

## 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 05 December 2016 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, section 2. Specifically, the ministry determined that the information provided did not establish that the appellant's severe mental impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, she requires help to perform those activities.

The ministry determined that the appellant satisfied the other 3 criteria: she has a severe mental, though not a severe physical, impairment; she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 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 appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 06 June 2016. The Application contained:
  - A Self Report (SR) completed by the appellant.
  - A Physician Report (PR) dated 07 June 2016, completed by the appellant's general practitioner (GP) who has known the appellant since February 2016 and seen her 2-10 times over that period.
  - An Assessor Report (AR) dated 07 June 2016, completed by a social worker (SW) who has known the appellant for 3 months and seen her 2-10 times over that period.
2. The appellant's Request for Reconsideration dated 24 November 2016, with Reasons provided by a nurse practitioner (NP) on the appellant's behalf.

In the PR, the GP diagnoses the medical conditions related to the appellant's impairment as:

- Major recurrent depression (onset 2010)
- Alcohol misuse/abuse disorder (onset 2010)
- Anxiety/OCD (onset 2010)
- PTSD due to partner abuse (onset 2013)
- History of concussion head injury (onset 2015)

The panel will first summarize the evidence from the PR and the AR as it relates to the PWD criteria at issue in this appeal.

### Ability to perform DLA

#### *Moving about indoors and outdoors*

PR:

The GP indicates that the appellant is able to walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and has no limitations with lifting.

AR:

The SW assesses the appellant as independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. The SW comments, "Wants to sleep on her worst day."

#### *Impacts of mental impairment on daily functioning*

The SW assesses the impact of the appellant's mental impairment on daily functioning as having a major impact on bodily functions, emotion, impulse control, insight and judgment, attention/concentration, and motivation. The SW assesses a moderate impact in the areas of consciousness, executive, memory, motor activity, and other neuropsychological problems

(dystheria). The SW comments:

“Some sleep disturbance. If gets woken up struggles to get back to sleep. Anxious mind races. Hard to settle her mind 5 out of 7 nights/week. Gets confused and frustrated 2-3x week. Poor impulse control and impaired insight & judgment. Easily distracted and loses focus and hard time concentrating. Forgetful lately, needs reminder cards for medications. Decreased goal oriented activity, struggling with future planning.”

### *Communication*

PR:

The GP indicated that the appellant had no difficulties with communications.

AR:

The SW assessed the appellant's ability to communicate as satisfactory for speaking, reading, writing, and hearing. The SW comments, “Doesn't want to do anything.”

### *Daily living activities*

PR:

In answer to the question as to whether the appellant's impairment directly restricts her ability to perform DLA, the GP indicates “No.”

However, when asked whether any of the listed DLA is restricted, the GP indicates that the appellant is restricted on a continuous basis for meal preparation and on a periodic basis for daily shopping and social functioning. This GP indicates that the appellant is not restricted for the DLA of personal self care, management of medications, basic housework, mobility inside the home, mobility outside the home, or use of transportation.

The GP comments, “Shopping can be problematic – difficulty planning & executing shopping tasks – often overwhelmed.”

In terms of social functioning, the GP writes, “PTSD has made social interactions difficult. This anxiety impairs communication skills.”

AR:

The SW assesses the assistance required to perform DLA as follows (her comments in parentheses):

- Personal care – periodic assistance from another person required for dressing, grooming, and bathing (Struggles with getting out of bed @ least 1-2x month. Stays in bed and sleeps all day due to depression); independent for toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off of chair.
- Basic housekeeping – periodic assistance from another person required for laundry and basic housekeeping (Tries to tidy as needed but when she sleeps all day she is unable).
- Shopping – independent in all aspects (Buying crappy/processed foods).
- Meals – periodic assistance from another person required for meal planning, food preparation, and cooking (Don't like to cook in shared kitchen. Will either not eat or binge

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- eat due to depression); independent for safe storage of food (No interest).
  - Pay rent and bills – independent in all aspects (Impulsive with spending).
  - Medications – independent for filling/refilling prescriptions and safe handling and storage; periodic assistance from another person required for taking as directed (Forgets to take meds. Would benefit from reminders).
  - Transportation – independent for getting in and out of a vehicle; continuous assistance from another person required for using public transit schedules and arranging transportation (Missed the bus 5 times in the last week. Gets overwhelmed with understanding the schedule).

