

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated May 2, 2016 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age, and that he has a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the minister was not satisfied that:

- the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- as a result of these restrictions, the appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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 appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

1. A PWD application comprised of the Applicant Information and Self-report signed by the appellant on November 27, 2015, as well as a Physician Report (“PR”) dated November 27, 2015 completed by a general practitioner (the “physician”) and Assessor Report (“AR”) dated December 4, 2015 completed by a social worker. In the PR, the physician indicated the appellant has been his patient for approximately 6 months and reported that he has seen the appellant 2 to 10 times in the past 12 months. In the AR, the social worker indicated she has known the appellant for a year and that her agency provides mental health and outreach services, psychosocial support and provides access to mental health and other social services.

The PWD application included the following information:

Diagnoses

PR

- In the PR, the appellant was diagnosed with Hepatitis C (“HCV- genotype 1A”), onset 2013, major depressive disorder (no onset date) and vertebral fracture causing back pain (no onset date). Under Health History, the physician wrote that back pain was assessed clinically over several visits and confirmed with x-rays, that the fracture causes intermittent back pain; that Hepatitis C impairs the appellant’s digestive functions and contributes to fatigue, chronic pain and ability to absorb nutrients and that depression results in social withdrawal, anhedonia and poor concentration. Under Degree and Course of Impairment the physician wrote that depression is likely to require counselling/CBT and pharma therapy and is likely a chronic, relapsing condition, chronic pain is likely to continue to some degree despite treatment.

Self-report

- The appellant described back problems as a result of old injuries, and that it is extremely painful when it flares up, greatly affecting his mobility. He wrote that extreme depression and anxiety can be very debilitating, making it difficult to get out of bed, affecting sleep patterns and appetite, causing him to isolate himself socially and triggering his addiction. He wrote that he is a victim of childhood abuse, racism, poverty and trauma.

Functional Skills

PR

The physician reported the following information regarding functional limitations:

- The appellant can walk 4+ blocks unaided on a flat surface;
- Climb 5+ steps unaided;
- Lift an unknown amount;
- Remain seated with no limitation;
- Has no difficulties with communication;
- Has significant deficits with cognitive and emotional function in the areas of Emotional disturbance and Motivation, with no comments added.

AR

The social worker provided the following information for Mental or Physical Impairment (Abilities):

- Ability to Communicate: Speaking, Reading and Writing are good; Hearing is satisfactory, with the note "Scarred left eardrum from perforations".
- Mobility and Physical Ability: all aspects, walking indoors, walking outdoors, climbing stairs, standing, lifting, carrying and holding are reported to be managed independently with the comment "When back pain flairs up unable to move or get out of bed. Back pain flairs up x3 per month".

The social worker reported the following impacts for the 14 areas of Cognitive and Emotional Functioning:

- No impact in 6 areas: Bodily functions, Consciousness, Motor activity, Language, Psychotic symptoms and Other neuropsychological problems.
- Minimal impact in 2 areas: Attention/Concentration and Memory.
- Moderate impact in 2 areas: Executive and Motivation.
- Major impact in 4 areas: Emotion, Impulse control, Insight and judgement and Other emotional or mental problems.
- Comments: "Major social isolation – unable to go out for days at a time."

Self-report

The appellant reported that his back pain is extremely painful when it flares up, greatly affecting his mobility.

Daily Living Activities (DLA's)

PR

The physician checked *No*, the appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA's. In the section of the application form asking whether the applicant's impairment directly restricts the persons' ability to perform DLA's, the physician checked *No*, with no comments.

AR

The social worker provided the following information:

Personal Care

- All aspects reported to be performed independently.

Basic Housekeeping

- All aspects reported to be performed independently.

Shopping

- All aspects reported to be performed independently.

Meals

- All aspects reported to be performed independently.

Pay Rent and Bills

- All aspects reported to be performed independently.

Medications

- All aspects reported to be performed independently.

Transportation

- All aspects reported to be performed independently.

Social Functioning

The social worker indicated periodic support in four aspects and continuous support/supervision in one aspect, then scratched out the checkmarks and wrote "N/A".

