

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated August 17, 2016 which found that the appellant did not meet all of the 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, that she has an impairment that is likely to continue for at least two years and she has a severe mental impairment. However, the ministry was not satisfied that the evidence established 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 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 time of the Reconsideration Decision included:

1. The appellant's Persons With Disabilities ("PWD") Application comprised of:

- The Applicant Information and Self-report ("SR") completed by the appellant and dated March 14, 2016; and
- The Physician Report ("PR") dated August 29, 2015 and the Assessor Report ("AR") dated March 14, 2016, both prepared by the appellant's general practitioner ("GP") of 7 years, who treated the appellant 2-10 times in the 12 months prior to completing the PR and AR, and indicated that the source of the information used to complete the PWD application was "office interview with applicant and file/chart information".

2. Psychological assessment (the assessment). The assessment was completed on May 6, 2016 and the doctor signed and dated it on May 13, 2016. In part, the assessment states that "the patient [the appellant] has struggled with anxiety in the past in terms of feeling panicky when going grocery shopping or being in public. The patient states that she can force herself to do so, and that she has a tendency to avoid such tasks but can get them done".

3. Letter from the appellant (the letter), signed and dated August 4, 2016, which states in part that:

- The appellant experiences severe anxiety, extreme exhaustion and general melancholy;
- Some mornings she experience difficulty getting out of bed;
- Her conditions have stolen her physical and mental energy;
- She deals with body aches and pains due to depression and chronic exhaustion;
- Her interpersonal relationships fluctuate from relatively stable to extremely chaotic;
- She struggles with decision-making, problem-solving, and structure and routine;
- It is difficult for her to maintain steady employment and therefore experiences short periods of employment followed by long periods of unemployment;
- She had a suicide attempt this year; and
- She currently attends therapy and has made progress because she is not working. If she is has to return to work she would have to give-up her therapy.

4. Request for Reconsideration (RFR), signed and dated July 23, 2016 and states that the appellant disagrees with the ministry's decision.

Diagnoses

In the PR, the GP notes that the appellant has been diagnosed with Borderline Personality Disorder (BPD), Major Depressive Disorder (MDD) and Generalized Anxiety Disorder (GAD), with no onset dated indicated.

Physical Impairment

The appellant has not commented on any conditions or symptoms related to a physical impairment in the RFR, the letter or the SR.

In the PR, the GP has not diagnosed the appellant with a physical impairment or condition and indicates that the appellant has good functional skills. In the AR the GP indicates that the appellant is independent in all areas of mobility and physical functioning.

Daily Living Activities

In the AR, the GP has indicated that the appellant is independent in all listed DLA, except 3 aspects of social functioning; namely, 'able to develop and maintain relationship' is indicated as requiring periodic support/supervision. The GP does not indicate what support/supervision is required or the frequency and duration of the support/supervision that is required. The GP also indicates that the appellant needs continuous support/supervision with 'able to deal appropriately with unexpected demands' and 'able to secure assistance for others'. The GP does not describe the type of support/supervision the appellant requires on a continuous basis. In the assessment, the doctor indicates that the appellant experiences feeling panicky when going grocery shopping or being in public without addressing frequency and duration of this feeling or indicating if when experiencing this feeling, the appellant requires assistance either periodically for extended periods or continuous.

Need for Help

In the PR, the GP notes that the appellant does not require any prostheses or aids for her impairment. In the AR, the GP indicates that the appellant receives help and that help comes from family and friends, and that she does not use any assistive devices or animals.

Evidence on Appeal

A Notice of Appeal (NOA), signed and dated August 30, 2016, which states in part that the appellant's chronic mental illness does greatly affect her daily life and that there is a disconnect with the ministry's finding that she has a significant impairment and its decision to deny her PWD.

Evident at the Hearing

At the hearing the ministry relied on its reconsideration decision.

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 designation as a PWD under section 2 of the *EAPWDA*, 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 met the age requirement, that she has an impairment that is likely to continue for at least two years and that she has a severe mental impairment. 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 criteria for being designated as a 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;
 - (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.

Severity of impairment

Section 2(2)(a) of the *EAPWDA* provides that when addressing the issue of a severe physical or mental impairment in the context of a person applying for a PWD designation, that person must be found to have a severe physical or mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

A diagnosis of a serious medical condition or conditions does not in itself determine PWD eligibility or establish a severe impairment. An “impairment” is a medical condition that results in restrictions to a person’s ability to function independently or effectively.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning. In making its determination, the ministry must consider all the relevant evidence, including that of the appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence from prescribed professionals – in this case, the GP and the doctor who conducted the psychological assessment.