The SW comments, “Due to depression, on her worst days she sleeps all day @ least 1-2 days/month.”

### *Social functioning*

AR:

The SW assesses the support/supervision required in the following areas (the SW’s comments in parentheses):

- Making appropriate social decisions – continuous support/supervision required (Poor social judgment. Won't talk to others).
- Ability to develop and maintain relationships – continuous support/supervision required (Poor ability to develop and maintain relationships).
- Interacting appropriately with others – periodic support/supervision required (Isolates. Withdraws).
- Ability to deal appropriately with unexpected demands – continuous support/supervision required (Unable to deal with unexpected demands. Gets angry/defensive).
- Ability to secure assistance from others – independent.

The SW assesses how the appellant’s mental impairment impacts her relationship with her immediate social network and her extended social network as marginal functioning.

Under additional comments, including the identification of any safety issues, the SW writes, “If isolates too long will likely relapse/overdose.”

### Help required

PR:

The GP indicates that the appellant does not require any prostheses or aids for her impairment.

The GP writes, “Needs help with shopping, meal planning & preparing nutritious foods for herself.”

AR:

The SW does not indicate that the appellant requires any of the listed equipment or devices to compensate for her impairment and indicates that the appellant does not have an assistance animal.

The SW writes, “Would benefit from some support with meal planning and preparation and

transportation.”

The SW indicates that the appellant is provided help from health authority professionals and from friends. In terms of help required but not available, the SW writes. “Help with meals, transportation, medication reminders, social functioning.”

### Self Report

In her SR, the appellant writes that she is currently in recovery for her drug and alcohol addictions. Being in recovery has brought about depression, anxiety, OCD, ADD and PTSD from former partner abuse.

She writes:

“Some days I struggle with getting out of bed. I also struggle with eating healthy and regularly. Managing my personal finances can be hard. I do experience a lot of confusion, stress and depression. I struggle with finishing tasks because I’m still others first before me and some of my tasks are for me. I have a lot of difficulty interacting with my family or partner because of past experiences and asking for help does not come easy but I am learning. I do struggle with understanding what others say. I can get very defensive and shut down. Constructive criticism is hard for me to understand because I think I totally screwed up. I experience difficulty in unexpected situations. It throws me right off track and I get really frustrated. I am currently receiving help from friends, support groups and I need help from a professional counsellor’.”

### **Request for Reconsideration**

Under Reasons, a NP writes:

“[The appellant’s] condition has worsened over the last few months. Depression is worsening related to recent loss of several friends to overdose deaths as well as her own overdose. Unable to get up mornings. Requires help with ADLs. Increased short-term memory loss, very decreased (major impact) goal-oriented activities and executive functions. Has been unable to plan, organize and problem solve situations which is majorly impacting her ability to find meaning and sustained employment

[The appellant] requires additional assistance with personal care, housework, making purchases and carrying them home. Needs assistance with transportation continually. These activities are now continuously restricted.”

### **Notice of Appeal**

In her Notice of Appeal, dated 15 December 2016, the appellant writes:

“I feel that my condition is worsening. I am not managing my daily life at all. My brain is not allowing me to even leave my house or organize my affairs.”

### **The hearing**

At the hearing, the ministry stood by its position at reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet two of the five statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities (PWD) is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry determined that the information provided did not establish that the appellant's severe mental impairment, in the opinion of a prescribed professional,

(i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, she requires help to perform those activities.

The ministry determined that the appellant satisfied the other 3 criteria: she has a severe mental, though not a severe physical, impairment; she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The following section of the *EAPWDA* applies to this appeal:

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 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.

The following section of the *EAPWDR* applies to this appeal:

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;

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- (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.

## **Direct and significant restrictions in the ability to perform DLA**

### *The appellant's position*

The appellant's Notice of Appeal sets out her position:

"I feel that my condition is worsening. I am not managing my daily life at all. My brain is not allowing me to even leave my house or organize my affairs."

