

## 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 January 24, 2017, 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;
- Was not satisfied that, in the opinion of a prescribed professional, the Appellant’s ability to perform daily living activities (DLAs) are directly and significantly restricted either continuously or periodically for extended periods; and
- Was not satisfied that, in the opinion of a prescribed professional, as a result of direct and significant restrictions, the Appellant requires help to perform DLAs, in the form of an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

## 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

### **Nature of the Appellant's Application**

The Appellant requested designation as a Person with Disabilities, which was denied. The Appellant requested reconsideration of the denial. At reconsideration, the Appellant was again denied.

### **Evidence at the Time of Reconsideration**

The evidence before the Ministry at the time of Reconsideration consisted of:

- the original Person with Disabilities Application dated to June 23, 2016, which included
- the Appellant's self report, describing his disability and
- how the disability affects his life and ability to care for himself
- a Physician Report (PR) completed by the Appellant's General Practitioner (family Doctor)
- an Assessor Report (AR) completed by the same General Practitioner
- the original Denial Decision Summary dated December 22, 2016
- the request for reconsideration dated January 15 the 2017, in which the Appellant stated that he was a First Nations Person, diagnosed with
- fetal alcohol syndrome, and suffering from
- anxiety and depression, and who
- had been struggling with loss of identity due to removal from his culture at a young age, and who struggles with his job, his personal hygiene, and his day-to-day living activities

### **Summary of Relevant Information**

#### **Diagnoses**

The physician diagnosed the Appellant with fetal alcohol syndrome and two mood disorders, those being depression not otherwise specified and anxiety not otherwise specified.

#### **Physical Impairment**

##### **Physician Report**

The physician reported under section D - Functional skills that the Appellant

- can walk four or more blocks unaided in the flat surface
- can climb five or more steps unaided
- has no limitations in lifting
- has no limitations remaining seated
- has no communication difficulties

Although the reporting form instructs the physician that if he is completing the AR, he is not to complete part E "Daily Living Activities" of the PR, the physician did so anyway and reported that the Appellant has no restriction with the DLAs of

- personal self-care
- meal preparation
- basic housework
- daily shopping
- mobility both inside and outside the home, and
- use of transportation, but
- did not comment on the Appellant's ability to manage medications,
- did not comment on the Appellant's social functioning, and said that the Appellant has

- restrictions in his management of financing, but did not comment further on that.

### **Assessor Report**

In the AR when dealing with physical functioning, the physician reported

- that the Appellant lived with family, friends or caregiver, and
- gave no written summary of the Appellant's "Mental or Physical Impairment" in Section B that impact his ability to manage DLAs, and reported that in the areas of
- *Ability to Communicate* the Appellant was "Good" in all 4 listed tasks of Speaking, Reading, Writing and Hearing
- *Mobility and Physical Ability*, the Appellant was "Independent" in all 6 listed tasks of Walking indoors, Walking outdoors, Climbing stairs, Standing, Lifting and Carrying and holding

In the AR the physician reported under section C - Daily Living activities, that under the DLA of

- *Personal Care*, the Appellant is "Independent" in all 8 listed tasks Addressing, Grooming, Bathing, Toileting, Feeding self, Regulating diet, Transfers (in/out his bed) and Transfers (on/off of chair)
- *Basic Housekeeping*, the Appellant is "Independent" in both listed tasks of Laundry and Basic Housekeeping
- *Shopping*, the Appellant is "Independent" in all 5 listed tasks of Going to and from stores, Reading prices and labels, Making appropriate choices, Paying for purchases and Carrying purchases home
- *Meals*, the Appellant is "Independent" in all 4 listed tasks of Meal planning, Food preparation, Cooking and Safe storage of food
- *Pay Rent and Bills*, the Appellant is "Independent" in all 3 listed tasks of Banking, Budgeting and Paying rent and bills
- *Medications*, the Appellant requires "Periodic assistance from another person" in all 3 listed tasks of Filling/Refilling prescriptions, Taking as directed and Safe handling and storage, but the physician gives no comments or explanation of what sort of assistance and how often that assistance is required
- *Transportation*, the Appellant is "Independent" in all 3 listed tasks of Getting in and out of a vehicle, Using public transit and Using transit schedules and arranging transportation, and
- described the assistance provided by others is being provided by family and friends, indicates that no Assistive Device is required nor is any assistance required by an Assistance Animal.

