

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) March 17, 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 his 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;
- the Appellant’s daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of those restrictions, the Appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

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

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

PART E – Summary of Facts

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

1. Appellant's PWD application consisting of:

- His self-report dated February 5, 2015.
- A physician's report and an assessor's report, both completed on October 8, 2014 by a doctor who indicated that the Appellant has been his patient for 15 years and he had seen the Appellant between 2-10 times in the 12 months preceding the reports. The doctor also wrote that he is a physician with an interest in mental health and addictions.

2. The Appellant's request for reconsideration with his statement.

At the hearing, the Appellant described his impairments and how they affect his functioning. His testimony substantially reiterated or added details to the information that was before the Ministry at reconsideration. Therefore, the Panel accepted that testimony as evidence in support in accordance with section 22(4) of the *Employment and Assistance Act*. His testimony is summarized under the relevant PWD criteria below.

The Ministry relied on its reconsideration decision.

Diagnoses

The Appellant's doctor diagnosed him with personality disorder-paranoia/cluster B (onset years); substance abuse in remission (onset 2007), anxiety, PTSD [posttraumatic stress disorder] traits and social phobia (onset 2012).

The doctor provided no diagnosis of any physical health conditions and provided no information about any impairments arising from any physical health conditions.

Mental/Physical Impairment

In his self-reports, the Appellant described his disability as follows:

- Depression, fatigue, anxiety disorder, PTSD, social phobia, paranoia, suicidal thoughts; he is on medication for these conditions.
- He had been seeing a psychiatrist every two weeks and now sees him once a month.
- He does not have the mental ability to be on his own in public; has trouble in public or with large groups of people because of his conditions.
- When his anxiety kicks in body shuts down, so that he is unable to do physical activity for more than a few hours; the anxiety attacks also give him severe headaches so that he becomes incapacitated; this happens quite frequently.
- His paranoia affects his ability to do activities; has trouble conversing with people; becomes fearful or defensive; starts to go into a delusional state of mind and he shuts down mentally and physically.
- His depression affects his physical state; he is constantly fatigued and is unable to stay up for long periods of time, affecting his ability to work and his personal life.
- He has suicidal thoughts from depression which affects his confidence; he is unable to do activities he is used to doing.
- His mental health conditions affect his ability to concentrate and focus so he has trouble completing tasks.

- His conditions also prevent him from working; he tried a part-time job but left after 2-3 hours because he couldn't focus, and he gets anxiety attacks around people.
- For the last few years, he has been in and out of recovery for alcohol and drug abuse; he completed a program last year and attends AA meetings; but he still has lots of problems from his alcohol and drug abuse – problems that affect him every day.
- His parents escort him when he goes out because he cannot go out by himself; they take care of everything for him such as banking and bills because he cannot focus on those himself.
- His parents also take care of his meals, any phone calls and going to the store.

In the physician's and assessor's reports, the doctor provided the following information about the Appellant's impairment:

- He usually is unable to carry on social interactions; is fearful and often barricades himself in a room; he has paranoid delusions around others on an ongoing basis.
- He attends psychotherapy and medication therapy with as yet modest improvement in function.
- He has difficulties with communication – significant social anxiety; however, his ability to speak, read, write, hear is good.
- He has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and impulse control – forgetfulness for dates, appointments; has had suicidal impulses and difficulty with attention.
- As for impacts to daily functioning, experiences moderate impact to consciousness, emotion, impulse control, motivation, psychotic symptoms ("paranoia delusion"), and to other emotional or mental problems; minimal impact to insight and judgement, attention/concentration, executive, memory and other neuropsychological problems; no impact to bodily functions, motor activity or language.
- Has intermittent rages, difficulty with following through on tasks, [illegible] motivated, and often becomes paranoid and reclusive despite supportive environment.
- He is able to walk 4+ blocks, climb 5+ steps, has no limitations with lifting and can remain seated for 1-2 hours.

Doctor's Assessment of Restrictions to Living Activities

The doctor reported that the Appellant has not been prescribed any medications and/or treatments that interfere with his ability to perform daily living activities. As for impairments that impact the Appellant's ability to manage daily living activities, the doctor wrote "Profound anxiety and some paranoia, social phobia, difficulty concentrating".

The doctor indicated that the Appellant manages daily living activities as follows:

- Independently manages all areas of mobility and physical ability.
- Independently manages all areas of personal care, basic housekeeping, shopping, meals, medications and transportation.
- Needs continuous assistance with banking, budgeting, and paying rent and bills.
- For social functioning, the Appellant needs periodic support/supervision in all areas; that is, with making appropriate social decisions, with developing and maintaining relationships, with interacting appropriately with others, with dealing appropriately with unexpected demands and with securing assistance from others.

- Has very disrupted functioning in both his immediate and extended social networks.
- Is at risk of relapse with stress, and risky/dangerous behavior.

Help with Daily Living Activities

The doctor noted that the Appellant:

- Gets assistance from family and requires Mental Health support.
- Is socially isolated and has no friends; relies on the support of his parents.
- Does not need assistive devices or have an assistance animal.

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 he 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 parties' positions under the PWD criteria at issue in this appeal.

Severe Mental Impairment

The Appellant submitted that he has several mental health conditions, confirmed by his doctor and psychiatrist, which prevent him from working and which impair his ability to function. The Appellant described how depression, fatigue, anxiety attacks, social phobia, paranoia, and suicidal thoughts impact his ability to take care of himself. He does not go out without his parents and he relies on them to look after him, including taking care of financial matters, shopping and meals.