### *The ministry's position*

The position of the ministry, as set out in the reconsideration decision, is that due to inconsistencies between the information provided by the GP and SW, it is difficult to develop a clear and coherent picture of the impacts of the appellant's ability to perform DLA and the assistance required as a result.

The ministry reviewed the assessments provided by the GP in the PR, noting that he indicates that the appellant's impairment does not directly restrict her ability to perform DLA. The ministry also noted that he indicated periodic restrictions with daily shopping, while the SW in the AR assessed the appellant as independent with all listed areas of shopping. The ministry further noted that the GP indicated that the appellant is not restricted with the majority of listed areas of DLA. The ministry concluded that it is difficult to establish significant restrictions to DLA based on the GP's assessments.

The ministry went on to review the assessments provided by the SW in the AR, noting that the SW indicated restrictions with the DLA of personal care, basic housekeeping, medications, and transportation, while the GP indicated that the appellant is not restricted in these areas. The ministry also noted that the SW does not describe the frequency or duration of periodic assistance from

another person required with dressing, grooming, bathing, meal planning, food preparation, cooking, and taking medications as directed. The ministry further noted that restrictions with personal care and housekeeping due to sleeping all day 1-2 days/month, as reported by the SW, are not considered indicative of significant restrictions to DLA.

The ministry also reviewed the information provided by the NP in the Request for Reconsideration. The Ministry considered the statement, “Depression is worsening related to recent loss of several friends to overdose deaths as well as her own overdose” is suggestive that the worsening of the appellant's condition is situational in nature and may improve in the future. The ministry also noted inconsistencies between restrictions noted by the NP and those by the GP and the SW. For instance, the NP describes restrictions with personal care, housework, and transportation, while the GP indicates that the appellant is not restricted with these areas.

The ministry concluded that, based on the assessments of the GP, PSW, and the NP, the ministry found that there is not enough evidence to confirm that the appellant's severe impairment significantly restricts her ability to perform DLA continuously or periodically for extended periods and therefore this legislative criterion has not been met.

#### *Panel decision*

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, a criterion that has not been established in this appeal. The legislation – section 2(2)(b)(i) of the *EAPWDA* – requires the minister to assess direct and significant restrictions of DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP, SW or NP. This does not mean that other evidence should not be factored in as required to provide clarification of the professional evidence, but the legislative language makes it clear that a prescribed professional's evidence is fundamental to the ministry's determination as to whether it is “satisfied.” And for the minister to be “satisfied,” it is reasonable for the ministry to expect that a prescribed professional provides a clear picture of the degree to which the ability to perform DLA is restricted in order for the ministry to determine whether the restrictions are “significant.”

The panel will first review the information provided regarding restrictions in the appellant's ability to perform the 8 DLA applicable to a person with a severe mental or physical impairment.

In the PR, the GP is asked to provide a general overview of restrictions in the ability to perform DLA. Here, the GP begins by indicating that the appellant's impairment does not directly restrict her ability to perform DLA. Despite this general assessment, the GP goes on to indicate that the appellant is continuously restricted in the DLA of meal preparation and periodically restricted for daily shopping, commenting, “Shopping can be problematic – difficulty planning & executing shopping tasks – often overwhelmed.” The panel notes that the GP has not provided any additional information regarding the degree to which meal preparation is restricted or the frequency and duration of periodic restrictions to daily shopping.

In the AR, the SW is asked to provide a more detailed assessment of the appellant's ability to perform DLA. The SW assesses the appellant as requiring periodic assistance from another person for three aspects of personal care (dressing, grooming, and bathing) and two aspects of basic housekeeping (laundry and basic housekeeping), commenting that these restrictions result from her struggles with

