

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 July 27, 2016 which held that the appellant did not meet 2 of the 5 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 a medical practitioner confirmed that the appellant has an impairment that is likely to continue for at least 2 years. The ministry was satisfied that the appellant has a severe mental impairment. However, the ministry was not satisfied 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 those restrictions, in the opinion of a prescribed professional, the appellant requires help, as it is defined in the legislation, 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

Information before the ministry at reconsideration

- A PWD application comprised of: a Self-report (SR) dated January 25, 2016; a Physician Report (PR) dated January 1, 2016, completed by the appellant's general practitioner (GP) since 2005; and, an Assessor Report (AR) dated February 26, 2016, completed by a psychiatric nurse (PN) who has known the appellant since October 22, 2015 and has seen the appellant 2 to 10 times in the past 12 months.
- A questionnaire titled "Supplemental Medical Opinion" completed by the PN and dated July 12, 2016.
- A letter dated July 21, 2016, from the appellant's sister.
- A disability advocacy organization DLA checklist completed by the appellant on July 11, 2016.

Information provided on appeal

- The appellant's Notice of Appeal.
- An August 4, 2016, letter from a social worker.
- August 12, 2016 note from the GP to the appellant's advocate.
- A September 7, 2016 letter of support from the appellant's sister.
- The same questionnaire titled "Supplemental Medical Opinion" completed by the GP and dated September 9, 2016.
- A September 20, 2016 letter from the PN.

The ministry did not object to the above information being admitted into evidence.

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit into evidence the information and records before the minister when the decision being appealed was made and "oral and written testimony in support of the information and records" before the minister when the decision being appealed was made. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA - to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role decision makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The information from the appellant in her Notice of Appeal reiterates that she is being treated for depression, for which she has been hospitalized, and that she is unable to work. The letter from the social worker confirms two hospitalizations and notes that "there are times when [the appellant] would require assistance with ADL's" and that the appellant "is unemployable at this time and does require PWD because the stress of living on \$600.00 per month interferes with her recovery, overall wellness and quality of life." As the Notice of Appeal and social worker's letter corroborate information available at reconsideration, the panel admitted them under section 22(4) of the EAA as information

in support of the information before the ministry at reconsideration.

In considering the admissibility of the information provided on appeal by the GP in his August 12, 2016 note and questionnaire, the panel notes that the GP's information available at reconsideration was that the appellant independently managed the majority of DLA within a typical timeframe, and that current treatment was likely to return her to baseline functioning within 3-12 months. The information provided by the GP on appeal, in the both the August 12, 2016 note and the questionnaire, substantially conflicts with his previous information. In particular, the GP now reports that the appellant's condition has deteriorated significantly since the PWD application, recommending the completion of a new application, and that she is continuously severely restricted and requiring daily assistance with all but one DLA. As this information does not corroborate the GP's information available at reconsideration, the panel has not admitted the GP's August 12, 2016 note or questionnaire under section 22(4) of the EAA as they are not in support of the information and records before the ministry at reconsideration and constitute new information that is properly put before the ministry for assessment.

Respecting the September 7, 2016 letter from the appellant's sister, the panel determined that the references to hearing voices and cutting herself, which were not previously reported, are not admissible. The balance of the information which includes that the appellant has had two previous hospitalizations and has difficulties with crowds and some daily tasks, corroborates the information available at reconsideration and was therefore admitted under section 22(4) of the EAA as information in support of the information and records before the ministry at reconsideration.

The PN's September 20, 2016 letter includes some corroborating information but, on balance, reflects a change in the appellant's condition. In particular, the appellant's symptoms of depression had been described as "moderate" in the AR, but are now described as moderate to severe. Additionally, while the PN completed questionnaire provided at reconsideration identified social anxieties/panic/trauma when the appellant was shopping and in crowds, the PN now reports that due to Panic Disorder with Agoraphobia the appellant is not "able to go outside of the home without someone." Further, the PN now reports that the appellant is not able to attend to her laundry without assistance, whereas in both the AR and the questionnaire, he previously indicated there were no restrictions. Therefore, the panel has not admitted the PN's September 20, 2016 letter under section 22(4) of the EAA as it is not in support of the information and records before the ministry at reconsideration and constitutes new information that is properly put before the ministry for assessment.

At the hearing, the appellant's advocate reviewed the information provided on appeal. The appellant stated that her last hospitalization was for one month and that she is living with her mother and sister, who cook for the appellant, do her laundry, make sure she takes her medications, and help her with her finances.

The ministry did not provide additional evidence on appeal, and relied on its reconsideration summary.