Severity of physical impairment

The appellant did not argue that she suffers from a specific physical impairment or condition.

The ministry’s position as set out in the Reconsideration Decision is that the evidence as a whole, including the appellant’s functional skill limitations, does not support a finding that the appellant has a severe physical impairment.

Panel Decision

As mentioned above, diagnoses of serious medical conditions do not by themselves determine that the physical impairment is severe. The appellant faces challenges but the panel is of the view that the challenges she experiences are the result of her mental impairment and not due to a physical impairment. In the PR, the GP has not diagnosed the appellant with a physical impairment or condition and indicates that the appellant has good functional skills because she can walk 4+ blocks

and climb 5+ stairs unaided, and can lift and remain seated without limitation. In the AR the GP indicates that the appellant is independent in all areas of mobility and physical functioning.

Section 2(2) of the *EAPWDA* requires that the minister must be satisfied that a person has a severe mental or physical impairment that results in restrictions to a person's ability to function independently or effectively. The evidence given by the GP indicates that the appellant's functional ability is good and there is no indication that she requires help. Therefore the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment.

Restrictions in the ability to perform DLA

The appellant argued that she is restricted in her ability to perform tasks of DLA due to her mental health. She argued that her anxiety prevents her from leaving her home to even get groceries and necessities. She is physically drained to the point where she cannot get out of bed on some days. Finally she argues that her personal hygiene suffers on some days.

The ministry's position as set out in the Reconsideration Decision is that it has not been established by the evidence of a prescribed professional that the appellant's ability to perform DLA has been directly and significantly restricted by her physical or mental impairments either continuously or periodically for extended periods as required by section 2(2) of the *EAPWDA*.

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 or her DLA, continuously or periodically for extended periods. In the present case, while the appellant has provided evidence of the challenges that he faces with DLA, the legislation is clear that to satisfy the criteria the evidence must come from a prescribed professional. In the present case, this evidence has been provided by two prescribed professionals - the GP and the doctor who conducted the psychological assessment.

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 DLA, if any, are significantly restricted by the appellant's impairments, either continuously or periodically for extended periods. Employability is not a listed criterion in the legislation and as such is not a consideration in the determination of whether an applicant's DLA are restricted by a severe impairment.

The GP addresses DLA in the AR. The GP has indicated that the appellant is independent in all listed DLA, except 3 aspects of social functioning; namely, 'able to develop and maintain relationships' which is indicated as requiring periodic support/supervision with the comment "struggles". However, the GP does not indicate what support/supervision is required or the frequency and duration of the support/supervision that is required, or the nature of her struggles. The GP also indicates that the appellant needs continuous support/supervision with 'able to deal appropriately with unexpected demands' and 'able to secure assistance for others'. However, once again the GP does not describe the type of support/supervision the appellant requires on a continuous basis. The appellant faces challenges but the evidence provided by the GP does not clearly demonstrate the

impacts of her mental impairment.

The evidence provided in the assessment does not provide sufficient information regarding the appellant's ability to perform DLA and only speaks to the severity of the appellant's medical condition. The assessment states that the appellant experiences feeling panicky when going grocery shopping or being in public but it does not indicate if she feel panicky either periodic for extended periods or continuous. Furthermore the assessment goes on to states that the appellant can force herself to do these tasks and get them done, but has a tendency to avoid them.

In making its decision in this matter the ministry must consider the evidence and therefore, considering the evidence of the GP as set out in the AR and the assessment, the panel finds that the ministry reasonably concluded that the evidence was insufficient to establish that the appellant's impairment significantly restricts her ability to perform tasks of DLA either continuously or periodically for extended periods.

Help with DLA

The appellant argues that she requires help with various tasks of DLA with that help coming from family and friends.

The ministry's position as set out in the Reconsideration Decision is that because it has not been established that the appellant's DLA are significantly restricted, it cannot be determined that significant help is required.

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. Section 2(3) of the *EAPWDA* provides that a person requires help in relation to a DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal. In other words, it is a pre-condition to a person requiring help that there be a finding that a severe impairment directly and significantly restricts a person's ability to manage his or her DLA either continuously or periodically for an extended period.

Given the panel's finding that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel further finds that the ministry's conclusion that 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*, was reasonable.

Conclusion

Having reviewed and considered all of the evidence at the time of the ministry's reconsideration decision and relevant legislation, the panel finds that the ministry's Reconsideration Decision which determined that the appellant was not eligible for PWD designation under section 2 of the *EAPWDA* was reasonably supported by the evidence and a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision. The appellant is not successful in her appeal.