

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 25, 2015 which found that the appellant did not meet two of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that he has a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated August 12, 2014, a physician report (PR) dated May 22, 2015 completed by a general practitioner who has known the appellant for 9 years and an assessor report (AR) dated March 11, 2015 and completed by a registered nurse who met with the appellant once.

The evidence also included:

- 1) Learning Disabilities Assessment dated March 24, 2005 prepared by a registered psychologist;
- 2) Excerpts from a Neuropsychological/ Psycho-vocational Assessment dated August 7, 2015 prepared by a registered psychologist;
- 3) Letter dated November 9, 2015 in which a psychiatrist wrote that the appellant struggles with multiple issues including ADHD and a learning disability with difficulty with written expression and processing information. He is unable to tolerate medication for ADHD. The appellant is significantly impaired and has tremendous difficulty finding work that fits his needs; and,
- 4) Request for Reconsideration dated November 5, 2015.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with a lifelong learning/ developmental disorder, with a history of sleep issues/disorders, anxiety. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the general practitioner wrote: "...issues are reading and writing- comprehension expressive disorder."

Daily Living Activities (DLA)

In the PR, the general practitioner reported that:

- In terms of health history, the appellant "...is able to read but he is completely unable to comprehend what he is reading; unable to retain/comprehend instructions/written; unable to keep schedules reliably; unable to remember/participate in conversation with more than one other person...; anxiety- loss of sleep; intellectually challenged..."
- The appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA.
- The appellant has cognitive difficulties with communication, described as "comprehension and communication are severely limited by his inability to retain/cope with instruction/conversation."
- The appellant is not restricted with several listed DLA, specifically: personal self care, meal preparation ("simple only"), basic housework, daily shopping, mobility inside and outside the home, and use of transportation ("no driver's license"). Management of medications was not assessed and was noted as "N/A" or not applicable.
- The appellant is restricted with management of finances, but there is no indication if this is either continuous or periodic in duration. The general practitioner noted that the appellant "is careful to manage finances, but only if they are simple- can't understand contracts, rules, instructions, etc."
- The appellant is continuously restricted with one listed DLA, specifically social functioning. Regarding the degree of restriction, the general practitioner wrote: "...Isolated by inability to comprehend conversations, sociable situations, withdrawn, anxious, solitary."
- In the additional comments to the PR, the general practitioner wrote that she agrees with the

account the appellant has made of his condition and its effect on his daily life as well as its impact on his ability to function normally.

In the AR, the registered nurse reported that:

- The appellant has a good ability to communicate in hearing, satisfactory ability with speaking and poor ability with both reading and writing, with a note “30% at best.”
- The appellant is independent with all areas of mobility and physical ability.
- The appellant is independently able to perform every task of all DLA, specifically: personal care, basic housekeeping, shopping, meals, paying rent and bills, and transportation. The nurse noted that management of medications is not applicable to the appellant as he is “on no medications.”
- The appellant is independent in 4 out of 5 areas of social functioning, namely making appropriate social decisions (“when younger used some drugs [got in with the wrong people] but not now; just occasional marijuana to help with sleep”), developing and maintaining relationships (“was in common-law relationship but not now”), interacting appropriately with others, and securing assistance from others (“has seen a counselor for years”). The appellant requires periodic support/supervision with dealing appropriately with unexpected demands, described as: “will get angry then tries to reframe it.”
- The appellant takes has good functioning in his immediate social networks and marginal functioning in his extended social networks, described as: “states he has to work at it.”
- In the additional comments to the AR, the registered nurse wrote that the appellant “...has a ‘written expression disorder’ and he learns better listening to the spoken word and not by reading. Every day he will spend a couple of hours on-line checking job postings and then will go to ‘Career Link’ to check for work opportunities, but he has not been able to find work that he can do. Any job training would need to be visual or spoken as he cannot comprehend written material. [The appellant] also suffers from some sort of sleeping disorder- he has great difficulty getting to sleep. As a result, he will often sleep through his alarm, which makes getting to work on time impossible on most days.”

