

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated April 19, 2016, which found that the appellant did not meet one 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 prescribed professional, directly and significantly restricts his daily living activities 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 to perform DLA.

However, the ministry was not satisfied that the evidence establishes that, in the opinion of a medical practitioner, the appellant's impairment is likely to continue for at least two 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 adjourned on September 16, 2016 to allow the appellant a further opportunity to provide documentation and for the advocate to attend the hearing. The ministry did not attend the hearing on October 20, 2016. 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 Persons With Disabilities (PWD) Application comprised of the applicant information and self-report dated October 29, 2015, a physician report (PR) dated April 14, 2016 completed by a general practitioner (GP) who had met the appellant once to complete the PR, and an assessor report (AR) dated October 29, 2015 and completed by a social worker who had known the appellant for one month and had seen him 2 to 10 times.

The evidence also included the appellant's Request for Reconsideration dated July 11, 2016 and a letter faxed July 12, 2016 from an advocate on behalf of the appellant.

### **Diagnoses**

In the PR, the appellant was diagnosed by the GP with depression with onset in January of 1967. In the AR, asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the social worker wrote that depression and suicide ideation "...have taken a huge toll" and the appellant "...is unable to care for himself or his home."

### **Duration**

In the PR, regarding the degree and course of the impairment, the GP did not indicate either a "yes" or "no" response to the question whether the appellant's impairment is likely to continue for two years or more and, instead, added a third option of "unsure." The GP wrote: "...this is my first appointment meeting with this patient at this clinic. Today he appears to have severe depression, which is making him incapable of working as a result of severe suicidal thoughts, decreased concentration and decreased energy."

In his Request for Reconsideration, the appellant wrote that the physician indicated "unsure" because this was a first appointment. This clinic has seen him at least 4 times since his PWD application and it is now apparent that his chronic depression is likely to continue. It has been a lifetime condition. He will be providing a psychiatric assessment.

In the July 12, 2016 letter, the advocate wrote that the appellant will need to be assessed by a psychiatrist to determine that his depression is chronic and lifelong. The doctor did not have any prior history when he filled out the PR and narrated that he was "unsure" of the duration of the appellant's condition.

### **Appellant's additional information**

In his Notice of Appeal dated August 23, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- He is waiting to have a psychiatric assessment.
- He has seen 4 different doctors and feels that a better assessment would have clarified his chronic condition.
- He now has a doctor's note stating that it is in fact a chronic condition.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Copy of an email dated July 26, 2016 in which the appellant's daughter wrote that she has watched her father's health and energy level get lower and lower. She described her father's lack of motivation that she has observed with several daily activities and commented that "he has been this way for years but it is getting way worse day by day week by week;" and,
- 2) Letter dated August 15, 2016 in which a physician wrote that the appellant is a patient and he has depression, which is chronic, and he has been started on medication for this in the past year. The appellant is awaiting consultation with a local psychiatrist and: "This is likely to be an ongoing condition that affects his overall function with respect to his daily activities."

At the hearing, the appellant and his advocate stated:

- The doctor who completed the PR indicated he was unsure if the appellant's depression was likely to continue because this was the first appointment with the appellant. Under 'degree and course of impairment' the doctor wrote that the appellant appears, on that day, to have severe depression.
- After the PWD application was submitted, the appellant met several times in the clinic with the doctor who completed the PR and the doctor who wrote the letter dated August 15, 2016.
- With additional contact with the appellant and an opportunity to look at some previous records, the doctor was prepared to confirm in the letter that the appellant's depression is chronic and long-standing. The doctor was approached after the date of the reconsideration decision.
- The appellant's daughter is an on-going witness who confirms that he has had his condition for many years.
- The appellant's depression is chronic and severe, not situational, and has impaired him for decades. He was considered emotionally disturbed as a child. He is not one to ask for help, but he is not functioning well and needs help. He is currently homeless, living in a camper.
- The appellant has been on a waiting list to consult with a psychiatrist but a psychiatrist is only available once per month in his community and, only due to a cancellation, the appellant has an appointment for next week for an assessment. If the advocate had been involved in the process earlier, she would have recommended that the psychiatrist complete the PR.
- The appellant has been taking the medications prescribed by the doctor.

