

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 03 February 2017 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 impairment, in the opinion of a prescribed professional,

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

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

The ministry determined that the appellant satisfied the other 3 criteria: he has a severe mental, though not a severe physical, impairment; he has reached 18 years of age; and his 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

With the consent of the appellant, a ministry worker attended the hearing as an observer.

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

1. The appellant's PWD Designation Application dated 01 Sep 2016. The Application contained:
  - A Self Report (SR) completed by the appellant.
  - A Physician Report (PR) dated 22 August 2016, completed by the appellant's general practitioner (GP) who has known the appellant for 30 years and seen him 2-10 times over the last year.
  - An Assessor Report (AR) dated 22 August 2016, completed by the same GP.
2. The appellant's Request for Reconsideration dated 06 January 2017 requesting an extension. Subsequently, the appellant provided an undated reconsideration submission, an undated letter from his parents, and a letter dated 08 December 2016 from a registered psychologist (RP).

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

- Attention Deficit Disorder (onset>30 years),
- Mood Disorder – depressive type (onset>13 years),
- Anxiety Disorder (onset>13 years).

In describing the severity of the appellant's impairment under Health History in the PR, the GP writes:

“Patient has moderately severe cognitive dysfunction. This causes significant disruption to his life – decreased short-term memory, decreased concentration. Loses focus on jobs/goals/task; easily bored. Difficulty learning new skills. Depression and Anxiety symptoms can be overwhelming – anxiety in social situations.”

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; he is limited in remaining seated to less than 1 hour (“needs to get up and move”)

AR:

The GP assesses the appellant as independent with walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding.

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

The GP assesses the degree of impact of the appellant's mental impairment on daily functioning

as moderate bodily functions (sleep disturbance), consciousness, emotion, impulse control, insight and judgment, attention/concentration, executives, memory, motivation, language, other neuropsychological problems (learning disabilities), and other emotional or mental problems (severe dysfunction that affects his mood so is part of his daily life).

The GP assesses no impact in the area of motor activity.

The GP comments: "Difficult functioning in society

### *Communication*

PR:

The GP indicated that the appellant has difficulties with communication, with a cognitive cause.

AR:

The GP assesses the appellant's ability to communicate as good for speaking and hearing, and poor for reading and writing ("ADHD interferes with comprehension and concentration").

### *Daily living activities*

AR:

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

- Personal care – independent in all aspects.
- Basic housekeeping – independent in all aspects.
- Shopping – Independent for going to and from stores, reading prices and labels, paying for purchases, and carrying purchases home; periodic assistance required from another person for making appropriate choices (reduced math capability and reading skills).
- Meals – independent but taking significantly longer than typical for meal planning, preparation and cooking (can take longer if more complex tasks involved).
- Pay rent and bills – independent in all aspects (as mentioned, reduced math skills).
- Medications – independent in all aspects.
- Transportation – independent in all aspects.

### *Social functioning*

AR:

The GP assesses the support/supervision required in the following areas (his comments in parentheses):

- Making appropriate social decisions – independent.
- Ability to develop and maintain relationships – periodic support/supervision required (anxiety, depression in life and social anxiety and difficult to form relationships).
- Interacting appropriately with others – independent.
- Ability to deal appropriately with unexpected demands – periodic support/supervision required (same comment as above).
- Ability to secure assistance from others – periodic support/supervision required

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

The GP does not provide any additional comments, including the identification of any safety issues.

Help required

PR:

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

AR:

In terms of help required for social functioning, the GP writes: "Needs further education skills."

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

The GP indicates that the appellant is provided help from family and from friends. In terms of help required but not available, the GP writes. "Family supporting him makes life easier and reduces stress levels."

Self Report

In describing how his disability affects his life and his ability to take care of himself, the appellant writes:

"The Attention Deficit Hyperactivity Disorder makes completing projects or duties within a specific timeframe extremely difficult. Distraction is chronic at times and hinders day-to-day activities. Also maintaining long-term employment is severely affected. Throughout the past 20 years I have had over 24 jobs the longest term being 3 years. This was to do [with] the ability to set my own schedule and structure of work. Mood disorders cause a limited scope of motivation within the workplace. Though I am working on controlling my mood I find without medication this to be impossible. The above two disabilities affect my peace of mind and cause me to get anxious quite often. Anxiety can cause problems for me within the workplace and day-to-day activities. Neurological disorders cause learning new things extremely longer than colleagues who I have worked with in the past. This disability has caused others to not understand my workplace performance. Throughout my life I have tried to mask my disabilities, but I feel now I need to seek out the assistance and support to be successful throughout the future.