In his self-report, the appellant wrote that:

- He has had problems with reading and understanding all his life. The main barrier seems to be between reading the words and understanding and remembering what they say. His mind “just goes blank.”
- He cannot get a driver’s license or any job that requires him to read or take and remember instructions.
- He cannot get to sleep even when he is really tired and eventually when he does manage to, he sleeps through alarms and all efforts to wake him.
- He is able to look after himself and although he is not physically strong he is motivated to clean, cook and live independently, but only as long as he cannot worry all the time about how he shall manage to stay that way.

In his Request for Reconsideration, the appellant wrote that all his life he has worked around his academic deficiency problem and each time he requires help finding work the only help offered to him has been advice to go back to school.

Need for Help

The general practitioner reported in the PR that:

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- The appellant “functions with regards to DLA’s but unable to read, follow and understand warnings, instructions, etc.”

In the AR, the registered nurse reported that:

- The help required for DLA is provided by the appellant’s family (“father”), health authority professionals (“counselor”), and community service agencies.
- The nurse commented: “father helps if needed; has seen a counselor for some years; uses ‘Career Link’ employment search agency.”
- Describing the help required where none is available, the registered nurse wrote that the appellant “would require assistance with reading and writing comprehension (he has never gotten a driver’s license because of his reading/writing disability).”

Additional Information

In his Notice of Appeal dated December 16, 2015, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that all aspects of living are affected by his condition.

At the hearing, the appellant stated that:

- His condition does affect his daily living. He is not a psychologist but he does not know how he is supposed to overcome his problems without assistance.
- He is restricted from finding and keeping work. He has been denied Persons with Persistent Multiple Barriers (PPMB) status. He has been fired from jobs and the foremost recommendation is to return to school but he cannot do it without assistance with reading. He needs educational support to help make any learning experience meaningful.
- His insomnia and inability to keep a regular sleep schedule is directly related to his condition.
- He has difficulty with making appropriate choices when shopping and wonders what “appropriate” choices are.
- He has had to do all his daily living activities all his life. There is no help in the areas that he needs.

The ministry relied on its reconsideration decision, as summarized at the hearing.

Admissibility of Additional Information

The panel considered the appellant’s oral testimony as information that corroborates the extent of the appellant’s impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant has a severe mental impairment but his DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA as follows:

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either

(A) continuously, or

(B) periodically for extended periods, and

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

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

Definitions for Act

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

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

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

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- (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe mental impairment. At the hearing, the appellant confirmed that he does not take the position that he has a severe physical impairment.

Restrictions in the ability to perform DLA

The appellant's position is that his severe mental impairment directly and significantly restricts his ability to perform DLA on an ongoing basis to the extent that he requires the significant assistance of another person, namely his father, a counselor, and community service agencies.

The ministry's position is that the information from the prescribed professional does not establish that the appellant's severe mental impairment significantly restricts his DLA either continuously or periodically for extended periods. The ministry argued that the majority of the DLA are performed independently or require little help from others and the letter from the psychiatrist refers to difficulty finding work but employability is not one of the criteria of the PWD designation.

Panel Decision

Section 2(2)(b) of the EAPWDA requires that a prescribed professional provide an opinion that an applicant's severe impairment directly and significantly restricts his DLA, continuously or periodically for extended periods. In this case, the general practitioner and the registered nurse are the prescribed professional. DLA are defined in Section 2(1) of the EAPWDR and are also listed in the PR and, with additional details, in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the appellant's circumstances, the general practitioner reported in the PR that the appellant has not been prescribed medications and/or treatments that interfere with his ability to perform DLA. The general practitioner reported that the appellant is not restricted with most of the listed DLA, specifically: personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, and use of transportation. In the AR, the registered nurse noted that management of medications is not applicable to the appellant as he is "on no medications."

