

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 December 21, 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 the appellant had a severe mental impairment.

However, the ministry was not satisfied that:

- a medical practitioner has confirmed that the appellant’s impairment is likely to continue for at least 2 years;
- 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 documents before the ministry at reconsideration included:

- 1) PWD application comprised of the appellant's Self-report (SR) dated May 10, 2016, a Physician Report (PR) dated July 6, 2016, and an Assessor Report (AR) dated July 5, 2016. Both the PR and AR were completed by the appellant's general practitioner (GP). The panel notes that a second version of page 11 of 28 of the PR (date stamped as received by the ministry on Dec 09 2016) was submitted in response to a ministry request, as the original page was not completed.
- 2) December 5, 2016 letter from the GP.
- 3) The appellant's December 7, 2016 Request for Reconsideration.

On appeal, the appellant submitted a letter dated January 3, 2017 from the GP stating that the appellant's "addiction to drugs is a lifelong medical condition. The anxiety disorder and PTSD (Post Traumatic Stress Disorder) results in her requiring daily assistance in banking, appointments, meal planning etc. She is living in a supervised setting (24 hour supervision) which she requires and will require indefinitely." In its appeal submission, the ministry states that it has reviewed this additional information and had the ministry had this information at the time of the reconsideration decision, the ministry may have found that the appellant met the criteria for PWD designation.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were 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 – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. 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 of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel finds that the information respecting the duration of the appellant's medical condition confirms information before the ministry at reconsideration and is therefore admissible. However, the information respecting the need for daily assistance with DLA directly conflicts with the information available at reconsideration and is therefore not admissible as supporting information under section 22(4) of the EAA; rather, it is information that is properly first put before the ministry.

Summary of relevant evidence

Diagnoses and background information

In the PR, the GP diagnoses the appellant with PTSD (2006 onset) and anxiety disorder (2002 onset).

The GP notes significant deficits with cognitive and emotional functioning, with a major impact on daily functioning in the areas of emotion (excessive anxiety), insight and judgement, attention/concentration (distractible, unable to maintain concentration, poor short term memory), executive, motivation (loss of interest), motor activity (repetitive actions), and language (racing speech). The GP also notes substance abuse, now in remission, and agoraphobia, and that the appellant needs time to deal with long developing psychiatric issues.

In the December 5, 2016 letter, the GP writes that it is recommended that the appellant not work for medical reasons and that the appellant is in a community living support setting where she is being treated for substance abuse and post-traumatic stress.

In her SR and Request for Reconsideration, the appellant writes that anxiety, PTSD, and long term substance abuse cause repetitive behaviour and difficulties with attention, sustained concentration, and motivation, resulting in extreme limitations in life. She also provides a history of past losses and abuse. She finds it hard to get daily tasks done on her own and simple DLA are a struggle, such as leaving the house, taking public transit, keeping scheduled appointments and attending social outings.

Duration of Impairment

No information was provided by the GP regarding degree and course of impairment on the original page 11 of 28 of the PWD application. On the second version of this page, the GP ticks the “yes” box where asked “Is the impairment likely to continue for two years or more from today” but provides no commentary where asked to “Please explain.”

DLA

In the PR, the GP reports a periodic restriction in the appellant’s ability to perform the following DLA: personal self-care, meal preparation, management of medications, basic housework, daily shopping, management of finances, and social functioning. The GP describes the periodic restrictions as “severe bouts of anxiety – environmental triggers lead to significantly impaired function.” Respecting social functioning, the appellant is unable to sustain long-term relationships – socially isolated – substance abuse. Mobility inside and outside the home and use of transportation are not restricted.

In the AR, the GP provides the following information:

- All aspects of mobility and physical ability are managed independently
- Personal care is managed independently (dressing, grooming, bathing, and toileting, transfers in/out of bed and on/off of chairs, feeding self, and regulate diet)

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- Basic housekeeping is managed independently (laundry and basic housekeeping)
 - Shopping – reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home are managed independently; going to and from stores requires periodic assistance from another person “unable to leave the home when anxious”
 - Meals are managed independently – meal planning, safe storage of food, food preparation, and cooking
 - Paying rent and bills – banking and paying rent and bills are managed independently; budgeting requires periodic assistance from another person
 - Medications are managed independently – filling/refilling prescriptions, taking as directed, and safe handling and storage
 - Transportation – getting in and out of a vehicle and using public transit are managed independently; using transit schedules/arranging transportation requires periodic assistance from another person “When anxious, unable to focus to figure out transit schedules or unable to get on a public bus re: agoraphobia”
 - Social functioning – appropriate social decisions, develop and maintain relationships, and deal appropriately with unexpected demands are managed independently; interact appropriately with others and ability to secure assistance from others require periodic support/supervision. Marginal functioning with both immediate and extended social networks

The GP also commented “Mood fluctuations. Prone to angry outbursts when frustrated. Poor self-esteem – lack in confidence re: dysfunctional family upbringing.”

