

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of May 31, 2017, which found that the appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (“EAPWDA”) for designation as a person with disabilities (“PWD”). The ministry found that the appellant met the age requirement and that in the opinion of a medical practitioner the appellant’s impairment is likely to continue for at least two years. However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe physical or mental impairment;
- the appellant’s daily living activities (“DLA”) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- that as a result of those restrictions, the appellant requires the significant help or supervision of another person, an assistive device, or the services of an assistance animal.

PART D – Relevant Legislation

EAPWDA, section 2

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 2

PART E – Summary of Facts

Information before the ministry at reconsideration

The information before the ministry at the time of reconsideration included the following:

- The appellant's PWD application form consisting of the appellant's self-report form dated February 2, 2017, which the appellant chose not to complete; a medical report ("MR") completed by the appellant's psychiatrist (the "physician") on February 27, 2017; and an assessor's report ("AR") completed by a registered psychiatric nurse (the "assessor") on February 6, 2017.
- A Request for Reconsideration form dated May 16, 2017, including a type-written statement from the appellant.

The physician indicated he has known the appellant for over 1.5 years and has seen her 11 or more times during that period. The assessor indicated she has known the appellant for 5 months and has seen her 2-10 times during that period.

The panel assessed this evidence as follows.

Diagnoses

In the MR the physician diagnosed the appellant with psychosis (onset July 2015)

Physical Impairment

In the MR, the physician reported the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, has no lifting limitations, and no limitations with respect to remaining seated.

In the AR, the assessor indicated the appellant is independent in all areas of mobility and physical ability.

Mental Impairment

In the MR, the physician reported:

- The appellant has been his patient for over a year and a half (since the onset of psychosis).
- Since the onset of psychosis, the appellant has responded positively to treatment and her medication has been withdrawn to monitor for return of psychosis. The appellant's level of functioning has not returned to "baseline" and she suffers from low motivation, apathy, social isolation and withdrawal. She is also struggling to hold down a job.
- The psychosis is likely to last more than 2 years; it tends to be chronic and the appellant has been unwell for several years before initial presentation and has ongoing negative symptoms.
- The appellant has significant deficits in cognitive and emotional function with respect to "executive" (planning, organization, sequencing, calculations, judgement), and "motivation" (loss of initiative or interest).

In the AR, the assessor reported the following:

- The appellant has a good ability to communicate.
- The appellant's cognitive and emotional functioning suffers no or minimal impact in areas of bodily function, consciousness, insight and judgement, attention concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, and other neuropsychological problems.
- The appellant's cognitive and emotional functioning suffers moderate impact in emotion, impulse control, and other emotional or mental problems ("depression, mood swings that are erratic and unpredictable making it difficult to maintain employment").
- The appellant has marginal functioning in her relationships with immediate and extended social networks.

In her statement on reconsideration, the appellant reports that she had a recent relapse in April 2017 for which she was hospitalized for 3 days. The appellant notes her difficulty in concentration and ability to focus and be out in public. She said she gets very anxious and has panic attacks. She also complained of depression, with difficulty sleeping and eating, and overall feelings of hopelessness. She said it is hard to go out and engage in activities; she can't hold a job; she can't go grocery shopping because she gets confused; and she has a hard time remembering things (even simple directions) and following conversations. She becomes easily emotional in social settings.

DLA

In the MR, the physician indicated that the appellant has not currently been prescribed any medication or treatments that interfere with her ability to perform DLA. He reports the appellant is not restricted in personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation, and management of finances. The physician does report a continuous "moderate – severe" restriction in social functioning, which he describes as "Negative symptoms result in lack of drive & motivation, no planning, no follow through, impaired judgment, social isolation."

In the AR, the assessor reported the appellant is independent in all areas with the exception of needing periodic assistance with banking and budgeting, and three areas of social functioning (appropriate social decisions, able to develop and maintain relationships, and able to deal appropriately with unexpected demands).

In her reconsideration statement the appellant said she has a hard time doing basic living skills like shopping due to her "mh" (mental health) and that she has seen a decline in her ability to care for herself over the last 2 months and few weeks.

Help

In the MR, the physician reported that the appellant does not require any prostheses or aids for her impairment. With respect to the nature and extent of assistance required, the physician notes the appellant's inability to find and maintain a job, resulting in total financial dependence on family. He notes "Patient able to attend to basic ADLs."

In the AR, the assessor indicates the appellant has "family/parental" support in her interactions with the community. The appellant does not have an assistance animal.

Information provided on appeal

In her notice of appeal, the appellant reiterated information in her reconsideration submission, writing “Diagnosed with anxiety and psychosis. I need governments [*sic*] help. And I have depression as well.”

The appellant did not attend the hearing. After confirming delivery of the Notice of Appeal, the hearing proceeded in the appellant’s absence in accordance with section 86(b) of the Employment and Assistance Regulation.

At the hearing, the ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on this 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 the appellant does not have a severe physical or mental impairment, and that, in the opinion of a prescribed professional, the appellant's impairments do not directly and significantly restrict her from performing DLA either continuously or periodically for extended periods, and that as a result of those restrictions the appellant does not require help to perform DLA?

