

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 21, 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 she 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 May 24, 2015, a physician report (PR) dated June 12, 2015 completed by a general practitioner who has known the appellant since February 2010 and has seen her once in the preceding 12 months, and an assessor report (AR) dated August 4, 2015 and completed by a registered social worker who met with the appellant once for the purpose of completing the assessment, which was based solely on an office interview with the appellant and her mother.

The evidence also included:

- 1) General practitioner's Questionnaire dated June 8, 2015 completed by the appellant and for the purpose of ensuring she is given "the best chance at being accepted for the Ministry of Human Resources Disability Pension;"
- 2) General practitioner's Chart Summary dated June 12, 2015; and,
- 3) Request for Reconsideration dated December 7, 2015 with the following attached documents:
  - List of appointments with the general practitioner from December 2, 2013 to present;
  - Referral letter from the general practitioner dated December 2, 2015; and,
  - Letter dated December 3, 2015 from the social worker.

### ***Diagnoses***

In the PR, the appellant was diagnosed by the general practitioner with social anxiety disorder with an onset in 1996. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the social worker wrote: "...social anxiety- severe; depression."

### ***Daily Living Activities (DLA)***

In the PR, the general practitioner reported that:

- In terms of health history, "...it is difficult to assess as have only had 2 visits. She hesitates to see doctors. I really have no other information than this booklet and the attached visit notes."
- The appellant has not been prescribed medications and/or treatments that interfere with her ability to perform DLA.
- The appellant has cognitive difficulties with communication, described as "in a social setting (anxiety)."
- The appellant is not restricted with several listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, mobility inside the home, and management of finances.
- The appellant is continuously restricted with daily shopping, mobility outside the home, use of transportation and social functioning. There were no further comments provided regarding the degree of restriction.
- For social functioning, the general practitioner wrote that the appellant has "extreme social anxiety; avoids social situations as much as possible."

In the Chart Summary dated June 12, 2015, the general practitioner reported:

- As a subjective note, the appellant was seen with her mother, has "severe social anxiety," won't go out, dealing with ministry and has a PWD disability form, panic attacks, has been going on for years and has not seen MD's in past about it, not working, sleep OK, moods OK, interest OK, does not like people, exercises daily, can't do job interview;

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- As an objective note, the appellant was seen with her mother, she is very anxious, she moves her legs and shifts in chair, she is “embarrassed appearing.”

In the List of Appointments from December 2, 2013 to present, it was indicated that the appellant met with the general practitioner 7 times: once in May, twice in June, once in July, once in September, once in October and once in December 2015.

In the Referral letter dated December 2, 2015, the general practitioner wrote that:

- The appellant suffers from anxiety disorder with social anxiety. She was seen with her mother who indicated that the appellant’s disability application was rejected and “(t)his is not appropriate in my opinion to reject this application.”
- Further history obtained yields: the appellant does not leave the house, she has a hard time in social situations, does not answer the door, hides in the basement, won’t answer the phone, coming to his office was a very difficulty endeavor, if the family comes over she will leave, she cannot get onto a bus, her mother must be involved with everything, and she is intolerant of public places.

In the AR, the social worker reported that:

- The appellant has a good ability to communicate in reading, writing and hearing, and poor ability with speaking described as: “extreme anxiety for public speaking.”
- The appellant is independent with all areas of mobility and physical ability, including walking indoors and outdoors.
- The appellant is independently able to perform every assessed task of most DLA, specifically: personal care, basic housekeeping, shopping, meals, paying rent and bills, and transportation. The social worker did not assess the task of “using public transit” but noted that the appellant “will not take the bus for fear that someone would try to make conversation” and she is “avoidant of social situations.”
- For management of medications, the appellant is independent with taking her medications as directed and with safe handling and storage. For the task of filling/refilling prescriptions, the social worker indicated that the appellant is independent and takes significantly longer than typical and also that she requires continuous assistance from another person. The social worker wrote that the appellant “needs to have a caregiver present to attend pharmacy because of extreme fear of public speaking, talks and being around other people” and her “mother attends to speak on her behalf.”
- The appellant is independent in 2 out of 5 areas of social functioning, namely making appropriate social decisions and securing assistance from others,, with a note that “at times feels sick to her stomach due to fear.” The appellant requires continuous support/supervision with developing and maintaining relationships (note: “does not develop relationships easily; finds this very challenging; interacts with close family and close friends but avoids new social interactions”), interacting appropriately with others( note: “will respond minimally to others; avoids social interaction; will not make phone calls due to fear of social interaction”), and dealing appropriately with unexpected demands, described as: “not able to deal with unexpected social interactions/demands.”
- The appellant has good functioning in her immediate social networks and very disrupted functioning in her extended social networks, described as: “will avoid contact; this makes working challenging.”
- In the additional comments to the AR, the social worker wrote that the appellant “...suffers from extreme/severe anxiety and depression,” and she “continues to meet regularly with her family

