

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 30, 2015, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). 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 establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant’s daily living activities (“DLA”) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of 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
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report dated May 11, 2015; a physician's report ("PR") and an assessor's report ("AR") both signed by the appellant's general medical practitioner (the "physician") and dated May 26, 2015.
- The appellant's Request for Reconsideration dated October 19, 2015 with attached advocate's letter signed by the physician on October 22, 2015.

Admissibility of Additional Information

In a written statement submitted as part of her Notice of Appeal on September 28, 2015, the appellant provided information that was substantially reiterative of information that had been before the ministry at the time of reconsideration. At the hearing, the appellant added that she and her doctor have not yet found medications to help her anxiety and depression because she finds the side effects impact her ability to parent. This information was generally consistent with the information before the ministry on reconsideration. Accordingly, the panel has admitted the appellant's written statement and oral clarifications into evidence in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and submitted no new information.

Diagnoses

- In the PR the physician diagnosed the appellant with generalized anxiety disorder and depression with an onset of December 2008 and sciatica with an onset of July 2012. The physician described the generalized anxiety disorder and the depression as "moderate to severe" and wrote that sciatica causes "intermittent severe pain."

Physical Impairment

- In terms of functional skills, the physician indicated in the PR that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, remain seated less than 1 hour ("15 to 20 minutes depending on sciatica"), and has no limitations with lifting. In the AR the physician reported that the appellant independently manages walking indoors and outdoors, standing, lifting and carrying and holding and uses an assistive device for climbing stairs, described as "rails due to sciatica."
- In her written statement submitted with her Notice of Appeal the appellant reported that standing or sitting for more than 10 to 15 minutes is painful and when her sciatica "is acting up, a few times a week" she has to lie in bed for 30 minutes before she can move through the day and she cannot take medication to relieve the pain of her sciatica.

Mental Impairment

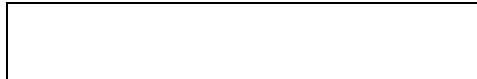
- In the PR the physician indicated the appellant has no difficulties with communication and

significant deficits with cognitive and emotional function in 6 of 11 listed areas, namely executive, memory, emotional disturbance, motivation, motor activity, and attention or sustained concentration.

- In the AR the physician reported the appellant's ability to communicate is good with writing and hearing, satisfactory to poor in speaking ("difficulty expressing herself when anxious") and poor in reading ("difficulty focusing"). He reported major impacts in 3 of 14 categories of cognitive and emotional functioning (emotion, attention/concentration, memory), and moderate impacts in 6 categories of bodily functions, executive, motivation, motor activity, language and other neuropsychological problems. The physician commented: "insomnia secondary to depression; poor short term memory; easily distracted; diagnosed with dyslexia as a child."
- In the advocate's letter of October 22, 2015, the physician confirmed his previous assessments and wrote regarding the appellant's difficulty with speaking that "this happens periodically" and with respect to the impacts to cognitive and emotional function that the "patient has not improved despite treatment with SSRI's [serotonin-specific reuptake inhibitors]."
- In her written statement submitted with her Notice of Appeal the appellant reported that it is a struggle to find a medication that allows her to be alert for her child and comfortable with her impairment. She often feels as if she does not have a choice to get up and going since she is a single parent. She suffers from anxiety attacks which demobilize her and she seeks aid from a close friend or her mother.

DLA

- In the PR the physician indicated that the appellant has not been prescribed medication or treatments that interfere with her ability to perform daily living activities (DLA). The physician commented that the appellant's conditions severely affect her ability to cope, she gets panic attacks which are incapacitating despite medication, and "multiple comorbidities make her struggle with ADL."
- In the AR the physician indicated that the appellant independently manages all tasks related to the DLA of basic housekeeping, meals, managing medications and transportation. Regarding the tasks of the DLA personal care, the physician reported that she is independent with all aspects except dressing, for which she requires periodic assistance described as "lack of motivation due to depression." For the tasks of the DLA shopping, the physician reported that the appellant requires continuous assistance with going to and from stores, with a comment that she "travels with Mom due to agoraphobia," and remains independent with the other tasks of shopping. The appellant requires periodic assistance with the budgeting task of the DLA "pay rent and bills," with an explanation "difficulty at times" and is independent with banking and paying rent and bills.
- For social functioning, the appellant is independent with 4 out of 5 aspects and requires continuous support/supervision with dealing appropriately with unexpected demands, described by the physician as "difficulty coping due to anxiety." The appellant has good functioning in her immediate social networks and marginal functioning in her extended social networks.
- In her self-report the appellant wrote that she is unable to get dressed at least 2 days per week due to depression and lack of motivation and she has difficulty with budgeting when her bills fluctuate in amounts.



Help

- In the PR the physician indicated that the appellant does not require any prostheses or aids for her impairment, and in the AR the physician confirmed that she does not have an assistance animal or use an assistive device.
- In the AR the physician indicated that the appellant receives help with DLA from family.
- In her written statement submitted with her Notice of Appeal, the appellant wrote that she seeks the help of her mother “when things are bad” for cooking, cleaning, shopping, and activities with her child. She seeks her mother’s help a minimum of 3 times a week.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of section 2 of the EAPWDA in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the evidence does not establish that

- the appellant has a severe physical or mental impairment;
- the appellant's 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, the appellant does not require the significant help or supervision of another person, an assistive device, or the services of an assistance animal?

The relevant legislation is as follows:

EAPWDA:

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.

EAPWDR section 2(1):

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.

Severe Physical Impairment

The appellant's position is that her sciatica constitutes a severe physical impairment as a result of severe pain for which she takes pain medication 3 times per week.

The ministry's position is that a severe impairment of physical functioning has not been established, as the physician reported mostly independent mobility and physical ability and did not describe the frequency or duration of her intermittent severe pain due to sciatica, which affects her ability to sit for more than 15 to 20 minutes and the use of handrails when climbing stairs.

Panel Decision

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An impairment is a medical condition that results in restrictions to a person's ability to function independently or effectively. To assess the severity of an impairment 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 performing DLA is restricted.

The appellant's functional skills as described by the physician in the PR and AR are at the high end of the scale. While the appellant is limited in her ability to sit more than 15 to 20 minutes when her sciatica is "acting up," which the appellant wrote was "a few times a week", she is reported as independent with all other areas of mobility and physical ability and uses the handrails when climbing stairs; however, the ministry reasonably concluded that handrails do not fall within the legislative definition of an assistive device and climbing stairs does not take the appellant longer than typical.

As discussed in more detail below under the heading Significant Restrictions to DLA, the appellant's physical condition does not appear to have translated into significant restrictions in her ability to manage her DLA independently.

Accordingly, the panel has concluded that the ministry reasonably determined that the evidence falls short of establishing that the appellant has a severe physical impairment.

Severe Mental Impairment

The appellant's position is that she has a severe mental impairment due to her panic attacks and lack of motivation due to her anxiety and depression. She argued that she has been working with her physician to find a medication she can take when needed and she is currently not taking any medications.

The ministry's position is that there is not enough evidence to establish a severe mental impairment. The ministry pointed out that in the advocate's letter signed October 22, 2015, the physician agrees that the appellant has made statements regarding the impact of her anxiety and depression and this is considered by the ministry to be more in the nature of a self-assessment as opposed to medical assessments by the physician.

Panel Decision

In terms of mental functional skills, the evidence of the physician in the PR and AR indicates that the

appellant has “moderate to severe” anxiety and depression and she gets panic attacks which are incapacitating despite medication. The physician did not specify how often or how long the panic attacks occur, despite being given an opportunity to do so in the advocate’s letter of October 22, 2015. The appellant wrote that she suffers from anxiety attacks which demobilize her and she seeks aid from a close friend or her mother, but she does not indicate how often the attacks occur. The appellant also wrote that she often feels as if she does not have a choice to “get up and going” since she is a single parent. The physician reported significant deficits with cognitive and emotional function in several areas, with major impacts in 3 of 14, namely emotion, attention/concentration and memory, and moderate impacts in 6 areas. Although the physician wrote that the appellant was diagnosed with dyslexia as a child, there was no further information to explain the current impacts as a result of this condition.

With respect to social functioning, the physician indicated the appellant is independent in making appropriate social decisions and with interacting appropriately with others, with good functioning in her immediate social networks and marginal functioning in her extended social networks. The appellant is assessed as independent in those areas of DLA requiring decision-making, including regulating her diet, making appropriate choices when shopping, meal planning and safe storage of food, taking her medication as directed and safe handling and storage as well as using transit schedules and arranging transportation. She requires periodic assistance with budgeting described as “difficulty at times” and the appellant wrote in her self-report that it is “when my bills fluctuate in amounts,” which does not specify how often the assistance is required. The physician indicated both that the appellant has no difficulties with communication and also that her speaking is “periodically” poor, without an indication of how often this occurs, and she has difficulty focusing when reading. The panel concludes that the ministry reasonably determined that the evidence does not demonstrate a severe mental impairment.

Significant Restrictions to DLA

The appellant’s position is that her impairments cause significant restrictions to her ability to manage her DLA.

The ministry’s position is that there is not enough evidence to confirm that the appellant’s impairments directly and significantly restrict her ability to perform DLA either continuously or periodically for extended periods.

Panel Decision

The legislation requires that a severe impairment directly and significantly restricts the appellant’s ability to perform DLA either continuously or periodically for extended periods. The term “directly” means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. In circumstances where the evidence indicates that DLA are directly restricted, it is appropriate for the ministry to require evidence as to whether the restriction is continuous or periodic and – if periodic – of how frequently the restriction arises.

In the PR, the physician wrote that the appellant’s conditions severely affect her ability to cope, she gets panic attacks which are incapacitating despite medication, and “multiple comorbidities make her struggle with ADL.” In the AR, the physician reported restrictions to and the need for periodic assistance with two tasks (dressing and pay rent and bills) and continuous assistance with one task

(going to and from stores) related to three DLA – personal care, shopping and “pay rent and bills.” With respect to the need for continuous assistance with carrying purchases home, the physician commented that the appellant “travels with Mom due to agoraphobia.” The comments about the other tasks included a lack of motivation 2 days per week due to depression with respect to dressing and “difficulty at times” with respect to budgeting. The panel finds that the ministry determined that there was insufficient information to establish that the periodic assistance is required for extended periods.

Considering the foregoing, while the appellant experiences some restrictions due to her mental impairment, the evidence does not present a compelling picture of an individual whose ability to manage her DLA is significantly restricted as contemplated by the legislative scheme. Accordingly, the panel concludes that the ministry reasonably determined that the appellant’s ability to manage her DLA independently is not significantly restricted either continuously or periodically for extended periods.

Help with DLA

The appellant’s position is that she requires help from her mother “when things are bad” for cooking, cleaning, shopping, and activities with her child.

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

Panel Decision

A finding that a severe impairment directly and significantly restricts a person’s ability to manage her DLA 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 provided above, the panel finds the evidence falls short of satisfying that precondition.

Accordingly, the panel finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

Conclusion

The panel acknowledges that the appellant’s medical conditions currently affect her ability to function. However, having reviewed and considered all of the evidence and the relevant legislation and for the foregoing reasons, the panel finds that the ministry’s decision finding the appellant ineligible for PWD designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry’s decision.