Summary of relevant evidence

Diagnoses and history

The GP diagnoses depression, generalized anxiety, maladaptive coping mechanisms, and relationship difficulty, all with an onset date of July 2015. Previously coping well. Decompensated in August 2015 and required psychiatric admission. Work stressors and relationship breakup contributed significantly. Should improve on medication and with mental health input. Current treatment should return patient to baseline in 3 to 12 months.

DLA

In the PR, the GP provides the following information.

- The appellant has not been prescribed medications and/or treatments that interfere with her ability to perform DLA.
- Personal self-care, meal preparation, management of medications, basic housework, mobility inside the home (part of the DLA move about outdoors and indoors), use of transportation, and management of finances are not restricted.
- Daily shopping, mobility outside the home, and social functioning are continuously restricted. Anxiety makes it severely difficult to interact effectively.

In the AR, the PN indicates that major depression with moderate symptoms, anxiety disorder NOS, and general anxiety are the impairments that impact the appellant's ability to manage DLA. The PN adds "marriage ending, job loss not able to work – JOB LOSS financial strain."

Information provided by the PN in the AR specific to individual DLA is as follows.

Move about indoor/outdoors

- Independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

Personal care

- All listed aspects managed independently with no noted limitation - dressing, grooming, bathing, toileting, feeding self, regulate diet, and transfers (in/out of bed and on/off chair).

Basic Housekeeping

- Laundry and basic housekeeping are managed independently with no noted limitation.

Shopping

- Going to and from stores and making appropriate choices require continuous assistance from another person.
- Reading prices and labels and paying for purchases require periodic assistance from another person

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- Carrying purchases home is managed independently.
 - Needs considerable assistance with shopping and getting things done.

Meals

- Food preparation and safe storage of food are managed independently.
- Meal planning requires periodic assistance from another person.
- Cooking requires continuous assistance from another person.

Paying Rent and Bills

- Banking is managed independently.
- Budgeting requires continuous assistance from another person.
- Pay rent and bills requires periodic assistance from another person.

Medications

- All tasks require continuous assistance from another person – filling/refilling prescriptions, taking as directed, and safe handling and storage.

Transportation

- Independently gets in and out of a vehicle.
- Requires continuous assistance from another person for using public transit and transit schedules/arranging transportation.

Social Functioning

- Marginal functioning with extended social networks.
- Very disrupted functioning with immediate social network.
- Four aspects require periodic support/supervision – appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, and able to deal appropriately with unexpected demands. No information is provided respecting the remaining aspect, able to secure assistance from others.

In the questionnaire completed by the PN on July 12, 2016, approximately 5 months after he completed the AR, in response to being asked if in his professional opinion there is a restriction beyond that of a typical healthy person and to provide explanatory details, the PN checked the boxes corresponding with prepare own meals, shop for personal needs (“social/anxieties/panic/trauma”), use of public or personal transportation facilities, move about indoors and outdoors, make decisions about personal activities, care or finances and relate to, communicate or interact with others. With the exception of the commentary respecting shopping for personal needs, the PN does not provide comments specific to the other listed activities, though he notes that the appellant’s ex-husband takes advantage of her, particularly economically. The PN indicates that these restrictions are continuous. The PN did not check the boxes corresponding with perform housework to maintain acceptable sanitary condition and manage personal medication. The PN responds “yes” when asked if in he is of the professional opinion that the appellant is directly and significantly restricted with these DLA. He comments that the appellant has struggled with mental health most of her life but since fall 2015 (at least) her mental health has mentally ‘paralysed’ her from doing these activities and that she requires

long-term mental health treatment to work at moving forward.

The social worker states that “there are times when [the appellant] would require assistance with ADL’s, however due to our lack of mental health services and lifeskills workers there would be none available.”

Need for Help

The GP reports that the appellant gets help from friends and family with shopping, form filling and dealing with others.

In the AR, the PN reports that assistance is provided by family, health authority professionals, and community service agencies and in the questionnaire writes that the appellant requires assistance from friends/family to help with meal preparation, shopping, getting out and dealing with financial issues.

No assistive devices are used and the appellant does not require an assistance animal.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

- the appellant's daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of those restrictions, in the opinion of a prescribed professional, the appellant does not requires help, as it is defined in the legislation, to perform DLA?

Relevant Legislation

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.

(4) The minister may rescind a designation under subsection (2).