Three years ago I began treatment and administering medications. This has helped. I'm currently on social assistance but desire to be on more of a permanent support as my disabilities are permanent and life-long."

**Request for Reconsideration**

In his reconsideration submission, the appellant describes how he felt discriminated against by the ministry's decision, and how it demonstrated a lack of sympathy for a person with a lifelong mental impairment. He refers to the attached letters from his parents and the RP.

In their letter, the appellant's parents begin by reviewing the history of his mental illness. In terms of his daily functioning, they note that as a youth he had a very noticeable difficulty in processing information or controlling behavior. They go on to write:

“This behavior is severe at times and causes our son to have extreme difficulty making close or intimate relationships. [The appellant] struggles in responding to stressful situations and times will go into a state of isolation and shuts down physically, mentally, and emotionally.”

They write that through the past 28 years of the appellant's adult life they have watched him jump from job to job, relationship to relationship, and city to city. He has relocated back home most summers since he was a boy. As parents, they feel now is the time for him to develop a structured environment and continue to seek the help he needs – financial, clinical, and relational.

They conclude by writing that the appellant has potential, and believe that he requires steady financial aid. Due to his disabilities being hereditary, permanent, and severe, they believe this application/reconsideration should be approved – being on social assistance is a start; however \$600 a month is not a healthy amount to live on. The appellant has expressed a desire to work again soon, but he cannot cope with more than 20 hours a week; without structure he may never move beyond social assistance and his present state.

In her letter at reconsideration, the RP writes:

“As a B.C. Registered Psychologist, I have seen [the appellant] for six sessions for support pertaining to a recent car accident he suffered. Although we have had only a few sessions which centred on pain and anxiety management, [the appellant's] present and historic struggles with the complexities of daily existence are quite evident. Although a sociable young man, he describes experiencing a level of sensitivity to opinion that makes daily interactions with others quite taxing, risking becoming overwhelmed and emotionally disregulated. He often interprets negative intent in others and must manage these feelings with care, especially when his stress load is significant. In addition, [the appellant's] Attention Deficits make focused effort difficult across the trajectory of an hour, a day and also a year. For example, [the appellant] describes needing to change employment frequently due to inability to main motivation for a job once it becomes familiar.

At present, [the appellant] is experiencing significant difficulty with sleep, ongoing pain, and difficulty managing a stress load related to uncertainty of schooling situation, living situation, and future income. Although it is difficult to determine what [the appellant's] stress load and vulnerabilities would look like now without having experienced a car accident, [the appellant's] self-described history makes clear that he has struggled with such pressure for most of his adult life.”

### **Notice of Appeal**

In his Notice of Appeal, dated 10 February 2017, the appellant takes issue with the ministry's

discrimination and/or incompetence in reaching its reconsideration decision.

## The hearing

At the hearing, the appellant submitted the following documents:

- Letter from the appellant's GP dated 02 March 2017. The GP reviews the diagnoses of the appellant's mental illnesses as set out in the PR. In terms of restrictions to daily functioning, the GP writes:

“All 3 of his disabilities can be acting up at [the] same time which causes a significant and severe total disability. These mental disorders can fluctuate in intensity and at times he is able to function reasonably well. He recently had to withdraw from University as he was not able to effectively learn.  
It affects his social functioning and he tends to avoid going out in public a lot. He sees a psychologist on a weekly basis. I believe he requires help and support in providing him with financial means to attempt to continue to improve his life.”
- Letter from the appellant's RP dated 21 February 2017. This letter is essentially along the same lines as that submitted at reconsideration, adding that the RP has seen the appellant 9 times on a weekly basis, starting on 02 November 2016 and continuing to the present except for holidays in December.
- Letter from the appellant's parents (undated). This letter describes the appellant's 3 mental health conditions – Depression, Anxiety and Mood Disorder, and Attention Deficit Hyperactivity Disorder (ADHD), going to the severity of these conditions. Regarding restrictions to daily functioning, the parents write that:

“[W]hen all three of [the appellant's] disabilities are extreme and flaring simultaneously, he cannot function physically, nor mentally, or communicate effectively, within the structure of today's society. We hope that our deeper revelation regarding our son's medical conditions sheds light to the extreme disadvantage [the appellant] faces in his day-to-day functioning.”
- Letter from the appellant's former landlords (a wife and husband) in another city where the appellant resided for 3 years (2013 to 2016). The wife, a nurse, writes that the appellant's mood would change quite frequently – one day he would be outgoing, full of positivity and energy and the next day everything could be different. The appellant would slump into a state of depression, isolation, and would appear to be extremely anxious. Some days he would not eat, leave his room, and would appear to disassociate himself with those around him.

