

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 9, 2016 that found that the appellant did not meet two 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 she has a severe mental, though not a severe physical, impairment that, in the opinion of a medical practitioner, is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included the Person With Disabilities (PWD) Application comprised of the applicant information and self-report dated June 7, 2016, a physician report (PR) dated June 6, 2016 completed by a general practitioner (GP) who met the appellant for first time to complete the PR, and an assessor report (AR) dated June 2, 2016 completed by a social worker (SW) who has known the appellant since February 2016.

The evidence also included the following documents:

- 1) Letter dated August 24, 2010 from an orthopaedic surgeon;
- 2) Report of the SW dated May 5, 2016 regarding the appellant's employability;
- 3) Hearing Assessment report dated October 12, 2016;
- 4) Physician's note dated October 22, 2016 regarding the appellant's hearing loss; and,
- 5) Request for Reconsideration dated October 17, 2016 with attached note by the appellant.

Diagnoses

In the PR, the appellant was diagnosed by the GP with Major Depressive Disorder (MDD) and Generalized Anxiety Disorder (GAD), with no date of onset specified. In the AR, when asked to describe the mental or physical impairments that impact the appellant's ability to manage daily living activities, the SW left this section incomplete.

Daily Living Activities (DLA)

In the PR, the GP reported that:

- In terms of health history, the appellant has "...sleep disturbance, difficulty concentrating, social withdrawal, hyper-vigilance, muscle tension, and easily-triggered crying spells."
- The appellant has not been prescribed medications and/or treatments that interfere with her ability to perform DLA, although it is noted that she "...is undergoing therapy."
- For functional skills, the appellant has no limitations with walking, climbing stairs, lifting and remaining seated.
- The appellant has cognitive difficulties with communication.
- Asked to indicate if the impairment directly restricts the appellant's ability to perform DLA, the GP did not respond and did not provide an assessment for many of the listed DLA, specifically: personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside and outside the home, use of transportation, and management of finances.
- The appellant is restricted on a continuous basis with social functioning, and the GP wrote: "...due to anxiety, [the appellant] has trouble interacting and communicating with others." Regarding the degree of this restriction, the GP wrote: "...moderate restriction. Requires relatives present to be fully understood."
- No additional comments were provided in this section of the PR. The GP wrote that the appellant is not her patient and the appellant "...has no family doctor."

In the AR, the SW reported that:

- The appellant has a satisfactory ability to communicate with speaking, reading and writing and a poor ability with hearing, with a comment that "...hearing loss started as a teen (runs in her

family).”

- There are major impacts to cognitive and emotional functioning in the areas of consciousness (anxious), emotion (inappropriate anxiety emphasized), and attention/concentration, with no further comments provided by the SW. There are moderate impacts in four areas: bodily functions (sleep disturbance is emphasized), executive, memory, and motivation. There are minimal impacts in the areas of impulse control and motor activity.
- The appellant is independent with walking indoors and walking outdoors, climbing stairs and standing. She requires periodic assistance from another person with lifting and carrying and holding. The SW wrote that the appellant’s “...left arm weak and left hand fingers don’t bend. Can’t fully straighten.” The SW also wrote that the appellant is left-handed and weakness and physical dysfunction in her left arm was diagnosed in 2009 with Complex Regional Pain Syndrome by a doctor.
- The appellant is independently able to perform every assessed task of several DLA, specifically: personal care, basic housekeeping, meals, medication and transportation.
- Regarding the shopping DLA, the appellant is independent with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases. She requires periodic assistance from another person with carrying purchases home, with the comment by the SW: “...when shopping sometimes needs assistance carry purchases due to left arm problems.”
- For the “pay rent and bills” DLA, the appellant is independent with banking and there is a question mark regarding independence with the tasks of budgeting and pay rent and bills and an arrow to indicate possible need for periodic assistance from another person. The SW wrote that the appellant is “...not good at budgeting” and “...sometimes not good” with paying rent and bills, with an indication that she pays her rent first. The SW added: “...difficulty with budgeting her money. Is currently reading information on budgeting.”
- For social functioning, the appellant is independent in some aspects, specifically making appropriated social decisions, developing and maintaining relationships, interacting appropriately with others, with a comment by the SW that “...this is difficult for [the appellant] due to extreme shyness (since early childhood). Only has a few comfortable relationships.” The appellant requires periodic support/supervision from another person with dealing appropriately with unexpected demands, and securing assistance from others. The SW added that the appellant is “...very uncomfortable in social situations.”
- The appellant has marginal functioning with both her immediate and extended social networks, with no additional comments provided by the SW.
- Asked to describe the support/supervision required that would help to maintain the appellant in the community, the SW indicated counseling to address anxiety and social issues and childhood trauma therapy.
- For additional information, the SW wrote that the appellant “...is extremely shy, which makes social interactions very difficult. Her childhood history of abuse has resulted in PTSD. She is in therapy for these.” The SW also wrote: “...physically: the left arm and hand injury resulting from a fall (January 2009) when she broke her elbow, makes several activities difficult.”