The relevant legislation is as follows:

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

Definitions for Act

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

(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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#);
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the [Community Living Authority Act](#) to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the [Canada Pension Plan](#) (Canada).

Panel Decision

Severe Physical or Mental Impairment

A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. An “impairment” is a medical condition that results in restrictions to a person’s ability to function independently or effectively.

To assess the severity of an impairment one must consider the nature of the impairment and the extent of its impact on daily functioning as evidenced by functional skill limitations and the degree to which performing DLA is restricted. A medical barrier to the appellant’s ability to engage in paid employment is not a legislated criterion for severity. The legislation makes it clear that the determination of severity is at the discretion of the minister, and that the fundamental basis for the analysis is the evidence from prescribed professionals—in this case, the physician and assessor—though the appellant’s evidence must also be considered.

Physical Impairment

The appellant did not expressly advance an argument with respect to a severe physical impairment. The ministry’s position is that the information provided by the physician and assessor does not establish a severe physical impairment. As the ministry notes, the physician has not diagnosed a physical impairment. Additionally, the evidence from the physician is that the appellant can walk 4+ blocks unaided on a flat surface, can climb 5+ steps unaided, and has no limitations with lifting or remaining seated, and the assessor reports that the appellant is independent in all areas of mobility and physical ability. The panel also notes that the appellant does not describe a loss of physical functioning.

For the foregoing reasons, the panel has concluded that the ministry was reasonable in its determination that the evidence has not established a severe physical impairment.

Mental Impairment

The appellant’s position is that due to anxiety, psychosis and depression her overall functioning has declined. She cannot focus and remember things well enough which makes it difficult to take care of herself; she cannot follow conversations or hold a job and has feelings of hopelessness. The ministry’s position is that the cumulative impact on cognitive, emotional and social functioning reported by the physician and the assessor is not indicative of a severe impairment of mental functioning.

The appellant is diagnosed with psychosis and as the ministry notes, the physician reports significant deficits in two areas of cognitive and emotional function - executive and emotional (includes depression and anxiety). However, the physician reports no deficits in the majority of areas of cognitive and emotional functioning. Additionally, as the ministry notes, the assessor does not report a major impact on daily functioning for any of the 14 listed aspects of cognitive and emotional functioning, with a moderate impact for emotion and a minimal impact for executive. The assessor does identify two additional areas of moderate impact on daily functioning, impulse control and “other”, though as the ministry notes the physician did not identify significant deficits in these areas.

The appellant describes problems with memory but the physician does not report a significant deficit in this area and the assessor reports only a minimal impact on daily functioning.

Respecting social functioning, the physician reports a continuous “moderate – severe” restriction due to ongoing negative symptoms resulting in a lack of motivation, drive, planning and follow through. The assessor reports that two areas of social functioning are independently managed and the remaining three areas require periodic support/supervision. As the ministry notes, neither the frequency nor duration of the periodic support is described

The physician, the assessor and the appellant report that the appellant’s mental conditions impact her ability to find and maintain employment but as the ministry notes, employability is not a basis upon which PWD eligibility is assessed, as it is not described in the legislation or set out as one of the prescribed DLA. Additionally, as the ministry argues, while the physician reports that the appellant is dependent upon her family for finances, financial dependence is not indicative of an impairment of mental functioning. Also of note is that the assessor did not identify any safety issues.

While the panel notes that in her reconsideration submission the appellant reports a relapse in April 2017, some months after the PWD application was completed, no additional information was provided by the appellant from the physician or assessor.

Based on the above analysis, the panel has concluded that the ministry was reasonable in its determination that the evidence has not established a severe mental impairment.

Significant Restrictions to DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant’s ability to perform DLA either continuously or periodically for extended periods. 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. The term “directly” means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be “satisfied” that this legislative criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR 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 in the legislation, do not include the ability to work.

The appellant argues that she is having difficulties taking care of herself and a hard time doing basic living skills due to her mental impairment. The ministry argues that the assessments of the prescribed professionals make it difficult to establish significant restrictions to DLA. The panel finds that aside from continuous “moderate-severe” restrictions with social functioning, the physician reports that the appellant is not restricted in her ability to manage DLA, noting that the appellant is “able to attend to her basic ADL’s.” The assessor indicates that three areas of social functioning require periodic

support/supervision, as do budgeting and banking, but does not describe the frequency or duration of the assistance in order to determine the significance of the restrictions or whether they are for extended periods. Furthermore, the assessor reports that all other DLA tasks are managed independently.

Based on the foregoing, the panel concludes that the ministry was reasonable to determine that there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

Help with DLA

A finding that a severe impairment directly and significantly restricts a person's ability to manage DLA either continuously or periodically for an extended period is a precondition to a person requiring "help" as defined by section 2(3)(b) of the EAPWDA. 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 appellant argues that she needs help from others to manage her basic living skills. The ministry's position is that since it has not been established that the appellant's DLA are significantly restricted, it cannot be determined that significant help is required from other persons.

As the panel has found that the evidence falls short of satisfying that precondition, the panel also finds that the ministry reasonably concluded it could not be determined that the appellant requires help with DLA as defined by section 2(3)(b) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation and for the reasons provided above, the panel finds that the ministry's decision finding the appellant ineligible for PWD designation is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful on appeal.