

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated March 1, 2016 declaring the appellant for designation as a Person with Disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, Section 2. Specifically, the ministry determined that the information provided did not establish that in the opinion of a prescribed professional the appellant's severe mental impairment:

- (i) directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, he requires help to perform those activities.

The ministry determined that the appellant satisfied the other 3 criteria: he has a severe mental impairment, has reached 18 years of age and in the opinion of a medical practitioner his impairment is likely to continue for at least 2 years.

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 hearing was originally set down for April 4, 2016. The appellant requested an adjournment to a different venue because he was unable to access the second-floor room where the hearing was arranged. The ministry representative supported the appellant's request for an adjournment. The panel chair approved the appellant's request, and the appeal hearing reconvened on April 14, 2016.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD designation application submitted September 11, 2015, which contained:
 - Physician Report (PR) dated September 8, 2015, completed by the appellant's general practitioner (GP) who has known the appellant since birth and who has seen him 2-10 times in the past year;
 - Assessor Report (AR) dated July 27, 2015 completed by a social worker (SW) employed by Community Living BC (CLBC), who has known the appellant for 1 months and has seen him 2-10 times during that period;
 - Self Report (SR) completed July 28, 2015.
2. Request for Reconsideration received by the ministry on February 18, 2016 with the following attachments:
 - i. Psycho-educational assessment of the appellant dated June 24, 2011 undertaken to assist the appellant in post-secondary education or employment;
 - ii. Psychiatric consultation report co-authored by psychiatrist Dr. M dated July 9, 2014 containing a psychiatric assessment of the appellant;
 - iii. Letter authored by a social worker/mental health clinician and psychiatrist Dr. P supporting the appellant's PWD designation.

In the PR the GP lists the following diagnoses related to the appellant's impairment: major depression, generalized anxiety disorder, attention deficit disorder and developmental disability ("intellectually impaired").

Evidence from the PR and AR is summarized as follows:

Severity/Health History:

Physical Impairment:

PR:

Part B - Health History:

The GP writes: "appellant has trouble being around people due to anxiety and intellectual impairment. He will require help in all aspects of his life as he moves forward". The GP notes that the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLAs.

Part C - Functional Skills:

The GP reports that the appellant can walk 4+ blocks and climb 5+ steps unaided, and has no limitations around lifting or remaining seated. He experiences difficulties with communication due to his cognitive/intellectual impairment, and has significant deficits in cognitive and emotional function, specifically:

- executive function (planning, organizing, sequencing, calculations, judgment)

- memory (ability to learn and recall information)
- perceptual psychomotor (visual spatial) function
- emotional disturbance (eg. depression, anxiety)
- attention or sustained concentration.

AR:

Part B - *Mental or Physical Impairment:*

1. The Assessor writes that the appellant suffers from anxiety (panic attacks), depression, Attention Deficit Disorder, and mild intellectual disability, adding that he is supported by CLBC.
2. All 4 areas outlined in "ability to communicate" (speaking, reading, writing, hearing) are described as Good.
3. The Assessor also marks him as being Independent in mobility and physical mobility.
4. In "Cognitive and Emotional Functioning" the assessor indicates:
 - Major impact in functioning in areas of Emotion (excessive/inappropriate anxiety, depression), Executive (planning, organizing, sequencing, abstract thinking, problem-solving, calculations), Memory and Motivation;
 - Moderate impact in Consciousness (orientation, alert/drowsy, confusion), Attention/concentration and other Neuropsychological problems (eg. learning disabilities);
 - Minimal Impact in Bodily Functions, Impulse Control, Insight and Judgment, Motor Activity and Language;
 - No impact in the area of Psychotic Symptoms.

The Assessor comments that the appellant gets angry from time to time. When frustrated the appellant may hit a tree with his hand, and uses the pain to calm down his anger.

Ability to perform DLA:

PR:

Part E - The GP notes that the appellant has no restrictions in personal self care, medication management, shopping, mobility and transportation use. He does not know if the appellant is restricted in meal preparation, basic housework or managing his finances.

In social functioning, which includes daily decision-making, interacting, relating and communicating the GP indicates that the appellant is continuously restricted, and explains: "Cannot function in groups, severe anxiety/depression". The GP does not provide additional comments regarding the degree of the appellant's restriction.