In the report dated May 5, 2016, the SW added that:

- Due to her inability to drive, the appellant relies on her sister to drive her to her therapy sessions.
- The significant symptoms that affect the appellant’s inability to obtain and maintain employment include: severe anxiety with occasional panic attacks; easily triggered crying

spells; feelings of shame and embarrassment, which exacerbates her extreme shyness; withdrawal from social situations due to extreme shyness and anxiety; feelings of detachment and of not fitting in socially; difficulty concentrating, along with disorientation and confusion at times; intense fear- especially in social settings; feelings of helplessness and of having no control of most aspects of her life; sleep disturbances and deprivation; hyper-vigilance with high startle response; muscle tension in neck and shoulders; eating disturbances related to stress and anxiety; breathing difficulties; and low self-confidence and self-esteem.

In her self-report, the appellant wrote that:

- She feels her disability is worsening as the years go by.
- Her inability to cope with certain areas of her life, such as obtaining employment, driving, social situations, relationships, etc. were also having a negative effect in that she felt isolated and was at a loss for how to overcome these negative vulnerabilities.
- She relies on family members to help drive her to appointments.
- Her anxiety keeps her from socializing and she avoids certain activities.
- Her reliance on her family (sister) for support helps her to cope with feelings of helplessness.
- She is unable to obtain employment due to PTSD [post traumatic stress disorder] symptoms and childhood trauma issues.
- She has nervousness, which is fear-related, and she is easily startled.
- She has daily stomach upset and heartburn.
- She experiences difficulty concentrating, sleep disturbances, fatigue, depression/anxiety, trust issues, feeling stuck and unable to connect with others, constant tension, panic and withdrawal.
- She has guilt, depression, and shame stemming from childhood trauma.

In her Request for Reconsideration, the appellant wrote that:

- All of her issues, including hearing loss and arm injury, a PTSD-related issue, childhood trauma, and anxiety issues, and being a child of a survivor of the residential school system, cause her hardship.
- She relies on family members to drive her to appointments, attend appointments with her and speak on her behalf.

Need for Help

The GP reported in the PR that the appellant "...requires family accompaniment in order to get through daily activities."

In the AR, the SW reported that the help required for DLA is provided by family, and the SW wrote that the appellant's sister is her primary support person. The SW indicated that no assistive devices are needed, and no assistance animal.

Additional Information

In her Notice of Appeal dated November 17, 2016 the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that the decision states that she does not have a severe physical or mental impairment yet under Appendix A it states that the ministry is satisfied that the information provided establishes a severe impairment.

Prior to the hearing, the appellant provided a written submission dated December 5, 2016 in which



she wrote that the ministry wrote in one place in the reconsideration decision that she does not have a severe physical or mental impairment and, in another place, the ministry determines that she does have a severe mental impairment. The appellant wrote that the reconsideration decision report has some contradictory areas and is confusing as she does not know if her impairment is taken seriously by the ministry.

The panel considered the appellant's submission as argument on her behalf.

The ministry relied on its reconsideration decision as its submission on the appeal.

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 PWD designation, 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 has a severe mental, though not a severe physical, impairment but her DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that 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 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)(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;

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- (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.

At reconsideration, the ministry was satisfied that the information provided is sufficient evidence of a severe mental impairment under Section 2(2) of the EAPWDA.

Direct and Significant Restrictions in the ability to perform DLA

The appellant's position is that her severe mental impairment directly and significantly restricts her ability to perform DLA on an ongoing basis to the extent that she requires the significant assistance of another person, specifically her family members as well as counseling with the social worker as a health authority professional.

The ministry's position is that the information from the prescribed professionals does not establish that the appellant's severe mental impairment significantly restricts her DLA either continuously or periodically for extended periods.

Panel Decision

The determination that a person has a severe impairment does not itself determine eligibility for the PWD designation as 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 her ability to perform DLA, either continuously or periodically for extended periods. In this case, the GP and the SW are the prescribed professionals. 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, if any, DLA are significantly restricted by the appellant's impairments continuously or periodically for extended periods.

In the appellant's circumstances, the GP met the appellant for the first time to complete the PR and wrote that the appellant is not her patient and the appellant "...has no family doctor." The GP reported that the appellant has not been prescribed medications and/or treatments that interfere with her ability to perform DLA, and added that the appellant is "undergoing therapy." Asked to indicate if the impairment directly restricts the appellant's ability to perform DLA, the GP did not respond and did not provide an assessment for any of the listed DLA with the exception of social functioning. In the AR, the SW reported that the appellant is independent with the "move about indoors and outdoors" DLA, the personal care DLA, the basic housekeeping DLA, the meals DLA, the medication DLA and the transportation DLA. For the shopping DLA, the SW reported that the appellant is independent with all tasks with the exception of carrying purchases home, for which the appellant requires periodic assistance from another person, with the comment by the SW that "...when shopping sometimes needs assistance carry purchases due to left arm problems." The SW also wrote: "...physically: the left arm and hand injury resulting from a fall (January 2009) when she broke her elbow, makes

several activities difficult.” While the GP reported in the PR that the appellant has no limitations with lifting, the SW who has known the appellant over a longer period assessed the appellant in the AR as requiring periodic assistance with carrying and holding due to her left arm weakness and an inability to bend her fingers on her left hand. However, the ministry was not satisfied that the appellant has a severe physical impairment and the panel finds that the ministry reasonably determined that there is insufficient information provided by the SW to allow the ministry to determine that the periodic assistance is required for extended periods of time. For the “pay rent and bills” DLA, the SW indicated that the appellant is independent with banking and there is a question regarding independence with the tasks of budgeting and pay rent and bills and an arrow to indicate possible need for periodic assistance from another person, although the assessment is uncertain, as discussed below.