getting out of bed 1-2 times/month due to depression. As the ministry noted, it is difficult to consider this level of periodic restriction significant for an extended period. The SW also assessed the appellant as requiring periodic assistance from another person for three aspects of meals (meal planning, food preparation and cooking), and for medications (taking is directed). For these DLA, the SW has not provided any information as to the frequency and duration of the help required, nor the nature or extent of the assistance needed, making it difficult for the ministry to determine whether the restrictions assessed are significant and periodical for an extended period. For instance, for meals the SW commented, "Don't like to cook in shared kitchen. Will either not eat or binge eat due to depression"; this provides no insight into how often she either does not eat or binges. And while the SW later comments that the appellant would benefit from some support with meal planning and preparation, she does not describe the nature or extent of such support. The SW assesses the appellant as requiring continuous assistance from another person for transportation (using public transit and using transit schedules and arranging transportation), commenting "Missed the bus 5 times in the last week. Gets overwhelmed with understanding the schedule", but again the nature and extent of the assistance required is not described, such as whether she needs to be accompanied on every trip or whether she simply needs to be reminded by someone to leave home earlier.

At reconsideration, the NP writes that the appellant "Requires help with ADLs" and that she "requires additional assistance with personal care, housework, making purchases and carrying them home. Needs assistance with transportation continually. These activities are now continuously restricted." However, the NP did not provide any information as to the nature or type of the assistance required. The NP put her observations in the context of the appellant's condition having worsened over the past few months "related to recent loss of several friends to overdose deaths as well as her own overdose." Further, as the NP did not provide any prognosis as to whether the appellant's worsening condition is expected to continue for an extended period, the panel finds that the ministry was reasonable in taking this recent history as indicating this worsening condition as situational or temporary in nature.

In the reconsideration decision, the ministry noted several inconsistencies, both internal to the PR, and between the assessments provided by the GP, the SW and the NP. While the legislation requires that the direct and significant restrictions to the person's ability to perform DLA either continuously or periodically for extended periods be in the opinion of a prescribed professional (i.e. any one of the prescribed professional providing information), the panel considers it reasonable that the ministry would expect a some degree of consistency between the assessments provided by the prescribed professionals in developing a clear picture of the extent to which DLA are restricted.

In addition to the above DLA, there are 2 DLA (the "social functioning" DLA) that somewhat overlap with the 8 other DLA and are applicable to a person, such as the appellant, with a severe mental impairment: make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively.

In the PR, the GP assesses the appellant's social functioning as restricted on a periodic basis, commenting, "PTSD has made social interactions difficult. This anxiety impairs communication skills." The panel notes that the GP has not explained the frequency and duration of restrictions and social functioning, leaving the space for additional comments regarding the degree of restriction blank.

In the AR, in terms of the “decision-making” DLA, the SW assesses the appellant as requiring continuous support/supervision for making appropriate social decisions, and dealing appropriately with unexpected demands, but has not explained the nature or extent of support/supervision required. The SW's assessments regarding meal planning, taking medications as directed and transportation can be taken as indicative of difficulties with this DLA, and while the SW the comments, “Would benefit from some support with meal planning and preparation and transportation,” again there is no information provided as to the nature or extent of such support, is making it difficult for the ministry to obtain a clear picture of the degree to which the appellant's ability to perform this DLA is restricted.

Regarding the “relating to others effectively” DLA, the GP has noted no difficulties with the appellant's ability to communicate, and the SW has assessed the appellants ability to communicate as satisfactory. The SW assessed the appellant as requiring periodic support/supervision for interacting appropriately with others and requiring continuous support/supervision for ability to develop and maintain relationships, while assessing her relationships with her immediate and extended social networks as marginal functioning. However, no explanation or description is provided as to the nature or extent of any support/ supervision required.

Taking into account the assessments reviewed above, the panel finds that the ministry was reasonable in determining that the information provided does not establish that in the opinion of a prescribed professional the appellant's ability to perform DLA are directly and significantly restricted either continuously or periodically for extended periods.

### **Help with DLA**

#### *The appellant's position*

The position of the appellant is that, in light of her worsening condition as reported by the NP, she requires significant help and supervision from others, including from a professional counsellor.

#### *The ministry's position*

The position of the ministry is that, as it has not been established that 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 being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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.

As the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded

that under section 2(2)(b)(ii) of the *EAPWDA* it cannot be determined that the appellant requires help to perform DLA.

**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 thus not successful on appeal.