Need for Help

PR

- The physician checked *No*, the appellant does not require any prostheses or aids for his impairment.
- Under Additional comments (*relevant to understanding the significance of the person's medical condition*), the physician wrote "This patient is accessing care for the above conditions, and is preparing for treatment of his HCV."
- The physician left blank the section under Daily Living Activities, where the question is asked *What assistance does your patient need with Daily Living Activities?*

AR

- The social worker indicated the appellant lives alone.
 - The section for support/supervision required which would help maintain [the appellant] in the community was blank.
 - Under Assistance provided by other people, the social worker checked *Health authority* and *Community Service Agencies*, with the comment "Works with outreach workers at [a mental health agency] and other social service agencies for assistance re housing/health/mental health support."
2. The ministry's Persons with Disabilities Designation Original Decision Summary dated April 1, 2016.
 3. The ministry's letter to the appellant dated April 1, 2016, advising him of their decision.
 4. The appellant's Request for Reconsideration signed by the appellant on April 19, 2016, in which the appellant refers to an amended page 12 of his PWD application "Daily Living Activities", stating that his physician has indicated that Social Functioning is impaired. This document is referred to in the ministry's Reconsideration Decision, however it was not provided to the Panel. The amended page 12 stated that due to his history of trauma and abuse, as well as addiction and mental health he socially isolates and cannot maintain work.

Additional Submissions

Subsequent to the reconsideration decision, the appellant filed his Notice of Appeal dated May 17, 2016 in which he stated that the impact of trauma and systemic racism have had long lasting effects and do impact DLA's and cause a need for assistance with daily restrictions.

At the hearing the ministry stated that the appellant's initial denial on three points was revised to two; that he is considered to have a severe mental impairment; however restrictions on his ability to perform DLA's as a result of his impairment are not listed in his application and the degree of assistance required is not stated. The

information provided does not establish his eligibility for designation as a Person with Disabilities.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's Reconsideration Decision of May 2, 2016, which found that the appellant was 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. Based on the information provided in the PWD application and Request for Reconsideration, the ministry was not satisfied that the following criteria in EAPWDA section 2 were met: the appellant's impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA's, either continuously or periodically for extended periods, and, and as a result of the restrictions, he requires help to perform those activities.

Legislation

EAPWDA

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.

EAPWDR

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;
- (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.

Severe mental or physical impairment

The ministry determined that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA's

Appellant's position

In his self-report, the appellant wrote that his extreme depression and anxiety can be very debilitating. Depression makes it difficult to get out of bed, he is extremely lethargic, his sleep pattern is affected, he has loss of appetite, isolates himself and cuts off his social network. In his Request for Reconsideration, he wrote that he is socially isolated and his physician has confirmed that his social functioning is impaired.

Ministry's position

In the reconsideration decision, the ministry noted that the appellant's physician reported that the appellant has no restrictions. The assessor reported that the appellant is able to independently manage all areas, indicating that support/supervision is required in all areas on social functioning, which was then crossed out. With respect to the new information provided at reconsideration, the ministry stated that the physician reported that the appellant is continuously restricted with social functioning described by the physician as "MDD and his history of abuse cause this client to have difficulty building/maintaining relationships. He socially isolates and has difficulty accessing resources" and "he experiences excessive grief, loss and mood disturbance." However, the ministry noted that the physician wrote "n/a" in the area for describing the type of assistance required to manage social functioning.

Panel's decision – Restrictions to DLA's

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA's either continuously, or periodically for extended periods. In this case, the appellant's physician and the social worker are the prescribed professionals. DLA's are defined in section 2(1) of the EAPWDR and are also listed in the PR, 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 either continuously or periodically for extended periods.

The panel finds that the ministry reasonably determined that the appellant's DLA's are not directly and significantly restricted either continuously or periodically for extended periods as per EAPWDA s. 2(2)(b)(i). Although in the amended page 12 of his PWD application the physician commented that the appellant is continuously restricted in social functioning, both the physician and assessor reported that all DLA's are performed independently. The ability to work is not a criterion under section 2, EAPWDA.

Help to perform DLA's

Appellant's position

The appellant wrote that the impact of trauma and systemic racism have had lasting effects and impact his DLA's and cause a need for assistance.

Ministry's position

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

Panel's decision – Help to perform DLA's

Subsection 2(2)(b)(ii) of the EAPWDA requires a prescribed professional to confirm that as a result of significant restrictions to DLA, the person requires help to perform an activity. The panel recognizes that the appellant receives help from outreach workers and social service agencies, as stated in the appellant's application for PWD designation, however the panel finds that the ministry reasonably determined that the information provided does not confirm significant restrictions to DLA's as a result of the appellant's severe mental impairment. The panel therefore finds that the ministry reasonably determined the criterion for help under EAPWDA s. 2(2)(b)(ii) was not met.

The panel finds that the ministry's reconsideration decision denying the appellant PWD designation under s. 2 of the EAPWDA was reasonably supported by the evidence. The panel therefore confirms the ministry decision.