In reply to the question concerning what assistance the appellant needs with ADLs, the GP notes: "May need assistance managing finances, executive functions."

Part F – the GP did not provide any additional information considered relevant to an understanding of the significance of the appellant's medical condition, the nature and extent of his impairment and its impact on his daily functioning.

AR:

The Assessor indicates that the appellant is independent in all DLAs except social functioning DLAs. She comments that although the appellant can use public transit independently he does not do so due to his anxiety of being in a crowd.

In DLAs related to social functioning the Assessor adds the following explanations:

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- Appropriate social decisions : Independent, but avoids social situations due to anxiety;
 - Developing/maintaining relationships: Independent;
 - Interacts appropriately with others: Independent, but does not socialize outside of family;
 - Ability to deal appropriately with unexpected demands: Independent, but does not like surprises;
 - Able to get assistance from others: requires Periodic Support/Supervision. Requires others to reach out to him, needs support navigating “systems”.

In describing how the appellant’s mental impairment impacts his immediate social network the Assessor notes that he has Marginal functioning, with lack of engagement and communication in relationships.

In describing the impact on the appellant’s extended social networks the Assessor again notes Marginal functioning (little more than basic acts to fulfill basic needs), with very little engagement with extended social networks.

In describing the support/supervision required to help maintain the appellant in the community the Assessor noted that support is needed to draw him out and ensure he is getting the necessary attention to maintain health and safety

Assistance Provided

The Assessor notes that family and community services agencies (through CLBC) provide support. The appellant does not require an assistive device or an assistance animal.

Additional Information

The Assessor states that the appellant has been diagnosed with an intellectual disability and receives support from CLBC. He struggles greatly with his mental health – anxiety and depression and is supported by a psychiatrist at the Developmental Disability Mental Health clinic.

At the hearing the appellant tendered a letter from CLBC dated January 13, 2015 which confirmed that as a CLBC client the appellant has met the diagnostic criteria for a developmental disability. The ministry did not object to the admission of this letter. The panel determined that the letter was admissible under EAA Section 22(4) as evidence in support of the information before the ministry at the time of reconsideration because it corroborated the diagnoses in the PR.

At the hearing the appellant’s CLBC worker (“B”) told the panel that the when the appellant has a bad day his anxiety disorder affects his ability to perform DLA’s. He can’t eat properly and can’t carry on with his plans for the day. Recently the appellant was introduced to an employment coach, who stated that he was not ready to attempt employment due to the severity of his panic attacks. The appellant’s grandfather prepares his meals and drives him to appointments.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet two of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The ministry found that the appellant had a severe mental impairment, met the age requirement and, in the opinion of a medical practitioner, his impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's 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.

The relevant legislation is as follows:

EAPWDA:

2 (1) In this section:

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

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

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

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

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

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

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

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

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

(i) an assistive device,

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

(iii) the services of an assistance animal.

EAPWDR:

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.

Direct and significant restrictions in the ability to perform DLA:

Appellant:

In his SR the appellant reports that his constant fear, extreme anxiety, low energy, mood swings, panic attacks, depression, anger, ADHD and learning disability stop him from having a normal life. On bad days he can't perform his DLAs, can't eat properly and can't leave the house. His family members do the shopping, cooking and driving for him. He adds that there are more bad days than

good days. At the hearing the appellant's advocate/support worker told the panel that the when the appellant has a bad day his anxiety disorder affects his ability to perform DLA's. He can't eat properly and can't carry on with his plans for the day. Recently the appellant was introduced to an employment coach, who stated that he was not ready to attempt employment due to the severity of his panic attacks. The appellant's grandfather prepares his meals and drives him to appointments.

