

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 November 22, 2016, which held that the appellant did not meet 3 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. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- 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 an assistive device, the significant help or supervision of another person, 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 following documents were before the ministry at reconsideration.

- 1) PWD application comprised of the appellant's Self-report (SR) dated June 24, 2016, a Physician Report (PR), and an Assessor Report (AR). Both the PR and AR were completed by a general practitioner (GP) who had seen the appellant 2-10 times and are dated July 5, 2016.
- 2) June 10, 2016 referral letter to a psychiatrist from a physician (not the GP who completed the PWD application).
- 3) Consultation letter dated August 14, 2016 from the psychiatrist respecting a July 28, 2016 assessment of the appellant.
- 4) One page of Client Progress Notes dated October 5, 2016 from the psychiatrist.
- 5) The appellant's Request for Reconsideration dated November 8, 2016, which included information provided on November 2, 2016 from the GP.

No additional evidence was introduced on appeal. The arguments of both parties, including those in the appellant's Notice of Appeal, are set out in Part F of this decision.

Summary of relevant evidence

Diagnoses

In the PR, the GP diagnoses anxiety disorder and the psychiatrist diagnoses bipolar affective disorder.

Physical Impairment

The GP provides the following information.

- No aids or prostheses required.
- The appellant is able to:
 - walk 2 to 4 blocks unaided;
 - climb 5+ steps unaided;
 - lift 15 to 35 lbs; and
 - remain seated for 1 to 2 hours.
- Walking indoors and outdoors, climbing stairs, standing, lifting, and carrying/holding are managed independently with "no restriction."

The physician notes that the appellant reported having used medication for chronic back pain.

In his SR, the appellant reports that he is sore all over and his body aches due to arthritis in his back, neck, and hips; this affects his walking and causes sleeping troubles. Due to bipolar and arthritis he has trouble finishing things he starts.

Mental Impairment

The GP provides the following information.

- The appellant just joined the GP's practice. From previous records it is clear that he is having significant issues with mental health. He is visibly anxious. Will have follow-up with psychiatrist.
- Needs daily medication for mental health problems. Not in a position now to get a job. Family is helping him now very much to get more confidence and independence.
- Significant deficits with cognitive and emotional function are identified in the areas of executive (planning), memory, emotional disturbance, motivation, motor activity (agitation), and attention or sustained concentration. The GP comments that the appellant described these aspects of his life to be mostly affected on a daily basis.
- In the section of the AR listing 14 areas of cognitive and emotional functioning, a moderate impact on daily functioning is reported for emotion. A minimal impact is reported for attention/concentration, executive, and memory. No impact is reported for the remaining areas. The GP comments that anxiety is the major factor in everyday life. Respecting impulse control, the appellant now feels he is able to take control of his emotions and impulse decisions.
- Social functioning is managed independently. Good functioning with both immediate and extended social networks.
- No difficulties with communication, except that hearing is satisfactory rather than good, due to intermittent tinnitus in the left ear.
- At the time of reconsideration, anxiety levels are still very high and affecting daily functioning despite treatment.

In the referral letter, the physician notes the appellant likely suffers from bipolar as well as polysubstance drug history for which he is at a high risk of relapse. The physician notes that the appellant had pressured speech and flight of ideas, but repeatedly emphasized his desire to stay clean and start working part time.

The psychiatrist describes the appellant's self-reported history including that the appellant has been managed on an outpatient basis with no history of admission to a psychiatric facility. On mental state examination, the appellant appeared slightly anxious and apprehensive but was able to maintain rapport and has normal eye contact. Affect was appropriate and mood was reactive. He appeared euthymic but complained of ongoing anxiety and occasional mood swings affecting his daily functioning. Sleep pattern is patchy and he has middle insomnia. No psychotic symptoms were noted or reported. Cognitive functions were within normal range and the appellant apparently has sufficient insight. The psychiatrist believes the appellant suffers from bipolar affective disorder. Overall his mental state is stable, but he occasionally suffers from mood swings and is worried that his anxiety and depression may lead him to substance abuse disorder. In the subsequent Client Progress Notes, the psychiatrist comments that the appellant is compliant with medication and that speech is pressured. A check mark is indicated for rapport, eye contact, insight, and mood. Sleep pattern has improved and there are no psychotic symptoms.



DLA

In the PR, the GP reports that the appellant has not been prescribed medication and/or treatments that interfere with his ability to perform DLA.

In the AR, the GP reports that all listed tasks of mobility and physical ability, personal self-care, basic housekeeping, shopping, meal preparation, daily shopping, paying rent and bills, medications, transportation, and social functioning are managed independently. The only commentary provided is that there are “no restrictions” for mobility and physical ability.

Need for Help

The GP reports that assistance is provided by family. No assistive devices are required. 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:

- a severe physical or mental impairment was not established;
- the appellant's 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 require an assistive device, the significant help or supervision of another person, or the services of an assistance animal 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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner or nurse 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

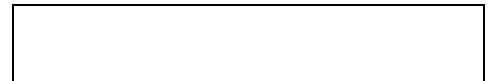
(A) continuously, or

(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.

Severe Impairment

The legislation provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning. While the legislation does not define “impairment”, the PR and AR define “impairment” as a “loss or abnormality of psychological, anatomical or physiological structure or functioning causing a restriction in the ability to function independently, effectively, appropriately or for a reasonable duration.” While this is not a legislative definition, and is therefore not binding on the panel, in the panel’s opinion, it reflects the legislative intent and provides an appropriate analytical framework for assessing the degree of impairment resulting from a medical condition.

Physical Impairment

The appellant’s position is that he has body aches and disrupted sleep due to his arthritis and that he is unable to work.

