

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 10, 2016 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 ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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 17, 2015, a physician report (PR) dated August 15, 2015 completed by a general practitioner who has not indicated how long he has known the appellant, and an assessor report (AR) dated August 5, 2015 and completed by a registered social worker who has known the appellant for 5 months.

The evidence also included:

- 1) Medical Imaging Reports dated November 6 and 11, 2013, December 30, 2013;
- 2) One page excerpt from medical notes dated April 22, 2014;
- 3) Social Work Mental Health Liaison Report dated March 19, 2015;
- 4) Orders and Directives dated April 17, 2015;
- 5) Consultation Report dated April 25, 2015 from hospital;
- 6) Referral form dated April 25, 2015 for Community Mental Health and Substance Use Services;
- 7) Acquired Brain Injury Program (ABI) Residential Services Quarterly Report for October through December 2015;
- 8) Letter dated February 25, 2016 from the general practitioner who completed the PR; and,
- 9) Undated Request for Reconsideration with letter from an advocate on the appellant's behalf.

Diagnoses

In the PR, the appellant was diagnosed by the general practitioner with attention deficit hyperactive syndrome and traumatic brain injury. 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: "...client suffered a traumatic brain injury 1.5 years ago. Client has ADHD."

Daily Living Activities (DLA)

In the PR, the general practitioner reported that:

- In terms of health history, the "...disability causes difficulty with executive function."
- The appellant has been prescribed medications, which he must take "lifelong," that interfere with his ability to perform DLA.
- The appellant has no difficulties with communication.
- The appellant is not restricted with almost all listed DLA, specifically: personal self care, meal preparation, basic housework, daily shopping, mobility inside and outside the home, use of transportation, management of finances, and social functioning.
- The appellant is periodically restricted with management of medications, described as "is difficult maintaining optimal dosage of medication."

In the AR, the social worker reported that:

- The appellant has a good ability to communicate in speaking and hearing, satisfactory ability with reading and poor ability with writing, with a no explanation or description provided.
- The appellant is independent with all areas of mobility and physical ability.
- The appellant is independently able to perform every task of almost all DLA, specifically: personal care, shopping, meals, paying rent and bills, and transportation.
- The appellant requires periodic assistance from another person with the DLA basic

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housekeeping (including laundry), and with one task of the DLA medications, specifically safe handling and storage. The social worker did not provide an explanation or description of the type or frequency of the assistance needed.

- The appellant is independent in 3 out of 5 areas of social functioning, namely making appropriate social decisions, interacting appropriately with others, and securing assistance from others. The appellant requires periodic support/supervision with developing and maintaining relationships and dealing appropriately with unexpected demands.
- The appellant takes has marginal functioning in both his immediate and extended social networks, described as: “client has difficulty maintaining positive relationships.”
- In the additional comments to the AR, the social worker wrote that the appellant “...has significant problems with finding and maintaining employment and housing. Client’s impulsivity, anxiety, low frustration tolerance, and cognitive impairments are permanent conditions which will continue to affect the client’s ability to find work, housing, and manage his medical and social needs.”

In his self-report, the appellant wrote that:

- An olfactory syndrome is just one of the things he suffers from due to his brain injury.
- Being unable to smell means he is unable to detect toxins.
- He has been unable to obtain and sustain stability with housing and gainful employment.
- His ability to perform his day-to-day duties in his chosen trade has diminished considerably.

In his Request for Reconsideration, the appellant’s advocate wrote that:

- The appellant is currently residing in a home funded through the ABI Program.
- The appellant acquired his brain injury in the fall of 2013 and he has a long-standing history of substance abuse and attention deficit disorder. Due to his concurrent diagnosis, he requires a substantial amount of support.
- He has a history of non-compliance with medications and requires prompting and reminders to take medications on a daily basis.
- He is unable to successfully start and finish a task without some prompting. He requires a care provider to prompt and support him with tasks.
- Although he has good communication abilities, the appellant struggles in having lengthy conversations.
- He struggles with managing his finances and requires support in ensuring he follows a budget. Due to his impulsive spending, with an inability to pay his rent, he is chronically at risk of homelessness.

In his February 25, 2016 letter, the general practitioner who completed the PR added that:

- The appellant is a pleasant and intelligent man, “...however, he is lost to possible further depths of destitution without certain supports in place, that being help with some basic higher activities of daily living, living accommodations.”

The Social Work Mental Health Liaison Report dated March 19, 2015 indicated that the appellant reported he had not had his medication in 3 days as his backpack was stolen.

In the ABI Program Residential Services Quarterly Report for October through December 2015, it is noted that:

- The appellant reported that he takes his medication when he feels like it and the care provider

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continued to support and encourage him to access his physician and take his medications as prescribed.