### **Mental Impairment**

#### **Physician Report**

The family physician provided the following information in the PR:

- that he has been the Appellant's family physician for less than a year, and has seen the Appellant between two and 10 times
- that the Appellant has difficulty maintaining employment due to moderate to severe anxiety/depression and his symptoms include difficulty with concentration, focus, attention and social difficulties, and that the impairment is likely to continue for two years or more
- that the Appellant has not been prescribed medication or treatments that interfere with his ability to perform daily living activities

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- that depression and anxiety can last a lifetime and that duration of these is unpredictable
  - that the Appellant has significant deficits with cognitive and emotional function, specifically in the areas of Executive, Emotional Disturbance, Motivation and with Attention or Sustained Concentration, but made no comments as to how these deficits affect the Appellant

### **Assessor Report**

In the AR, the physician reported that in the area of

- *Cognitive and Emotional Functioning*, the Appellant experiences
  - “Major Impact” in none of the 14 listed areas, and in the area of
  - “Moderate Impact” in 2 of those listed areas, namely Emotion and Motivation, and
  - “Minimal Impact” in 4 of those listed areas, namely Insight and judgement, Attention/concentration, Executive and Psychotic symptoms, and
  - “No Impact” in 7 of the 14 listed areas, and
  - does not comment at all about the area of Other emotional or mental problems
- *Social Functioning*, which is to be completed if an Applicant has an identified mental impairment, the physician reported that the Appellant is
  - “Independent” in the 2 of the five listed tasks, namely Appropriate social decisions and Able to secure assistance from others, and
  - requires “Periodic Support/Supervision” in the remaining 3 tasks, of Ability to develop and maintain relationships, Interacting appropriately with others and Able to deal appropriately with unexpected demands.
  - the Appellant has “marginal functioning” in his relationship with both his immediate and extended social network and
  - in need of support or supervision, consisting of Cognitive Behavioural Therapy, Counselling and First Nations liaison.

### **Information Provided on Appeal**

This was a written hearing.

### **The Appellant**

In the Appellant’s Notice of Appeal dated January 30, 2017, he stated that

- he has a mental impairment, consisting of depression, anxiety and fetal alcohol syndrome
- his doctor has stated he suffers significantly with cognitive and emotional function
- he is limited in his walking and managing his finances
- he is unable to perform 100% of DLAs, and
- he is struggling with grooming and maintenance of his health

### **The Ministry**

The ministry’s submission was the reconsideration summary.

## PART F – Reasons for Panel Decision

### Issue on Appeal

The issue on appeal is whether the ministry's decision dated January 24, 2017 to deny the Appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment, namely section 2 *EAPWDA* and section 2 *EAPWDR*, in the circumstances of the Appellant. In particular, was the ministry reasonable in determining 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), and specifically that

- the evidence did not establish that the Appellant has a severe physical or mental impairment;
- in the opinion of a prescribed professional, the Appellant's ability to perform daily living activities (DLAs) are directly and significantly restricted either continuously or periodically for extended periods; and
- in the opinion of a prescribed professional, as a result of direct and significant restrictions, the Appellant requires help to perform DLAs, in the form of an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

### Relevant Legislation

#### Employment and Assistance for Persons with Disabilities Act

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) (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 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.

## **Employment and Assistance for Persons with Disabilities Regulation**

**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.

### **General Scheme of the Legislation**

The general scheme of section 2 *EAPDWA* and section 2 *EAPDWR* is that in order to be designated as a Person With Disabilities, an applicant must satisfy the Minister that he has a severe mental or physical impairment which is likely to continue for at least 2 years, and that impairment, in the opinion of one of the members of a prescribed class of professionals, directly and significantly restricts his ability to perform Daily Living Activities continuously or periodically for extended periods, and as a result he requires help to perform them.

### **Parties' Positions at Appeal**

#### **Analysis**

##### **Section 2(2) *EAPDWA***

##### **Age and Duration and Severe Impairment Requirement**

Section 2(2) *EAPDWA* requires that an applicant for PWD status must be 18 years of age or older, have a severe mental or physical impairment, and that in the opinion of a prescribed professional, is likely to continue for at least 2 years.

At reconsideration the ministry found that the Appellant met the age requirement, and that the Appellant, in the opinion of a physician, had neither a severe physical impairment nor a severe mental impairment. The ministry found that while the Appellant had significant defects with cognitive

and emotional functioning in the area of emotional disturbance and motivation, the physician indicated that the impairment was minimal to moderate, not severe, and that the minimal to moderate impairment was likely to continue for at least 2 years.

Thus the requirements of section 2(2) of the *EAPWDA* as to age and duration had been met.

### **Severe Physical Impairment**

At reconsideration the ministry found that the Appellant did not have a severe physical impairment.

### **Appellant's Position**

The Appellant put forth no evidence of a physical impairment.

### **Ministry's Position**

The Ministry's position was that as the Appellant can walk four more blocks are needed, climb five or more steps are needed, has no lifting limitations and no seating limitations, is independent with all listed it with all areas of mobility and physical ability and does not need the assistance of another person, an assistive device or an assistance animal, no severe physical impairment has been established.

### **Panel Finding**

The information from the general practitioner set out in the PR and the AR does not establish any restriction in physical ability.

The panel finds therefore that the Ministry's was reasonable in determining that the information provided did not establish a severe physical impairment.

### **Severe Mental Impairment**

#### **Appellant's Position**

The Appellant's position was that due to depression, anxiety and fetal alcohol syndrome he is unable to perform 100% of the daily living activities, is limited in his walking, and struggles with his personal finances and struggles with grooming and maintaining his health.