The ministry relied on its reconsideration decision.

### ***Admissibility of Additional Information***

The panel considered the email from the appellant's daughter and the oral testimony on behalf of the appellant as additional information that corroborates and tends to substantiate the history of the appellant's depression, which was diagnosed in the PR before the ministry 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*. The panel did not admit the letter from the physician dated August 15, 2016 as it included an opinion about the likely future of the appellant's condition, whereas the information in the PR, before the ministry at reconsideration, related to the history and the state of the appellant's condition at the time the application was completed. The panel finds that the new opinion does not corroborate or tend to substantiate the medical practitioner's original opinion regarding the future course of the appellant's impairment, which at that time was "unsure," and would change the character of the information to be in the nature of a new application.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant did not meet one of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances. In particular, was the ministry reasonable to conclude that there was insufficient evidence to establish that, in the opinion of a medical practitioner, the appellant's impairment is likely to continue for at least two years?

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) and (2) of the EAPWDR provide definitions of DLA and prescribed professionals as follows:

### Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

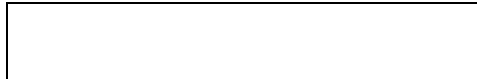
(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(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.

(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 ministry found that the appellant met the age requirement and that he has a severe mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts his daily living activities 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 to perform DLA. However, the ministry was not satisfied that the evidence establishes that, in the opinion of a medical practitioner, the appellant's severe mental impairment is likely to continue for at least two years.

### **Duration**

#### ***Appellant's position***

The appellant's position, as set out in his Request for Reconsideration, is that the physician indicated "unsure" because this was a first appointment, and this clinic has seen him at least 4 times since his PWD application and it is now apparent that his chronic depression is likely to continue. The appellant argued that his depression has been a lifetime condition and that he would be providing a psychiatric assessment.

#### ***Ministry's position***

The ministry's position, as set out in the reconsideration decision, is that the appellant's GP had not confirmed in the PR that the appellant's impairment will continue for two years or more, and no additional documents or information had been provided from a medical practitioner.

### **Panel Decision**

Section 2(2)(a) of the EAPWDR requires that a medical practitioner provide an opinion that the appellant's severe mental impairment is likely to continue for at least two years. In response to the question in the PR whether the appellant's impairment is likely to continue for two years or more, the general practitioner did not indicate either "yes" or "no" and, instead, added a third option of "unsure." The GP wrote: "...this is my first appointment meeting with this patient at this clinic. Today he appears to have severe depression, which is making him incapable of working as a result of severe suicidal thoughts, decreased concentration and decreased energy."

At the hearing, the advocate stated that the appellant's depression is severe and has impaired the appellant for decades. The advocate argued that the appellant's daughter is an on-going witness who confirms in her email that the appellant has had this condition for many years. While the evidence of the appellant and his daughter shows that the appellant has experienced impacts from depression for a long time, section 2(2)(a) of the EAPWDR requires that an opinion be provided by a medical practitioner about the likely future duration of the impairment.

The advocate also referred to the appellant's depression as "chronic," or persistent and not situational, and the panel notes that the requirement in the legislation is for a medical practitioner to provide an opinion specifically that the *impairment* [emphasis added] is likely to continue for at least 2 years. "Impairment" is defined in the PR form as a medical condition that results in restrictions to a person's ability to function independently or effectively. Therefore, one's medical condition may be likely to continue while the resulting 'impairment' to functioning is alleviated through the use of medications and/or treatments. The appellant stated that he has been taking medications prescribed by the doctor and that he will be consulting with a psychiatrist next week to have a mental health assessment completed. The appellant and his advocate stated that the appellant's depression is an ongoing condition; however, the panel finds that the ministry's determination that the medical practitioner had not confirmed that the appellant's impairment will continue for two or more years from the date of the application, as required by Section 2(2)(a) of the EAPWDR, was 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 since the evidence does not satisfy all of the criteria in Section 2(2) of the EAPWDA was reasonably supported by the evidence, and therefore confirms the decision. The appellant's appeal, therefore, is not successful.