In its reconsideration decision, the Ministry wrote that it reviewed the information provided by the Appellant and by the doctor who completed the physician's and assessor's reports. It also noted that the doctor referred to mental health assessments and psychiatric reports. The Ministry added that it

is possible that these reports would confirm a severe mental impairment. The Ministry also wrote that as no new medical, diagnostic or psychiatric reports were submitted with the request for reconsideration, it determined that it did not have enough information from the doctor to confirm that the Appellant has a severe mental impairment.

The Panel's Findings

The diagnosis of a serious medical condition does not in itself establish PWD eligibility. To satisfy 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 other prescribed professionals.

The Appellant submitted that he is unable to work because of his medical conditions. The Panel notes that, in contrast to the province's Person with Persistent Multiple Barriers legislation, the ability to work and/or find work is not part of the legislation for designation as a PWD.

The Appellant provided details about how his conditions directly restrict his ability to function. For example, he stated that he cannot focus or concentrate enough to complete tasks. His anxiety attacks discourage him from going out on his own or being around people. Also, his body shuts down, so that he is restricted in his physical activities. His paranoia affects his ability to do any activities and he becomes fearful or defensive. His depression results in constant fatigue and he has suicidal thoughts from depression which affects his confidence. Because of these restrictions to his ability to function, the Appellant stated that he relies on his parents to pretty much take care of everything.

The medical diagnoses and reports from the doctor corroborate and expand the Appellant's descriptions of the severity of his impairments. The doctor noted significant deficits with the Appellant's cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and impulse control. The doctor added that the Appellant forgets dates and appointments, has had suicidal impulses and has difficulty with attention. As for impacts to daily functioning, although the doctor did not note any major impacts in areas of cognitive and emotional functioning, the doctor did report that the Appellant does experience numerous impacts such as moderate impacts to consciousness, emotion, impulse control, motivation, psychotic symptoms ('paranoia delusion'), and to other emotional or mental problems. He also experiences minimal impact to insight and judgement, attention/concentration, executive, memory and other neuropsychological problems. The Appellant often becomes paranoid and reclusive despite a supportive environment. In addition, the doctor reported that the Appellant has very disrupted functioning with his immediate and extended social networks. The Appellant also requires periodic support/supervision with every aspect of social functioning and requires continuous support with financial tasks.

In the assessor's report, the Appellant's doctor indicated that he accessed various information sources when he completed the form. Those included the Appellant's parents, psychiatrist and addiction counsellor as well as the doctor's own files and knowledge about the Appellant's impairments. Given the totality of the evidence summarized above and considering that the Appellant's doctor based his opinion on his own professional knowledge of the Appellant for 15 years plus the information provided by other treating professionals, the Panel finds that the cumulative evidence establishes that the Ministry was not reasonable in concluding that there was not enough

information to determine that the Appellant has a severe mental impairment.

Severe Physical Impairment

The Appellant's doctor provided no information about any physical health conditions or restrictions arising from any physical health conditions. The only information about any physical impairments was the Appellant's evidence that his body shuts down and he gets severe headaches when he has anxiety attacks. These physical conditions are secondary to the Appellant's mental health conditions. Based on this evidence, the Panel finds that the Ministry reasonably determined that there was insufficient information to establish a severe physical impairment.

Direct and Significant Restrictions to Daily Living Activities

The Appellant submitted that his severe mental impairment directly impacts his ability to function outside his home, his ability to focus and concentrate on tasks and his ability to take care of himself.

The Ministry noted that it relies on the medical opinions and assessments from the doctor regarding how the Appellant's impairments impact his ability to manage his daily living activities and whether he requires assistance with those activities. The Ministry determined, based on all of the available information from the doctor, that there is not enough evidence to establish that the Appellant's impairment directly and significantly restricts his 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 his severe physical or mental impairment directly and significantly restricts his daily living activities, continuously or periodically for extended periods. It is not enough, however, for the prescribed professional to merely report that such activities are restricted. The prescribed professional must assess and describe 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 the case, the Appellant's doctor, who completed the physician's and the assessor's reports, is the prescribed professional. The doctor reported that the Appellant needs continuous assistance with banking, budgeting, and paying rent and bills. The doctor also reported that the Appellant needs periodic support/supervision with all areas of social functioning, and that he has very disrupted functioning with his social networks. These reported restrictions are consistent with the Appellant's evidence. However, the doctor did not provide details about the frequency or extent of any support/supervision that might be needed, other than stating that the Appellant gets help from his family.

With respect to the majority of defined daily living activities, the doctor reported that the Appellant independently manages all aspects of seven other defined daily living activities. Therefore, based on the doctor's evidence that the Appellant independently manages almost all tasks related to daily living activities, the Panel finds that the Ministry reasonably concluded that there is not enough information to establish that the Appellant's impairments directly and significantly restrict daily living activities continuously or periodically for extended periods.

Need for Help with Daily Living Activities

The Appellant submitted that he relies on his family to take care of everything for him, including being with him when he goes out and doing all the shopping and banking. He also gets help from therapy and AA sessions.

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 Ministry also noted that the doctor indicated that the Appellant does not require any assistive devices.

The Panel's Findings

A finding that a severe impairment directly and significantly restricts a person's ability to manage his daily living activities either continuously or periodically for an extended period is a precondition to a person requiring help as defined by section 2(3)(b) of the EAPWDA. For the reasons stated above, the Panel finds that the Ministry reasonably concluded that the evidence falls short of satisfying that precondition. The Panel also notes that the doctor reported only that the Appellant's family helps him, but provided no details about the frequency or extent of such help. Therefore, the Panel finds that the Ministry reasonably concluded that it could not determine that the Appellant requires help as defined by section 2(3)(b) of the EAPWDA.

Conclusion

The Panel acknowledges that the Appellant's medical conditions affect his ability to function. However, having reviewed all of the evidence and the relevant legislation, the Panel finds that the Ministry's reconsideration decision finding that the Appellant was ineligible for PWD designation 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.