Ministry:

In the reconsideration decision the ministry determined that there was insufficient evidence to establish that the appellant's mental impairment "directly and significantly" restricted his DLAs "continuously" or "periodically for extended periods". In coming to its determination the ministry notes the following:

- in the PR the GP notes that the appellant is unrestricted in his ability to do personal care, management of medications, daily shopping, mobility outside the home and use of transportation. In assessing whether the appellant is restricted in his ability to perform meal preparation, basic housework and management of finances the GP writes "unknown", and adds the additional comment: "may need assistance managing finances, executive functions".
- The GP also notes that the appellant is continuously restricted in social functioning, adding that he "cannot function in groups, severe anxiety/depression", but the GP does not explain the degree of restriction experienced by the appellant, or the type of assistance he requires to function socially.
- in the AR the assessor indicates that the appellant is independent in all his DLAs except that he requires periodic assistance in reaching out to others. In all other areas of physical and social functioning the assessor indicates that the appellant is independent. Although the assessor comments that the appellant needs support and avoids social situations, she does not explain the degree or duration of assistance or supervision required.
- in the February 16, 2016 letter from psychiatrist Dr. P and a mental health clinician it is noted that the appellant's mental impairment "significantly impacts his DLAs in areas of motivation, avoidance, social isolation and problem solving, to the point where he is unable to work or attend school" and "it will be essential for the appellant to receive support in these areas". The ministry argues that Dr. P and the mental health clinician focus on employability and education, which are not criteria in the PWD application.

Panel Decision

The legislation set out in EAPWDA Section 2(2)(b) requires that a prescribed professional confirm that the appellant's impairments directly and significantly restrict his ability to perform his DLAs continuously or periodically for extended periods. The panel notes that although a prescribed professional may indicate that, because of a restriction, an individual requires assistance either continuously or periodically for extended periods, this does not necessarily meet the legislative test of being a "direct and significant restriction." The DLAs to be considered for a person with a mental impairment are, as set out in subs. 2(1) of the EAPWDR, as follows:

- Prepare own meals;

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- Manage personal finances;
 - Shop for personal needs;
 - Use public or personal transportation facilities;
 - Perform housework;
 - Move about indoors and outdoors;
 - Perform personal hygiene and self care;
 - Manage personal medication;
 - Make decisions about personal activities, care or finances; and
 - Relate to, communicate or interact with others effectively.

The GP who completed the appellant's PR noted that the appellant was "unrestricted" in his ability to do personal care, management of medications, daily shopping, mobility outside the home and use of transportation. In assessing whether the appellant is restricted in his ability to perform meal preparation, basic housework and management of finances the GP writes "unknown", and adds the additional comment: "may need assistance managing finances, executive functions". The GP notes that the appellant is continuously restricted in social functioning, adding that he "cannot function in groups, severe anxiety/depression", but the GP does not explain the degree of restriction experienced by the appellant, or the type of assistance he requires to function socially. Although in Part B, Question # 1 of the PR the GP comments that the appellant "will require help in all aspects of his life as he moves forward" he does not explain how this statement applies to his subsequent assessment of most of the appellant's DLAs as independent, and does not explain the degree of the restriction or the type of assistance required.

The assessor who completed the appellant's AR indicated that the appellant is independent in all his DLAs except that he requires periodic assistance in reaching out to others. In all other areas of physical and social functioning the assessor indicated that the appellant is independent. Although the assessor commented that the appellant needs support and avoids social situations, she did not explain the degree or duration of assistance or supervision required.

The February 16, 2016 letter jointly written by psychiatrist Dr. P and the mental health clinician focus on employability and education, which are not criteria considered in a PWD application, and which do not directly address the degree of restriction or assistance required with managing DLAs.

The panel acknowledges that the appellant's severe mental impairment restricts his ability to manage his DLAs. However, in considering the evidence as a whole, particularly the evidence contained in the PR and AR, the panel concludes that the ministry reasonably determined that the evidence is insufficient to establish that the appellant's ability to perform his DLAs is directly and significantly restricted either continuously or periodically for extended periods.

Help Required for DLAs

Panel Decision

EAPWDA Section 2(b)(ii) states that in order to meet the final PWD eligibility criterion, namely that a person requires help to perform his DLAs, it must first be established that the person's ability to perform his DLAs is directly and significantly restricted either continuously or periodically for extended periods. For the reasons provided above it has not been established that the appellant's DLAs are

directly and significantly restricted either continuously or periodically for extended periods. The panel therefore finds that the ministry reasonably concluded that because DLAs were determined not to be significantly restricted, it cannot be determined that significant help is required from other persons.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation is reasonably supported by the evidence, and confirms the ministry's decision.