#### **Ministry Position**

The ministry's position was that although the physician assessed the Appellant's cognitive and emotional deficits as significant, the effect on cognitive and emotional functioning for emotion and for motivation is moderate and the effect on executive and attention and concentration is minimal and that therefore a severe impairment is not established. The ministry's position was also that although the physician indicated that Periodic Support/Supervision was required in three of the five areas of Social Functioning, he did not describe the frequency or the duration or the nature of the support or supervision required.

#### **Panel Finding**

The panel finds that the family physician did not describe the nature of the Appellant's depression, whether it is cyclical, chronic, or situational, and did not describe the extent and nature of the Appellant's anxiety, and reported that the Appellant's mental problems have minimal impact on cognitive and emotional functioning in the areas of executive and attention/concentration, and

moderate impacts to the Appellant's cognitive and emotional functioning, and as well did not indicate what effect upon the Appellant's mental health the fetal alcohol syndrome has. The panel finds that the physician reported that the Appellant had "good" Ability to Communicate in all 4 listed tasks of this area, and that of the 14 tasks listed under Cognitive and Emotional Functioning, the Appellant experienced no impact in 7 of the listed areas, experienced only Minimal Impact with 4 of them, and experienced Moderate Impact with respect to the remaining 2, with his mental difficulties having no Major Impact on any of those 14 listed tasks. Further, the physician that described the Appellant's functioning with both his immediate social network and extended social network as "marginal" but did not expand upon this except to say that it would benefit the Appellant to have Cognitive Behavioural Therapy, Counselling and First Nations liaison.

The panel finds therefore that the Ministry's determination at reconsideration that the information provided did not establish that the Appellant has a severe mental impairment was a reasonable application of Section 2(2) of the *EAPWDA* in the circumstances of the Appellant and is reasonably supported by the evidence.

### **Section 2(2)(b)(i) & (ii) *EAPWDA***

#### **Direct and Significant Restriction in the Ability to Perform Daily Living Activities**

Section 2(2)(b)(i) *EAPWDA* requires that a prescribed professional provide an opinion that the Appellant's mental or physical impairment directly and significantly restrict the person's ability to perform daily living activities either continuously or periodically for extended periods.

Section 2(2)(b)(ii) *EAPWDA* requires that a prescribed professional provide an opinion that as a result of the direct and significant restrictions of the Appellant's ability to perform Daily Living Activities, the Appellant requires help to perform of those activities.

#### **Appellant's Position**

The Appellant said in his Notice of Appeal that he is limited with much walking, has difficulty with his finances, is unable to perform 100% of daily living activities, is a struggling, feeling overwhelmed and depressed. He said it reconsideration that daily living activities "*have been hard to do*".

#### **Ministry's Position**

The ministry's position was that the physician found that physically the Appellant was not limited in his daily living activities except for the daily living activity of Medications where he required periodic assistance from another person but did not explain the frequency with which assistance is needed or the nature and type of assistance required. Regarding mental functioning the ministry noted that the Appellant had moderate to severe anxiety/depression, but that the appellant had no difficulties with communication, and while the Appellant had significant deficits to cognitive and emotional functioning in the areas of executive, emotional disturbance, motivation and attention/a sustained concentration, the physician noted that these were moderate Impact or minimal impact, and that in relation to mental impairment there were no major impacts. The ministry also noted that the physician did not describe the nature of the periodic support required or its frequency or duration. The ministry's position was that while the Appellant experienced limitations of cognitive and emotional functioning due to depression and anxiety and anxiety, that a severe restriction in the Appellant's Daily Living Activities relating to mental impairment had not been established.



### **Panel Finding**

The panel notes that the determination of whether or not there is a direct and significant restriction of the Appellant's ability to perform Daily Living Activities is to be determined by the opinion of a medical practitioner (or nurse practitioner) and that while the opinion of the Appellant is of assistance, the determination is that of a medical practitioner.

The panel finds that the establishment of either a severe physical or severe mental impairment is a precondition to both making a determination as to whether or not the Appellant is directly and significantly restricted in performing Daily Living Activities, and to whether or not the Appellant experiences those restrictions either continuously or periodically for extended periods and as a result requires help to perform those Daily Living activities

The panel finds that the ministry reasonably determined that, in the opinion of a medical practitioner, the Appellant was not directly and significantly restricted in his ability to perform Daily Living Activities, either continuously or periodically for extended periods, and that the ministry's determination was a reasonable application of the applicable legislation in the circumstances of the Appellant.

### **Conclusion**

As the panel has found that the Appellant had no severe physical or mental impairment and that the Appellant is not, in the opinion of the medical practitioner (or nurse practitioner), directly and significantly restricted in his ability to perform daily living activities either continuously or periodically for extended periods, the panel finds that the ministry's determination was a reasonable application of *EAPWDA* section 2(2) in the circumstances of the Appellant and was reasonably supported by the evidence, and that therefore the Ministry's decision in denying the Appellant Persons With Disability designation was a reasonable application of the evidence in the circumstances of the Appellant and was reasonably supported by the evidence.

The panel confirms the Ministry decision and the Appellant is not successful in his appeal.