- The appellant continued to require reminders to complete basic household chores. He needed prompting to complete his laundry and to tidy his suite.
- The care provider reported that the appellant is able to cook independently and there are no further concerns related to him using the stove.
- The appellant tended to spend all of his money on alcohol and the care provider continued to prompt and encourage him to manage his finances.

Need for Help

The general practitioner reported in the PR that:

- The appellant does not require an aid for his impairment.
- The appellant requires assistance "...with planning/organizing."

In the AR, the social worker reported that:

- The appellant requires period support/supervision for areas of social functioning, described as "client requires assistance from a community support worker several times per week to integrate with the community."
- The help required for DLA is provided by health authority professionals and community service agencies, including the ABI services, home health services and mental health services.

Additional Information

In his Notice of Appeal dated March 10, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he requires further support due to mental health and acquired brain injury.

At the hearing, the appellant provided an additional document, being a Hospital Discharge Summary dated May 14, 2015. The diagnosis on discharge was drug-induced psychosis with a past history of ADHD and significant antisocial personality traits. He suffered a brain injury in 2013 and is connected with brain injury services.

At the hearing, the appellant and his advocate stated that:

- The advocate manages the housing program in which the appellant is involved.
- The appellant does not claim to have a severe physical impairment.
- The appellant has known the general practitioner for 12 years.
- The appellant suffered an injury to the back of his head in 2013 which was not at first detected after he had an MRI. It took him 10 months before his cognitive functioning reached its current level. He still has problems with his cognitive focus. He will be okay for a while and then he "gets lost."
- He cannot smell anymore and he still gets migraine headaches. He worries about the loss of a sense of smell because, for example, someone could put bleach into a glass of water and he would not know that there were chemicals in it.
- He was homeless for about a year and was getting some help from the ABI program. He was sleeping in a tent and there was an incident where he had been sleeping in a grocery store and he got locked in until the cleaning staff came in at night.
- He has a hard time managing his finances. He has not been employed for some time. His care provider has been paying for his groceries, which is not part of her role, but he does not

have any family that he can rely on.

- The appellant requires prompting and support to do things daily. His care provider makes sure that he has enough to eat.
- The appellant requires help to manage his medications. He forgets to take them or he misplaces them and it is important that he takes his medications because it helps him to organize his thoughts.
- The appellant unplugged the smoke alarm in his suite and could not smell when something was burning on the stove, and this was a safety issue.
- The appellant believes that this is a temporary set-back and he would like to go to school and be a productive member of the workforce.
- The appellant finds it hard to complete tasks and he becomes frustrated so that his care giver has to guide him and she has strategies for when he is not positive in his thinking.
- The appellant requires reminders about doing his laundry and cleaning his suite and to cook for himself.
- The appellant lacks insight into his condition and needs support in areas that he sometimes is not willing to ask for or accept support. He requires support with his decision making and with interacting in the community.
- The appellant finds it hard to develop relationships.
- The appellant can physically perform his DLA but he needs support to initiate them and to continue with them and his lack of ability to do things independently has lead to his homelessness. He is known to community mental health and to the police as a result of his inability to interact in the community.

At the hearing, the social worker who completed the AR stated that:

- He met the appellant a few months after his discharge from hospital and had seen him twice. The appellant had received injections of medications and this seemed to help him.
- He had only known the appellant for 5 months, they had not spent much time together, and when he completed the AR, he largely relied on the appellant's self-reporting of his level of independence with DLA. Since the appellant has been in supportive housing, he has gotten to know the appellant better and he realizes that the appellant's functioning is at a much lower level than first assessed and the appellant has a greater need for assistance.
- Having more information, he realizes that his initial assessment regarding DLA was not accurately reported as he did not have complete information.
- The appellant was referred by the ABI program and has been in supportive housing since September 2015. The appellant lives in a suite within the care provider's home and she provides 24-hour per day care, 7 days per week. The care provider works in mental health and has been approved as a home care provider.
- The ABI program provides some of the funding for the supportive housing.
- The care provider has recently been providing the appellant with meals because he has been unable to cook independently for himself.
- The appellant has difficulty managing his medications and has used it to self-medicate when he is feeling depressed or he stops taking his medications at times.
- Regarding daily impacts to cognitive and emotional functioning, he would change his assessment to major impacts in the areas of impulse control, executive functioning, and psychotic symptoms, which are present and ongoing. There are moderate to major impacts in the areas of insight and judgment, memory, and other emotional or mental problems.
- The appellant requires continuous assistance with maintaining his personal hygiene and with

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regulating his diet or he will not take care of it. He requires prompting for showering/bathing and he all his meal planning has been taken over by his care provider.