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 authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

Restrictions in the ability to perform DLA

The appellant's position is that she is significantly restricted in her ability to perform DLA on a continuous basis as evidenced by the diagnosed medical conditions, two hospitalizations, and her dependence on family members to cook for her, do her laundry, make sure she takes her medications, and help with her finances. The significance of the restrictions is further demonstrated by the information provided on appeal.

The ministry notes that the legislation requires restrictions be both significant and either continuous or periodic for extended periods. While the legislation does not specifically require the frequency and

duration of restrictions be explained, the minister finds this information valuable in determining the significance of the restrictions.

The ministry finds that due to inconsistencies in the information provided by the physician and the assessor, it is difficult to develop a clear and coherent picture of the impacts on the appellant's ability to perform DLA and the assistance required as a result.

In particular, the ministry points to the fact that the GP indicates continuous restrictions with mobility outside the home but neither the GP nor the PN identify any physical limitations with regards to mobility. The ministry also notes that the GP indicates the appellant is independent with the majority of DLA. Also, the PN indicates the need for continuous assistance with aspects of the DLA meals whereas the GP indicates no restrictions with meal preparation. Similarly, the GP indicates no restriction with management of finances, management of medications, and transportation, whereas the PN identifies the need for assistance with most tasks of finances and all tasks listed for medications and transportation.

The ministry also points to what it argues are a number of inconsistencies between the information the PN provided in the AR and the information he provided in the subsequent questionnaire and the information provided by the GP, including that for many tasks the PN initially reported require either no or periodic assistance, continuous restrictions are now identified.

Based on the information provided by the prescribed professionals, the ministry concludes that it is difficult to establish *significant* restrictions to DLA and that furthermore, the GP has stated that the appellant is slowly improving and that current treatment should return her to baseline in 3 to 12 months.

Based on the above, the ministry determines that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods.

Panel Decision

The legislative requirement respecting DLA set out in section 2(2)(b) of the EAPWDA is that the minister be satisfied that as a result of a severe physical or mental impairment a person is, in the opinion of a prescribed professional, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence may be considered for clarification or support, the ministry's determination as to whether or not it is satisfied, is dependent upon the evidence from prescribed professionals. DLA are defined in section 2(1) of the EAPWDR and are listed in both the PR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative.

The social worker, GP, and the PN are prescribed professionals under the legislation.

The information provided by the social worker supports that there are times when the appellant's ability to perform DLA is restricted but does not indicate how often these times occur or for what duration and does not indicate which DLA are impacted.

The GP's information is that the appellant has severe restrictions in her ability to manage daily shopping, social functioning and mobility outside the home and independently manages all other DLA and is expected to improve within 12 months.

As the ministry notes, there are a number of apparent inconsistencies within the information provided by the PN in the AR. Specifically, it is unclear why the appellant is independent for meal preparation but requires periodic assistance with cooking and why the appellant is independently able to manage her finances but requires continuous assistance from another person with budgeting and banking. No explanation is provided by the PN.

Additionally, as the ministry notes, the information from the PN directly conflicts with the information from the GP in a number of areas. For example, the GP indicates that the appellant is not restricted with management of finances, which conflicts with the above-noted need for continuous assistance with budgeting and banking. Additionally, while the GP reports that the appellant's ability to manage medications and use transportation is not restricted, the PN identifies the need for continuous assistance from another person with all listed areas of medications and with using public transit and transit schedules/or arranging transportation.

The information from the PN is not clarified by his subsequent questionnaire, which identifies the need for continuous assistance/supervision with meal preparation, shopping, transportation, finances, communication/interaction with others, when in the AR he previously indicated that some tasks of these DLA, including all aspects of social functioning required only periodic assistance/supervision. Additionally, despite being reported as independently managing all aspects of mobility and physical ability in the AR, in the questionnaire, the PN indicates that the appellant is restricted with moving about indoors and outdoors. Similarly, the PN did not identify restrictions in the appellant's ability to manage her personal care in the AR, but does in the questionnaire. Another unexplained contradiction is that in the AR the PN reported the appellant as needing continuous assistance with all listed tasks of medications, while in the subsequent questionnaire, the PN indicates that there is no restriction with managing medications.

Based on the appellant's level of independence managing DLA and expected improvement reported by the GP and given the inconsistencies in the PN's information, the panel finds that the ministry reasonably determined that there is not enough evidence to confirm that, in the opinion of a prescribed professional the appellant has a severe impairment that significantly restricts her ability to perform DLA continuously or periodically for extended periods as required by section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that due to her mental impairments, she requires the daily assistance and supervision of her family to manage her DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that 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. 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 establishment of direct and significant restrictions with DLA is a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

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, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.