The ministry’s position is that a severe physical impairment is not established by the GP’s assessment of physical functioning, including that the appellant does not require any prostheses or aids. The ministry also notes that employability or vocational ability is not a criterion in assessing eligibility for PWD designation.

Panel Decision

While the appellant reports that he suffers from arthritis in his SR, and he referenced taking medication for back pain when meeting with the physician, none of the medical practitioners whose information was submitted in support of the appellant’s PWD application has diagnosed the appellant with arthritis or another medical condition that would limit physical functioning. Despite the lack of a diagnosis, the GP does note some limitations to physical functioning in the PR, including being limited to walking 2 to 4 blocks independently and lifting 15 to 35 lbs. However, in the AR the GP expressly states that there are “no restrictions” to the appellant’s ability to walk, climb stairs, and lift/carry. Additionally, as the ministry notes, the appellant does not require any assistive devices or aids. As the ministry notes, the ability to work is not a legislative criterion or activity for the purpose of assessing eligibility for PWD designation.

In the absence of a diagnoses of a medical condition that would impact the appellant’s physical functioning, together with the level of independent physical functioning reported by the GP, the panel finds that the ministry has reasonably determined that the GP’s assessment of physical functioning does not demonstrate a severe physical impairment.

Mental Impairment

In his reconsideration submission and Notice of Appeal, the appellant argues that no one will hire him due to his sickness, and the information provided by multiple doctors, including his psychiatrist, establishes that he is unable to work. Additionally, that he was previously on disability for over 15

years establishes that he is disabled.

The ministry argues that the GP's assessment of impacts to cognitive and emotional functioning, which are moderate and minimal, does not demonstrate the presence of a severe mental impairment. Additionally, the GP indicates that there are no cognitive difficulties with communication and that all aspects of social functioning as well as the decision-making tasks of personal activities, care and finances are managed independently. The ministry argues that the information provided by the psychiatrist does not differ significantly from that provided by the GP, noting that the psychiatrist mentions mood swings and episodes of anxiety and depression but does not assess the impacts to daily cognitive and emotional functioning. Further, except for commenting that the appellant experiences social withdrawal during depressive episodes, the psychiatrist does not address social functioning. The ministry acknowledges that the appellant's emotional and cognitive functioning is negatively impacted by anxiety and bipolar affective disorder, but concludes that the assessments of cognitive, emotional, and social functioning provided by the GP and psychiatrist do not establish a severe mental impairment.

Panel Decision

The appellant is diagnosed with anxiety and bipolar affective disorder. In the PR, the GP identifies a number of areas of cognitive and emotional function that the appellant feels are mostly impacted on a daily basis and the GP describes the appellant as visibly anxious and having significant issues with mental health. However, when assessing the impact of the appellant's mental condition across 14 areas of daily functioning, the GP assesses no major impact, one moderate impact (for emotion), and either minimal or no impact for all remaining areas of cognitive and emotional functioning. Additionally, as the ministry notes, the GP does not indicate any impact on communication arising from mental impairment and that all aspects of social functioning, as well as the listed decision-making tasks relating to personal care and finances, are managed independently. The other physician mentions that the appellant had pressured speech and flight of ideas during an appointment, but provided no further comment or assessment. The psychiatrist noted that the appellant appeared slightly anxious and apprehensive, with pressured speech, but was able to maintain rapport, had normal eye contact and appropriate affect, and that his mood was reactive. The psychiatrist noted the appellant's complaints of ongoing anxiety and occasional mood swings affecting his daily functioning but commented that the appellant appeared euthymic, that is, his mood appeared within normal ranges. The psychiatrist also noted that the appellant's cognitive functions were within normal range and that he appears to have sufficient insight. The psychiatrist concludes that the overall the appellant's mental state is stable but that he occasionally suffers from mood swings.

The panel finds that while the appellant reports that he is disabled by the daily impact of his mental health conditions, the assessments of the GP and the psychiatrist do not reflect the appellant's self-reported degree of impairment. Rather, while noting that the appellant is impacted daily, the GP reports that there is no major impact for any aspect of cognitive or emotional functioning and the assessment of the psychiatrist indicates functioning that is mostly in the normal range, though the appellant occasionally suffers from mood swings. Based on this analysis, the panel concludes that the ministry reasonably determined that the information does not establish that the appellant has a severe mental impairment.

Restrictions in the ability to perform DLA

The appellant does not specifically address his ability to perform DLA but argues that as a result of his medical condition he is unable to work.

The ministry notes that in accordance with the legislation, the ministry relies on the evidence from a prescribed professional respecting the impact impairment has on daily functioning. The ministry comments that considering the appellant's history it is reasonable to expect some restrictions in the ability to manage DLA. However, based on the information provided by the GP and the psychiatrist, there is not enough evidence to confirm that the appellant's impairment significantly restricts his ability to perform DLA either 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.

In this case, the appellant's GP, the second physician, and the psychiatrist are all prescribed professionals. The information from the second physician is not sufficiently detailed to indicate what impact the appellant's mental impairment has on his ability to perform DLA. The information from the psychiatrist suggests that functioning is impacted during the occasional mood swings, but does not establish restrictions that could reasonably be viewed as significant. The GP specifically addresses the appellant's ability to manage DLA and reports that, with the exception of some moderate physical mobility limitations, the appellant independently manages all listed tasks of all DLA.

Based on the level of independence with which the appellant is reported to manage his DLA, the panel finds that the ministry reasonably determined that a severe impairment that significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods as required by section 2(2)(b)(i) of the EAPWDA has not been established.

Help to perform DLA

The appellant does not take a position as to what help he requires with 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 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

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.