The husband, who works at the college where the appellant attended, writes that the appellant would take four times the length of time to learn something new in comparison with other students. As his disabilities were professionally documented, the appellant qualified, and was recognized as a student with a disability and given special exceptions and supports to allow him to succeed. He was granted a tutor, a translator during exams, time extensions for projects, a quiet isolated room to write exams, and unlimited time to complete exams. In the husband's opinion, the appellant could never have completed his program without these supports.

In his presentation at the hearing, the appellant stated that he was confused and upset by the contents of the Record of the Ministry Decision, with the ministry stating in one document that he does not have a severe impairment and in another that he does have a severe impairment. The panel and the ministry explained that, while in the original decision the ministry found that a severe impairment had not been established, this had been superseded by the reconsideration decision, in which the ministry was satisfied that the appellant does have a severe impairment in his mental functioning, but the DLA and help required criteria had not been met; this is the decision under appeal.

The appellant explained that for most of his adult life, apart from the time he spent at college where he benefited from the support described in the landlord's letter, he would find work away from home for short periods of time, but would always return home between jobs – there he could always rely on the support of his parents in dealing with his disabling mental conditions. His parents did the best they could, but it was only 3 years ago that he was formally diagnosed by a psychiatrist with the diagnoses reported by the GP in his PWD application.

The appellant acknowledged that the assessments provided by the GP reflect his abilities on his “good days.” He emphasized, however, that he has “bad days,” usually 2-3 days/week, though sometimes continuing for 5 or 6 days. These bad days are often triggered by his taking offense at what somebody might say to him, making him feel hated, and bringing on a flare-up of his three mental health disorders, particularly the ADHD, impairing his ability to regulate decision-making. On these bad days, he feels numb and paralyzed, and is immobilized to the point of not getting out of bed, not eating (except maybe cereal), not doing any housekeeping or laundry, not going out of his room, and not interacting with others.

The appellant stated that his condition has improved somewhat with the medication he takes, but it does not prevent the flare-ups of his mental disorders.

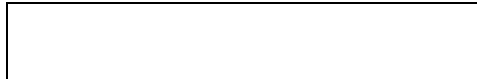
In answer to a question, the appellant explained that he had been involved in a motor vehicle accident several months ago, hit by a car while walking in a crosswalk, and further to an insurance settlement he has been seeing the RP on weekly basis. He also explained that during the Fall of 2016 he had attended another university, but the level of support provided there was not nearly what he received at his former college, and he withdrew at the end of term.

The ministry stood by its position at reconsideration.

### **Admissibility of new information**

The ministry did not object to the panel receiving the new information provided at the hearing.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and “oral or written testimony in support of the information and records” before the minister when the decision being appealed was made.” 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 by considering a new set of information that presents a new or different picture of the impairment or restrictions than what was before the ministry. Accordingly, panels cannot admit information that would place them in that role.

In this case, much of the testimony of the appellant and the content of the letters submitted at the hearing tends to be information that goes to severity of impairment, already established by the ministry. This material also introduces information as to restrictions in the appellant's ability to function on "bad days" and the degree of support provided the appellant while attending his college, information that was not before the ministry at reconsideration.

The panel therefore finds that this information regarding restrictions on bad days and his support while at college is not in support of the information and records before the ministry at reconsideration as it goes beyond the assessments provided in the PR and AR and the RP's original letter and therefore cannot be said to corroborate or substantiate those assessments. In accordance with sections 22(4) and 24 of the EAA, the panel therefore does not admit this information as evidence – i.e. will not take this information into account in the panel's decision.

Although the panel has found this new information not admissible for this appeal, this finding as to admissibility does not preclude the appellant from putting this information, or information along the similar lines, before the ministry in the future.