Need for Help

In the PR, the GP describes assistance needed with DLA as “Attending counselling weekly re: anxiety, substance abuse.” In the AR, the GP writes “Will need social supports/guidance, counselling to work through multiple family based issues.” In the AR the GP also indicates that assistance is provided by health authority professionals and that there is no family support. In addition, the GP says that the appellant requires assistance in organizing her day, child care, and transportation.

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 medical practitioner has not confirmed that the appellant's impairment is likely to continue for at least 2 years;
- 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 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.

Duration

The appellant's position is that she suffers from life-long mental health conditions.

The ministry argues that the GP has not answered the question regarding the likely duration of her impairment. Therefore, the requirement that in the opinion of a medical practitioner or a nurse practitioner an applicant's impairment is likely to continue for at least 2 years has not been met.

Section 2(2)(a) of the EAPWDR requires that an applicant's severe mental or physical impairment "in

the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years.” While the ministry correctly identifies the original page 11 of the PR as not indicating the duration of impairment, in response to the ministry’s request for further information from the GP, the GP provided another page 11 which was received by the ministry on December 9, 2016, approximately 2 weeks prior to the date of the reconsideration decision. The second page 11 includes confirmation from the GP that the appellant’s impairment is likely to continue for at least 2 years. Based on this information, the panel finds that the ministry unreasonably determined that the requirement of section 2(2)(a) of the EAPWDA was not met.

Restrictions in the ability to perform DLA

The appellant argues that she finds it hard to get daily tasks done on her own and that employment is made really difficult by her impairment. Daily living activities are a struggle, including leaving the house, taking public transit, keeping scheduled appointments, and attending social outings.

The ministry acknowledges that the appellant has certain limitations resulting from bouts of anxiety. However, the frequency and duration of these periods are not described in order to determine if they represent a *significant* restriction to the appellant’s *overall* level of functioning. The ministry concludes that while it is reasonable to expect some restrictions to the appellant’s ability to perform DLA and require assistance as a result, there is not enough evidence to confirm that the appellant’s impairment *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. DLA, as defined, do not include the ability to work.

In this case, the appellant’s GP is the prescribed professional who has provided information respecting the appellant’s ability to perform DLA.

In the PR, the GP reports that the appellant is restricted on a periodic basis with most of the prescribed DLA, including self-care, meal preparation, management of medications and finances, basic housework, and social functioning, explaining “periodic” as severe bouts of anxiety that lead to significantly impaired function. When asked to describe the assistance required for listed DLA tasks in the AR, the GP reports that the appellant manages DLA independently except for periodic assistance or support/supervision from another person with one task each of shopping (going to and from stores), paying rent and bills (budgeting), and transportation (using transit schedules) as well as for two areas of social functioning. The GP comments that the restriction with going shopping relates to

the inability to leave home when anxious, and that when anxious the appellant is unable to figure out transit schedules or to get on a public bus. It is possible that the GP is intending to convey that while periodically restricted in most DLA, the restriction is not always to a degree that requires assistance or that the information in the AR is not entirely consistent with the information in the PR. In either case, the panel finds that the ministry has reasonably concluded that, in the absence of a description of the frequency and duration of the periodic restrictions, the significance of the restrictions is not established. Additionally, because the GP refers to “bouts of severe anxiety”, “when anxious,” and “mood fluctuations” without describing either the duration or frequency of these occurrences, the panel finds that the ministry has reasonably determined that the restrictions with DLA have not been established as either continuous or periodic for extended periods.

Based on the above analysis, the panel concludes that the ministry reasonably determined that the information did not establish that as a result of a severe impairment, the appellant’s ability to perform DLA is directly and significantly restricted, either continuously or periodically for extended periods as required by section 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant argues that she finds it hard to get daily tasks done on her own and that her mental health issues, PTSD, anxiety disorder, and long term substance abuse makes simple DLA a struggle. The GP indicates that help is provided by health authority professionals and community service agencies and that the appellant has no family support.

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 are 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 a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.