physician to find medication that will alleviate her symptoms.” The appellant “avoids social interactions, finds it very challenging to be in community (stores/pharmacy/bank) without a support person (her mom).” She “does not initiate new relationships/friendships; can feel sick to her stomach at even the thought of going out in public.” When she goes out into public places, “afterwards she feels totally exhausted and fatigued” and she is “not able to work in groups and has never worked due to severe anxiety and depression; once in social interaction (forced) she needs a day to sleep/relax alone before she feels better.”

In the letter dated December 3, 2015, the social worker reported:

- As the general practitioner indicated, the appellant suffers from severe social anxiety and panic attacks and she will not go out in public without the support of her mother.
- The appellant’s social anxiety has prevented her from attending a job interview, she has never had a job. She is unable to go into a business and introduce herself to an employer.
- The appellant is not able to shop for herself, go to the bank independently, go to the pharmacy, and she relies on support for all doctor and dentist appointments.
- After speaking with the appellant’s mother, it was clear that the appellant’s disability impacts her life and daily activities more than what was initially expressed during their interview.
- The appellant is severely impacted by her disability as she hides in her home, will not answer the phone if someone calls and will not answer the door. The appellant’s mother stated that “making decision on how to handle what to do if someone does come to the door is way too much for her to handle.”
- The appellant has a very limited social network, i.e. two childhood friends who she is not involved with regularly. She is unable to develop new relationships due to fear, severe social anxiety and panic attacks which limit her social functioning.
- The appellant “is unable to work in my professional opinion.”

In her self-report, the appellant wrote that:

- She experiences many physical symptoms that accompany social anxiety disorder on a daily basis, including increased heart rate, shortness of breath, excessive sweating, upset stomach and shaking/trembling.
- Social anxiety makes everyday activities very stressful.
- When she goes grocery shopping, she tries to go during the hours when there are less people or to the stores that are less busy.
- When getting gas for the car, she always goes to ‘pay at the pump stations’ to avoid interacting with people.
- She has had mild panic attacks when there are too many people around her and she has to “leave places like the mall or movie theatre” and she avoids talking on the phone and answering the door.
- Meeting new people is very hard for her and makes her exceedingly uncomfortable and due to this she “find(s) it impossibly hard to do things like go for a job interview or even to the doctor.”

In the general practitioner’s Questionnaire dated June 8, 2015, the appellant indicated:

- Her social anxiety is severe.
- She is unable to attend social functions, to answer the door or phone, or to attend doctor appointments.
- She avoids grocery stores if they are busy.
- She is unable to work because of her anxiety.

In her Request for Reconsideration, the appellant wrote that this is a very serious issue that she is dealing with and she has been seeking medical attention regularly since her first application.

### ***Need for Help***

The general practitioner reported in the PR that:

- Regarding the nature and extent of assistance the appellant needs with DLA, the general practitioner wrote: “her mother helps with shopping.”

In the Referral letter dated December 2, 2015, the general practitioner wrote that the appellant’s mother “...must be involved with everything.”

In the AR, the social worker reported that:

- The help required for DLA is provided by the appellant’s family and friends.
- She does not use an assistive device or have an assistance animal.

In the letter dated December 3, 2015, the social worker reported that the appellant relies on the support of her mother to do all activities outside the home.

### ***Additional Information***

In her Notice of Appeal dated December 30, 2015, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that:

- Her anxiety has kept her extremely sheltered from the outside world.
- The only people in her life are her family and 3 girlfriends who she has known from childhood.
- Her anxiety has kept her from ever having a physical exam and she has never been on a date and this is unhealthy for a young woman.