## 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 his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,

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

The ministry determined that the appellant satisfied the other 3 criteria: he has a severe mental, though not a severe physical, impairment; he has reached 18 years of age; and his 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 position of the appellant, as explained at the hearing, is that when his mental disorders flare up, which can happen for 2/3 days/week and sometimes longer, he becomes basically immobilized, not getting out of bed, not able to perform such activities as eating, cooking, or housekeeping and laundry, and not interacting with others. The appellant also argues that the evidence shows that his mental impairment significantly restricts his ability to make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively. Given these considerations, it is unreasonable that the ministry found that he is not significantly restricted in his ability to perform daily living activities on an ongoing basis.

### *The ministry's position*

In the reconsideration decision, the ministry reviewed the assessments provided by the GP in the AR regarding the appellant's ability to manage DLA, noting that he requires periodic assistance with making appropriate choices while shopping due to decreased math capabilities and decreased reading skills and for that activity and for meal preparation and managing personal finances he takes significantly longer than typical. The ministry noted that his the GP does not describe how much longer the appellant takes for these tasks, as requested in the application, and without this information it cannot be determined whether the extra time taken represents a significant restriction in his ability to complete these tasks. Otherwise, the GP indicated that the appellant is independently able to manage all other DLA.

The ministry also noted that the RP, while supporting the appellant's generalized description of his

impairment and his application for PWD designation, does not provide an assessment of his ability to perform specific DLA as a direct result of his impairment.

The ministry stated that, unfortunately, the GP's assessment of the appellant's mental functioning does not correlate with his assessment of the appellant's ability to manage DLA. The degree of independence does not support a finding that the appellant is unable to make decisions about personal activities, care or finances. In addition, the GP's assessment of his social functioning does not indicate that he requires continuous support/supervision with any aspect or that he requires a significant level of support/supervision to maintain himself in the community.

In conclusion, the ministry found that there was not enough evidence provided to establish that the appellant's ability to manage DLA is significantly restricted and as a result, he requires significant assistance from others to manage them.

#### *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 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 and RP. 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. As the ministry noted, the GP assessed the appellant as independent for most of these DLA, including all aspects of mobility and physical ability (the DLA of moving about indoors and outdoors), personal care, basic housekeeping, medications, and transportation. The GP assessed the appellant as requiring periodic assistance from another person and taking significantly longer than typical for making appropriate choices while shopping due to reduced math capability and reading skills, with all other aspects of shopping assessed as independent. For meals and paying rent and bills, the GP assessed the appellant as independent, but with a note that for meals it can take longer if more complex tasks are involved and for paying rent and bills, reduced math capability and reading skills are an issue. As the ministry noted, that GP provided no information as to how much longer it might take for these tasks, making it difficult for the ministry to determine the degree of restriction.

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.

Regarding the "decision-making" DLA, the GP assess the appellant as independent for making appropriate social decisions and requiring periodic support/supervision for dealing appropriately with

unexpected demands and securing assistance from others. While the GP comments, “anxiety, depression in life and social anxiety and difficult to form relationships,” he does not, as requested, provide a description of the degree and duration of the support/supervision required, making it difficult for the ministry to assess the degree of restriction for this DLA.

As to the “relating-effectively” DLA, the GP assessed the appellant's ability to communicate as good for speaking and hearing and poor for reading and writing. The GP assessed the appellant as requiring periodic support/supervision for developing and maintaining relationships, with the same comment as above. Again, the GP does not provide a description of the degree and duration of support/supervision required. The GP assessed the appellant independent for interacting appropriately with others. Here, the panel notes some inconsistency between the GP’s assessment and that of the RP, who writes that that the appellant “describes experiencing a level of sensitivity to opinion that makes daily interactions with others quite taxing, risking becoming overwhelmed and emotionally disregulated.”

Considering the extent to which the GP has assessed the appellant as independent in managing his DLA and the absence of any assessment of the appellant requiring continuous help from another person or social functioning support/supervision, the panel finds that the ministry was reasonable in determining that the information provided did not establish that, as a result of the appellant's severe mental impairment, his ability to manage DLA is significantly restricted, either continuously or periodically for extended periods, as required under the legislation..

## **Help with DLA**

### *The appellant's position*

The position of the appellant is that he requires ongoing counseling, such as currently provided by his RP. He also requires the increased financial support available from being provided disability assistance. He also relies on his prescription medication, considering this an essential aid to his well-being.

### *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.

The panel notes that while increased monthly assistance is an outcome of PWD designation, financial need is not a criterion for such designation. The panel also notes that prescription medication is not

considered an “assistive device” under the legislation.

While the appellant benefits from the counseling by the RP and the support of his family, 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.