- The appellant requires continuous assistance with completing his laundry and continual prompting to clean his suite. He requires ongoing prompting to do his dishes, to remove clutter and to vacuum.
- The appellant also requires continuous assistance with most areas of shopping, He would not initiate going to and from stores on his own and the care provider must prompt but he also requires continuous assistance with making appropriate choices, paying for purchases and carrying purchases home. The appellant has made the choice to spend all his money as soon as he gets it.
- The appellant requires continuous assistance with meal planning. He could not plan to buy groceries for one month. His care provider has been buying him food. He once left something cooking on the stove and could not smell the burning, which was a safety concern. He needs prompting to follow through with cooking.
- The appellant requires continuous assistance with all areas of paying rent and bills. They arranged for the appellant's rent to be paid directly by the ministry or the appellant would choose to spend the funds on something else, such as alcohol, and putting himself in risk of homelessness. The appellant is not open to receiving support with budgeting.
- The appellant requires continuous assistance with all areas of managing his medications. He has great difficulty with making and keeping appointments with his doctor and he runs out of his medications. His care provider drives him to and from his doctor appointments. Without his care provider's assistance, he would go to the hospital for treatment. He needs prompting to take his medications as directed and he has misplaced his medications and not taken them and he quickly decompensates in the community. The appellant is resistant to support with managing his medications.
- With his social functioning, the appellant requires continuous support/supervision with making appropriate social decisions, developing and maintaining relationships, and dealing appropriately with unexpected demands. He only has one ongoing non-professional relationship.
- In the areas of interacting appropriately with other and securing assistance from others, the appellant requires periodic support/supervision during the times that he is psychotic. He has been having these episodes once or twice a month and they can last for a few days up to a week. It can take two to three weeks for the appellant to completely stabilize. During his psychotic episodes, he often has involvement with mental health and with local police. He becomes aggressive and has required seclusion in the Emergency Room.
- The appellant has very disrupted functioning with both his immediate and extended social networks. He is estranged from his mother, who also has mental health struggles, and his brother. He has been involved in altercations with bus drivers and with bystanders.
- Prior to the appellant getting help, he may have been getting DLA done, but it was at a very minimal level and he was homeless for two years. He has declined help from community mental health.

At the hearing, the appellant's care provider stated that:

- The appellant requires reminders and prompting to complete all areas of his DLA. She finds ways to remind him about his personal hygiene, the importance of eating meals, and to clean his suite.
- She gives constant reminders but is creative because he gets upset if he feels she is trying to

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“control” him. He says people are trying to control him and he thinks he can do things on his own when he cannot. She checks on the appellant a couple of times per day.

- The appellant is “playing” with his medications, sometimes taking more than prescribed and other times not taking them. She feels this is a safety concern.
- She has bought food for him to discover that he threw it in the garbage because he said it was moldy when, in fact, she had recently purchased it.
- When they are out in the community together, the appellant is often very inappropriate with people. He will intentionally stand in front of cars in the parking lot when they are honking for him to get out of the way. He has asked people in the doctor’s waiting room very personal questions like “Why are you here?” He has run with a shopping cart towards someone and then stopped right in front of them and asked if they were frightened.
- The appellant lacks insight into his condition. He thinks that he can manage on his own.
- One time, after a night of pouring rain, she found him very early in the morning sitting in the garden digging in the mud. He told her that he was helping to get an early start with planting, ahead of the neighbours.
- The appellant cannot live independently in a home.

The ministry relied on its reconsideration decision.

Admissibility of Additional Information

The ministry did not attend the hearing. The panel considered the Hospital Discharge Summary dated May 14, 2015 and the oral testimony on behalf of the appellant as information that corroborates the extent of the appellant’s impairment as diagnosed in the PWD application, which was before the ministry at reconsideration. While the social worker provided an assessment that was markedly different from that in the original AR, he explained the reason that he had incomplete information at the time, and the revised assessment is consistent with, and elaborates upon, information from the general practitioner and the ABI program that was available 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 care provider, as a health authority professional, as well as community service agencies.

The ministry's position, as set out in the reconsideration decision, 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 wrote that the majority of the DLA are performed independently or require periodic assistance that has not been sufficiently described to allow the ministry to determine that it is for extended periods of time. The ministry also wrote that the ministry had requested further clarification from the general practitioner regarding restrictions to DLA but had not heard further by the time of the reconsideration decision.