With respect to the two DLA that are specific to mental impairment – make decisions about personal activities, care or finances (decision making), and relate to, communicate or interact with others effectively (social functioning), there is insufficient evidence to establish that the appellant is significantly restricted in either. Regarding the decision making DLA, the SW reported in the AR that the appellant independently manages almost all decision-making components of DLA, specifically: personal care (regulate diet), shopping (making appropriate choices and paying for purchases), meals (meal planning and safe storage of food), medications (taking as directed and safe handling and storage), and transportation (using transit schedules and arranging transportation). For the tasks of budgeting and paying rent and bills, the SW wrote that the appellant is “...not good at budgeting” and “...sometimes not good” with paying rent and bills. Again, the panel finds that the ministry reasonably determined that there is insufficient information provided by the SW to allow the ministry to determine that the periodic assistance is required for extended periods of time. The SW indicated in the AR that the appellant is also independent with making appropriate social decisions.

Regarding the DLA of social functioning, the GP reported in the PR that the appellant is restricted on a continuous basis and the GP wrote: “...due to anxiety, [the appellant] has trouble interacting and communicating with others.” However, regarding the degree of restriction, the GP wrote: “...moderate restriction” and she “...requires relatives present to be fully understood.” In the AR, the SW reported that the appellant is independent in some aspects of social functioning, including developing and maintaining relationships and interacting appropriately with others, with a comment by the SW that “...this is difficult for [the appellant] due to extreme shyness (since early childhood). Only has a few comfortable relationships.” The SW assessed the appellant as requiring periodic support/supervision from another person with dealing appropriately with unexpected demands and securing assistance from others and the appellant is “...very uncomfortable in social situations.” The appellant has marginal functioning in both her immediate and extended social networks, with no additional comments provided by the SW.

Asked to describe the support/supervision required that would help to maintain the appellant in the community, the SW indicated counseling to address anxiety and social issues and childhood trauma therapy. For additional information, the SW wrote that the appellant “...is extremely shy, which makes social interactions very difficult. Her childhood history of abuse has resulted in PTSD. She is in therapy for these.” While the SW did not elaborate in the AR regarding the extent of the periodic support/supervision required in areas of social functioning, in the report dated May 5, 2016, the SW wrote that the appellant is unable to drive and relies on her sister to drive her to her therapy sessions. In the PR, the GP reported that the appellant has cognitive difficulties with communication; however, in the AR the SW indicated that the appellant has a satisfactory ability to communicate with speaking,

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reading and writing and a poor ability with hearing due to physical hearing loss, with no reference to cognitive difficulties.

In the report dated May 5, 2016, the SW also outlined the significant symptoms that affect the appellant's inability to obtain and maintain employment. In her self-report, the appellant wrote that her inability to cope with certain areas of her life, such as obtaining employment, driving, social situations, relationships, etc. were also having a negative effect in that she felt isolated and was at a loss for how to overcome these negative vulnerabilities. The appellant stressed in her self-report that she is unable to obtain employment due to PTSD symptoms and childhood trauma issues. As for finding work and/or working, the panel notes that employability is not a criterion in section 2(2) of the EAPWDA nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR.

In her Request for Reconsideration, the appellant wrote that all of her issues, including hearing loss and arm injury, a PTSD-related issue, childhood trauma, and anxiety issues, and being a child of a survivor of the residential school system, cause her hardship. In her self-report, the appellant wrote that she feels her disability is worsening as the years go by; however, there was no additional information provided on the appeal from the prescribed professionals to show deterioration in the appellant's functioning and the consequent impact on her ability to perform DLA, or to provide the missing detail regarding her need for periodic assistance with some tasks of DLA. 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 her DLA, either continuously or periodically for extended periods. There is no discretion provided to the ministry to rely on information regarding impacts to DLA that has not been confirmed as being in the opinion of a prescribed professional.

Considering the assessment of independence with most tasks of DLA and a lack of detail regarding the extent of periodic assistance required from another person with a few tasks of DLA, as well as the absence of evidence of significant impacts to the two DLA specific to a severe mental impairment, the panel finds that the ministry was reasonable to conclude that there is insufficient evidence from the prescribed professionals to show that the appellant's overall ability to perform her DLA is significantly restricted either continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA, namely her family and health authority professionals. In her Request for Reconsideration, the appellant wrote that she relies on family members to drive her to appointments, attend appointments with her, and speak on her behalf.

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

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.

While the appellant benefits from the help provided by the appellant's family, especially her sister as her primary support person, as well as the SW as a health authority professional who provides counseling, the panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, 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.

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 pursuant to 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.