emotional functioning are generally consistent with Dr. L's evaluation and Dr. B's assessment. Dr. S indicated that the Appellant has significant deficits with cognitive and emotional functioning in executive, memory, emotional disturbance, motivation, impulse control, and attention or sustained concentration areas. Dr. S also noted moderate impact to bodily functions, emotion, impulse control, attention/concentration, executive and motivation, and minimal impact to insight and judgment, and to memory, but no impact in 6 other areas. Dr. L, however, assessed the Appellant as having good functioning in terms of both memory and the ability to abstract principles in categories (executive).

The Appellant stated that she has a very hard time completing tasks, has no organizational skills; is unable to think of the consequences of her decisions and cannot plan ahead. These effects from ADHD and deficits to her cognitive and emotional functioning affect her ability to do tasks on her own as she gets distracted and very anxious. The Appellant described how she cannot keep track of what she is doing leaving everything undone, has poor impulse control, is unable to manage money and generally makes poor decisions. It is difficult for her to maintain social relationships and she doesn't have insight into relationships. She consults with her mother about any activities or friends, and generally relies on her mother to help her complete and organize daily tasks.

Dr. S. did note that the Appellant needs periodic assistance with some daily living activities, such as laundry and basic housekeeping, with making appropriate choices when planning meals, with weekly budgets and with areas of social functioning. However, in her reports, Dr. S also indicated that the Appellant independently manages many activities which require cognitive abilities, such as aspects of personal care, medication management, transportation, paying for purchases, food preparation, safe storage of food, banking, how to interact appropriately with others and securing assistance from others. This is consistent with the evidence that there is no major impact on daily functioning from any of the aspects of cognitive and emotional functioning listed in the assessor's report. Based on the medical reports, especially from Dr. S, and the information from the Appellant, the Panel acknowledges that the Appellant does experience limitations in her cognitive and emotional functioning which affect her daily functioning. When all of the evidence is considered, however, the

Panel finds that the Ministry reasonably determined that a severe mental impairment was not established.

### **Severe Physical Impairment**

The Appellant's position is that her poor physical conditions, including obesity, right shoulder cuff tear and ankle weaknesses, impact her ability to manage physical and mobility activities.

Based on the information the Ministry had, it acknowledged that the Appellant has physical limitations; however, the Ministry determined that it did not have enough information to confirm that the Appellant has a severe physical impairment.

#### *The Panel's Findings*

The Appellant described her struggles with weight, having ankle pains and limitations to her mobility. Dr. S also reported that the Appellant experiences chronic ankle pain and mobility issues. However, with respect to the Appellant's mobility and physical functioning, Dr. S indicated that the Appellant independently manages walking indoors and standing. The Appellant can walk unaided 2-4 blocks on a flat surface and can climb 5+ steps unaided, although she stops frequently to rest. The Appellant can lift 15-35 lbs., but needs periodic assistance with lifting, and with carrying and holding. The Appellant also independently manages dressing, bathing and transfers in/out of bed and chairs. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably concluded that there was not enough information to confirm that the Appellant has a severe physical impairment.

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

The Appellant's position is that she is directly and significantly restricted in her daily activities by her severe mental and physical impairments. The reports in her PWD application establish that she requires periodic assistance with daily living activities on an ongoing basis, including Dr. S's reports that she needs assistance with 5 daily living activities 70-90% of the time.

The Ministry wrote that it relies on the expert medical opinions and assessments provided by the Appellant's doctor. Based on the available information from the doctor, the Ministry determined that there was not enough evidence to establish that the Appellant's impairment directly and significantly restricts daily living activities continuously or periodically for extended periods.

#### *The Panel's Findings*

To qualify for PWD designation, the Appellant must provide a prescribed professional's opinion confirming that her severe physical or mental impairment directly and significantly restricts her daily living activities, continuously or periodically for extended periods. It is not enough, however, for a prescribed professional to merely report that such activities are restricted. The prescribed professional must assess and explain the degree of restriction and the extent of assistance needed to manage the daily living activities defined in section 2(1) of the EAPWDR. The physician's and assessor's reports specifically address these legislated requirements.

In this case, Dr. S, Dr. B and Dr. L are all prescribed professionals. However, the Panel will consider the reports from Dr. S as the prescribed professional's opinion for this PWD designation requirement because Dr. S, who has been the Appellant's family doctor of 3 years, completed the physician's and assessor's reports.



Dr. S reported that the Appellant needs periodic assistance with laundry and housekeeping, going to and from stores, making appropriate choices, carrying purchases home, planning meals, budgeting and 3 areas of social functioning. For these activities, the Appellant relies on her mother's help. As for 22 other daily tasks listed in the assessor's report, including all aspects of personal care, managing medications, transportation, and 2 areas of social functioning, Dr. S reported that the Appellant manages those independently. Therefore, based on the professional opinion of Dr. S that the Appellant manages a large majority of daily living activities independently, the Panel finds the Ministry reasonably determined that the Appellant did not meet the requirements in section 2(2)(b)(i) of the EAPWDA.

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

The Appellant's position is that she needs significant help performing daily living activities because of her severe mental impairment. Her mother helps her with many tasks and Dr. S reported that she needs help with several daily living activities between 70-90% of the time.

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 or an assistive device.

### *The Panel's Findings*

Section 2(2)(b)(ii) of the EAPWDA, also requires the opinion of a prescribed professional confirming that, because of direct and significant restrictions in her ability to manage daily living activities, the Appellant needs help with those activities. For the reasons stated in the previous section, the Panel will also consider the reports of Dr. S as the prescribed professional's opinion for this requirement. Dr. S. did report that the Appellant's mother helps between 70-90% of the time with the activities for which the Appellant requires periodic assistance. However, as the Panel noted in the previous section, the Appellant manages the large majority of daily living activities independently. Dr. S also noted that the Appellant does not need any assistive aids for her impairment. Therefore, based on Dr. S's evidence and based on the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted, the Panel finds that the Ministry reasonably concluded that the requirements in section 2(2)(b)(ii) of the EAPWDA were not met.

### **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.