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 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 been prescribed medications that interfere with his ability to perform DLA and that the anticipated duration of the medications is "lifelong." In the PR, 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, use of transportation, management of finances and social functioning. The appellant is restricted with management of medications and the general practitioner wrote that it is "difficult maintaining optimal dosage of medication." The social worker stated at the hearing that at the time that the AR and the PR were completed the appellant had received injections in the hospital and seemed to be doing better and that the appellant also lacks insight into his conditions and the associated limitations.

In his February 25, 2016 letter, the general practitioner who completed the PR added that the appellant is a pleasant and intelligent man "...however, he is lost to possible further depths of destitution without certain supports in place, that being help with some basic higher activities of daily living, living accommodations." In the ABI Program Residential Services Quarterly Report for October through December 2015, it is noted that the appellant takes his medication "when he feels like it" and the care provider continued to support and encourage him to access his physician and take his medications as prescribed. The appellant continued to require reminders to complete basic household chores and he needed prompting to complete his laundry and to tidy his suite. The appellant tended to spend all of his money on alcohol and the care provider continued to prompt and encourage him to manage his finances.

At the hearing, the social worker who completed the initial AR stated that his assessment of the appellant's abilities to perform DLA has changed since he has gained complete information through the appellant's involvement with residential care, whereas he initially relied more on the appellant's self reporting. The social worker stated that the appellant has limited insight into his condition and the associated limitations. The social worker stated that the appellant requires continuous assistance with maintaining his personal hygiene or he will not take care of it. The appellant requires continuous assistance with completing his laundry and continual prompting to clean his suite, including ongoing prompting to do his dishes, to remove clutter and to vacuum. The appellant also requires continuous assistance with most areas of shopping. The appellant would not initiate going to and from stores on his own and the care provider must prompt, but he also requires continuous assistance with making appropriate choices, paying for purchases and carrying purchases home.

The social worker also stated that the appellant requires continuous assistance with meal planning. He could not plan to buy groceries for one month. He once left something cooking on the stove and could not smell the burning, which was a safety concern. He needs prompting to follow through with cooking. The appellant requires continuous assistance with all areas of paying rent and bills and the appellant's rent is now being paid directly by the ministry. The appellant is not open to receiving support with budgeting, putting him at an ongoing risk of homelessness. The appellant requires continuous assistance with all areas of managing his medications. He has great difficulty with making and keeping appointments with his doctor and he runs out of his medications. His care provider drives him to and from his doctor appointments. Without his care provider's assistance, the appellant would go to the hospital for treatment. He needs prompting to take his medications as directed and when he does not take them, he quickly decompensates in the community. The appellant is resistant to support with managing his medications. The social worker stated that prior to the appellant getting help, he may have been getting DLA done at a very minimal level since he was homeless for two years.

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), the social worker and the care provider provided evidence at the hearing of significant impacts to both. The social worker assessed most decision-making components of DLA as requiring continuous assistance, specifically personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning), and managing his medications (taking as directed and safe handling and storage) and finances (budgeting, banking, and paying rent and bills). The social worker also reported that the appellant requires continuous support/supervision with making appropriate social decisions.

Regarding the DLA of social functioning, the social worker reported that the appellant requires continuous support and supervision with developing and maintaining relationships and dealing appropriately with unexpected demands. The social worker stated that the appellant also requires periodic support/supervision with interacting appropriately with others and securing assistance from others during the times of his psychotic episodes, which occur once or twice a month and last from a few days to a week. The social worker stated that the appellant has very disrupted functioning in both his immediate and his extended social networks. During his psychotic episodes, the appellant often has involvement with mental health and with local police. He becomes aggressive and has required seclusion in the Emergency Room. He has been involved in altercations with bus drivers and with bystanders. In the Request for Reconsideration, the advocate wrote that although the appellant has good communication abilities he struggles in having lengthy conversations.

Considering the updated evidence of the general practitioner, in his letter of February 25, 2016, and that of the social worker at the hearing, as the prescribed professionals, the panel finds that the ministry's conclusion that there is insufficient evidence from the prescribed professionals 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, was not reasonable.

Help to perform DLA

The appellant's position is that he requires the significant assistance of another person to perform DLA, namely his care provider, as a health authority professional, as well as 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 social worker, as the prescribed professionals, establishes that the help required for DLA is provided by the appellant's care provider and other health authority professionals and community service agencies, including the ABI services, home health services and mental health services. At the hearing, the appellant's care provider stated that she checks on the appellant at least a couple of times each day and that she has to creatively prompt him with doing most of his DLA. Given the additional information provided by the social worker and the appellant's care provider at the hearing, the panel finds that the ministry's conclusion that the appellant does not require significant help to perform DLA, as defined by section 2(3)(b) of the EAPWDA, was not reasonable.

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 not reasonably supported by the evidence, and therefore rescinds the decision. Therefore, the reconsideration decision is overturned.