

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated march 13, 2015 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the appellant did not meet 3 of the 5 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 his impairment was likely to continue for at least 2 years. However, the ministry was not satisfied that:

- the appellant had a severe mental or physical impairment,
- that the appellant’s mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted daily living activities (DLAs) either continuously or periodically for extended periods, and
- that as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLA.

PART D – Relevant Legislation

The relevant legislation is section 2 of the EAPWDA and section 2 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART E – Summary of Facts

The information before ministry at the time of the reconsideration decision consisted of the following:

A physician's report (PR) dated November 10, 2014, and completed by the appellant's physician indicating that the appellant suffers from generalized anxiety disorder, hepatitis C, on methadone and daily marijuana usage.

Under Health History the physician writes:

[The appellant's] has just been released on parole after 2 year incarceration.

Generalized anxiety – physically shaking in many social encounters.

- *Living at home with parents for stability*

- *Seeing counsellor*

Substance abuse – getting treatment and counselling

- *Goal is to wean off methadone & to also wean off marijuana*

Hepatitis C – LFS's currently normal – if changes will refer to Hepatitis C clinic for consideration of treatment.

The physician goes on to state under Degree of Impairment:

Long history of anxiety disorder. [The appellant] motivated to make long-term changes and hopefully eventually improve enough to re-enter workforce but prognosis guarded given past history.

Under functional skills the physician indicates the following:

- walk unaided 4+blocks;
- climb 5+ steps unaided;
- lift without limitations;
- remain seated without limitations;
- no difficulties with communication;
- significant deficits in executive, emotional disturbance, and attention or sustained concentration.

An assessor's report (AR) dated November 10, 2014, also completed by the appellant's physician which provides the diagnosis, "Generalized anxiety with panic attacks. Difficulty concentrating, completing tasks, difficulty with social interaction."

Under Mental or Physical Impairment, the AR indicates that the appellant's ability to communicate is good under all items, he is independent in all mobility and physical ability items, he has a major impact in the cognitive and emotional functioning areas of Emotion and attention/concentration, minimal impact in the areas of impulse control, insight and judgment, executive and memory, with no impact in the remaining 8 areas.

Under Daily Living Activities, the AR indicates that the appellant is independent in all DLAs except in the area of social functioning with which he requires periodic support/supervision with the impact on immediate social network described as very disrupted functioning with the comment "Is motivated to

work on improving relationships, social interactions,” and on extended social networks as marginal functioning.

Under Assistance Provided for Applicant the AR indicates Family, Friends and Volunteers, with the comment: “Has family that is trying to be supportive; has a parole officer. Is getting counselling.”

Under additional information the physician writes: “[The appellant] motivated to improve & eventually rejoin work force but has limited poor coping mechanisms at present & therefore would not do well with any adversity.”

A Self Report (SR) dated October 28, 2014, completed by the appellant which states:

- *I have Hep-C that in [illegible] the treatment*
- *I have addiction problems*
- *I have anxiety problems*
- *I have depression problems*
- *I'm on the methadone treatment*
- *I get to much going on. Need to take baby steps.*
- *My health is the most important and I'm sick with the Hep-C. Starting the treatment now and going to be sick I can't work because of it.*
- *Going to need counselling. Just rebuilding.*

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant has not met all of the eligibility criteria of section 2 of the EAPWDA for designation as a PWD was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry was not satisfied that:

- the appellant had a severe mental or physical impairment,
- the appellant's mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricted DLAs either continuously or periodically for extended periods, and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant required help to perform DLAs.

The ministry determined that the age requirement and the requirement that the appellant's impairment was likely to continue for at least 2 years had been met.

The criteria for being designated as a person with disabilities are set out in s. 2 of the EAPWDA and s. 2 of the EAPWDR. Section 2 of the EAPWDA states:

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;

"**health professional**" repealed

"**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 of the EAPWDR provides further clarification:

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.

The Appellant's Position

The appellant did not attend the hearing. The panel confirmed that the appellant had received the Notice of Appeal and continued with hearing in accordance with section 89(b) of the *Employment and Assistance Regulation*.

In his Notice of Appeal, the appellant writes: "It's all right there on paper from my Doctors and you want to why I disagree there's only a mountain of problems with me."

The Ministry's Position

The ministry's position is that there is not enough information in the AR, PR and SR for it to determine that the appellant is suffering from a severe physical or mental impairment, and that what information is provided tends to indicate that the appellant is not suffering from such an impairment.

The reports indicate that physically the appellant is suffering from Hepatitis C and is currently undergoing methadone treatment. Both of these conditions are under control and not causing the appellant any serious issues.

Mentally, the appellant suffers from anxiety and depression which is having some impact on his social, emotional and executive functioning. However, the severity of the conditions is not described,

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so that the ministry cannot determine whether it is severe or moderate.

The PR and AR clearly indicate that the appellant is independent in all his DLAs with the exception of requiring periodic assistance with his social functioning. While the appellant's issues with social functioning may impact his ability to carry out his DLAs, there is no detail provided that would establish that these impairments directly and significantly restrict the appellant's DLAs either continuously or periodically for extended periods.

Finally, there is no detail provided as to the level of assistance that is required by the appellant in his social functioning such that the ministry can determine that the appellant requires an assistive device or animal or that he requires significant assistance.

The Panel's Decision

Severe Physical Impairment

The appellant suffers from hepatitis C and is on methadone for addictions. The information provided indicates that the hepatitis C is under control, the physician noting that if any issues arise the appellant would be referred to a Hepatitis C clinic. Being treated with methadone is not a "severe medical impairment", but rather a treatment. As there was no indication in the information before the ministry that the appellant was suffering from a severe physical impairment, the panel finds that the ministry's decision in this regard was reasonable.

Severe Mental Impairment

The appellant suffers from anxiety and depression which impacts his mental condition in the areas of emotion and attention as well his social functioning. The AR indicates that the appellant's condition has minimal or no impact on 12 out of 14 assessed areas of his cognitive functioning. It appears that there may well be impacts on his social functioning, but the AR does not provide enough detail as to the impacts of these impacts to establish that they are severe. As there was not enough evidence in the information before the ministry that the appellant was suffering from a severe mental impairment, the panel finds that the ministry's decision in this regard was reasonable.

Daily Living Activities

The information before the ministry regarding the impact of the appellant's medical conditions on his ability to perform DLAs clearly indicates that in most cases he is independent. The exception is social functioning, which is impacted by his mental impairment. There is some information provided in this regard, to the effect that the appellant's family is helping him and that he is motivated to deal with this issue but no statements in regard to how significant this restriction really is. In any case, in the context of the DLA assessment generally, it is difficult to conclude on the evidence that the appellant's DLAs are significantly restricted continuously or periodically for extended periods. Based on this information, the panel finds that the ministry's decision in this regard was reasonable.

Help is Required to Perform DLAs

There is nothing in the information before the ministry which indicates that the appellant requires an assistive device or animal. What is clear from the PR and AR is that the appellant does not require any assistance with the vast majority of his DLAs. As noted in the above section, there is some indication in the AR that the appellant's family is assisting him with his social functioning issues. However, whether this help is significant is not clear. Given this information, the panel finds that the



ministry's decision in this regard was reasonable.

Conclusion

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify for PWD was reasonable based on the information before it at the time of the reconsideration decision.