At the hearing, the appellant’s mother stated that:

- They believe the impacts of the appellant’s condition were not fully understood at first.
- The appellant can cook but she does not cook.
- There are weeks at a time that the appellant does not even get out of bed.
- When she gets home from work, she sometimes has to make the appellant breakfast and/or dinner.
- The appellant can walk up the stairs from the basement but she does not.
- The appellant does not shop. Essentially, she has to do 99.9% of the shopping for the appellant. The appellant will only go if it is first thing in the morning or late at night when the stores are not likely to be busy and they cannot go to a local store in case the appellant were to run into someone she knows.
- They have been trying medications and are slowly making progress. Sometimes the appellant can make it to the grocery store. If she takes the medication, they might be able to make it to a book store together to pick up a book but there is a 50-50 chance that they will actually make it out the door.
- She can relate to close family, like her brothers, because they are part of her support system, but if anyone comes over to the house that she does not see on a regular basis, she will go down to the basement.
- When the appellant was a child she did okay but since she does not want to go out, her friendships have been “dropping off.”

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- She has to remind the appellant to get up out of bed, to shower, to eat, etc.
  - The appellant will not make phone calls so she has to make all the appointments for her.
  - When the appellant is in public, she will shake and sometimes the sweat will drip off her hands. She has panic attacks.
  - She and the appellant's father are separated and he lives in another home nearby so he sometimes helps the appellant but he is not as aware of how the appellant's condition affects her. Her brothers understand and will help her. Her friends help in more of a support function if the appellant were to go somewhere.
  - They are working on getting the appellant into mental health services but that is a challenge.
  - The doctor did not really know what was going on when they met with him to fill out the PWD application. The appellant became defensive when she started telling him about her limitations.
  - The appellant needs someone with her at all times in the public because she will not go out by herself.

At the hearing, the appellant stated that:

- The front door at their house is glass so when she is upstairs she is constantly on alert in case someone comes to the door and she has to get into another room so they will not see her.
- When her mother is not available, her father will help her.
- Her friends help her by providing support, not by doing things for her.

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 her 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 did not argue that she has a severe physical impairment.

### **Restrictions in the ability to perform DLA**

The appellant's position is that her severe mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, namely family (primarily her mother) and friends.

The ministry's position is that the information from the prescribed professionals does not establish that the appellant's severe mental impairment significantly restricts her DLA either continuously or periodically for extended periods. The ministry argued that the majority of the DLA are performed independently and although the general practitioner stated that the appellant's mother "must be involved with everything", he did not describe the DLA with which the appellant's mother must be involved. The ministry argued that the social worker did not describe restrictions to the appellant's DLA in her December 3, 2015 letter, outside those that require social interaction.

### ***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 her DLA, continuously or periodically for extended periods. In this case, the general practitioner and the registered social worker are the prescribed professionals. 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 her ability to perform DLA. The general practitioner also reported that it was "difficult to assess as have only had 2 visits. She hesitates to see doctors. I really have no other information than this booklet and the attached visit notes." The general practitioner reported that the appellant is not restricted with most of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, mobility inside the home aspect of moving about indoors and outdoors, and management of finances. While the appellant's mother stated at the hearing that although the appellant 'can' cook, she does not cook, and that there are weeks at a time that she does not even get out of bed, this level of restriction has not been confirmed in the opinion of either prescribed professional or that is



was a result of a severe mental impairment. In the Chart Summary completed June 12, 2015, the general practitioner noted: “not working, sleep OK, moods OK, interest OK, does not like people, exercises daily, can’t do job interview.”

The panel notes that the social worker completed the AR after meeting with the appellant once for the purpose of completing the assessment and the assessment was based solely on an office interview with the appellant and her mother, without the benefit of the input from other professionals, such as mental health specialists. In the AR, the social worker also assessed the appellant as independently able to perform every task of the DLA personal care, meal preparation, basic housekeeping, mobility inside and outside the home, and management of finances. For management of medications, the social worker reported in the AR that the appellant is independent with taking her medications as directed and with safe handling and storage but, for the task of filling/refilling prescriptions, the assessment is inconsistent as the appellant is at the same time independent and takes significantly longer than typical and also requires continuous assistance from another person. The social worker wrote that the appellant “...needs to have a caregiver present to attend pharmacy because of extreme fear of public speaking, talks and being around other people” and her “mother attends to speak on her behalf.”

The general practitioner reported in the PR that the appellant is continuously restricted with daily shopping, mobility outside the home and use of transportation. There were no further comments provided by the general practitioner in the PR regarding the degree of restriction and the panel notes that there is an apparent contradiction between the general practitioner’s assessment that the appellant can walk unaided on a flat surface for more than 4 blocks but that her mobility outside the home is continuously restricted. In the Referral letter dated December 2, 2015, the general practitioner reported with respect to DLA, after obtaining further history over the course of several visits, that the appellant does not leave the house and she cannot get onto a bus. In the AR, the social worker assessed the appellant as independent with walking indoors and outdoors and as independently able to perform every task of these same DLA, specifically: shopping, mobility both inside and outside the home, managing meals, and transportation. The social worker did not assess the task of “using public transit” but noted that the appellant “...will not take the bus for fear that someone would try to make conversation” and she is “avoidant of social situations.”

In the additional comments to the AR, the social worker wrote that the appellant “avoids social interactions, finds it very challenging to be in community (stores/pharmacy/bank) without a support person (her mom).” When she goes out into public places, “...afterwards she feels totally exhausted and fatigued” and she is “not able to work in groups and has never worked due to severe anxiety and depression; once in social interaction (forced) she needs a day to sleep/relax alone before she feels better.” In her self-report, the appellant wrote that social anxiety makes everyday activities very stressful and, when she goes grocery shopping, she tries to go during the hours when there are less people or to the stores that are less busy. At the hearing, the appellant’s mother stated that she does 99.9% of the shopping because the appellant will only go if it is first thing in the morning or late at night when the stores are not likely to be busy. The appellant wrote in her self-report that when she gets gas for the car, she always goes to ‘pay at the pump stations’ to avoid interacting with people. She has had mild panic attacks when there are too many people around her and she has to “leave places like the mall or movie theatre.” The panel notes that both the social worker and the appellant indicated that the appellant finds it difficult to go into the community but that she does so by adapting to times that are less busy or she leaves if it does become too busy for her.

The appellant wrote that meeting new people is very hard for her and makes her exceedingly uncomfortable and due to this she "...find(s) it impossibly hard to do things like go for a job interview." The appellant wrote in the Questionnaire that she is unable to work because of her anxiety, and the social worker wrote in the letter dated December 3, 2015, that the appellant's social anxiety has prevented her from attending a job interview, she has never had a job, and she is unable to go into a business and introduce herself to an employer. The social worker concluded her letter with her professional opinion that the appellant is unable to work. The panel notes that both the social worker and the appellant emphasized the appellant's employability, which is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR.

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 insufficient evidence of significant impacts to either. The social worker 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 her finances (budgeting and paying rent and bills), and transportation (using transit schedules and arranging transportation). The social worker also reported in the AR that the appellant is independent with making appropriate social decisions. In the social worker's letter dated December 3, 2015, she wrote that the appellant's mother stated that "making decision on how to handle what to do if someone does come to the door is way too much for her to handle," but the social worker did not elaborate on the extent of this impact.

Regarding the DLA of social functioning, the general practitioner reported in the PR that the appellant is continuously restricted and wrote: "...extreme social anxiety; avoids social situations as much as possible." In the AR, the social worker provided more detail in assessing the appellant as independent in 2 out of 5 areas of social functioning, including securing assistance from others. The appellant requires continuous support/supervision with developing and maintaining relationships and interacting appropriately with others. However, the appellant has good functioning in her immediate social networks and the assessment of very disrupted functioning in the appellant's extended social networks is qualified as "...will avoid contact; this makes working challenging." As previously mentioned, employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed DLA in section 2 of the EAPWDR. The general practitioner reported that the appellant has cognitive difficulties with communication described as "...in a social setting (anxiety)" and the social worker indicated that the appellant has a good ability to communicate in all areas except speaking, described as "...extreme anxiety from public speaking."

Considering that a majority of the appellant's DLA are performed independently, as well as the inconsistencies in the evidence of the general practitioner and the social worker as the prescribed professionals, both of whom referred to the challenges presented as a result of their limited interaction with the appellant, along with the emphasis by the social worker and the appellant on the impacts to her employability, the panel finds that the ministry was reasonable to conclude that there is insufficient evidence from the prescribed professionals to show that the appellant's overall ability to perform her 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 she requires the significant assistance of another person to perform DLA, namely her mother and friends.

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 social worker, as the prescribed professionals, establishes that the help required for DLA is provided by the appellant's family (primarily her mother but also her father and brothers) as well as her friends. The panel notes that the SR and the appellant's evidence suggesting the appellant requires continuous help from another person is not corroborated by the prescribed professionals and that the level of assistance cannot be determined based on their reports: for instance, the general practitioner indicates in the PR that the appellant's mother helps with shopping while in his Referral letter dated December 2, that her mother "must be involved with everything." Further, the social worker in the AR mentions the mother's assistance with social situations, going to the stores, pharmacy and bank but in her letter of December 3, she wrote that the appellant relies on the support of her mother to do all activities outside the home.

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.