For management of finances, the general practitioner indicated that the appellant is restricted, but there is no indication if this is either continuous or periodic in duration. The general practitioner noted that the appellant "...is careful to manage finances, but only if they are simple- can't understand contracts, rules, instructions, etc." While each task of "pay rent and bills," including banking and budgeting, are assessed by the registered nurse as independent, the panel notes that she only met with the appellant once while the general practitioner has known the appellant for 9 years and the

psychiatrist wrote in her dated November 9, 2015 that the appellant has a learning disability with difficulty with written expression and processing information. However, the psychiatrist concluded in her letter that the appellant has tremendous difficulty finding work that fits his needs, and the panel finds that the ministry reasonably determined that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. In the AR, the registered nurse reported that the appellant is independently able to perform every task of all DLA, specifically: personal care, basic housekeeping, shopping, meals, paying rent and bills, and transportation, and that management of medications does not apply to him.

Considering the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), there is little evidence of significant impacts to either with the exception of the area of communication. The registered nurse assessed all decision-making components of DLA as independent, specifically personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), managing his finances (budgeting and paying rent and bills), and transportation (using transit schedules and arranging transportation). The registered nurse also reported in the AR that the appellant is independent with making appropriate social decisions.

Regarding the DLA of social functioning, the general practitioner reported in the PR that the appellant is continuously restricted and wrote: "...isolated by inability to comprehend conversations, sociable situations, withdrawn, anxious, solitary." In the AR, the registered nurse provided more detail in assessing the appellant as independent in 4 out of 5 areas of social functioning, namely making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The appellant requires periodic support/supervision with dealing appropriately with unexpected demands, described as: "will get angry then tries to reframe it." The registered nurse did not provide further explanation or description to indicate how often this support/supervision is required and for how long. The appellant takes has good functioning in his immediate social networks and marginal functioning in his extended social networks as he "states he has to work at it."

The general practitioner reported that the appellant has cognitive difficulties with communication described as "comprehension and communication are severely limited by his inability to retain/cope with instruction/conversation." The registered nurse reported that the appellant has a good ability to communicate in hearing, satisfactory ability with speaking, and poor ability with both reading and writing, with a note "30% at best." The general practitioner wrote in the PR that the appellant "...is able to read but he is completely unable to comprehend what he is reading; unable to retain/comprehend instructions/written; unable to keep schedules reliably; unable to remember/participate in conversation with more than one other person..." and she concluded that the appellant "functions with regards to DLA's but unable to read, follow and understand warnings, instructions, etc." In his self-report, the appellant wrote that he is able to look after himself and, although he is not physically strong, he is motivated to clean, cook and live independently, but only as long as he cannot worry all the time about how he shall manage to stay that way. In his Request for Reconsideration and at the hearing, the appellant stated that all his life he has worked around his academic deficiency problem and each time he requires help finding work the only help offered to him has been advice to go back to school.

Considering the evidence of the general practitioner as well as the registered nurse as the prescribed

professionals, the panel finds that the ministry was reasonable to conclude that most of the tasks of DLA are performed by the appellant independently and the narrative placed an emphasis on the appellant's difficulties with written communication and his resulting inability to keep work. Therefore, the panel ministry reasonably concluded that there is insufficient evidence from the prescribed professional to show that the appellant's overall ability to perform his DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that he requires the significant assistance of another person to perform DLA, namely his father, a counselor, and community service agencies.

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

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The panel finds that the evidence of the appellant's general practitioner and the registered nurse, as the prescribed professionals, establishes that the help required for DLA is provided by the appellant's father, health authority professionals ("counselor"), and community service agencies. The nurse commented: "father helps if needed; has seen a counselor for some years; uses 'Career Link' employment search agency." Describing the help required where none is available, the registered nurse wrote that the appellant "would require assistance with reading and writing comprehension."

The panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation pursuant to Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision.