

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 13 June 2017, which denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds. The ministry further determined that the appellant did not meet all of the required criteria for PWD designation as 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 has a severe mental or severe physical impairment; that a severe impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years; that a severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts the appellant's ability to perform daily living activities (DLA) either continuously or periodically for extended periods; or that as a result of those restrictions, the appellant requires help to perform those activities.

The ministry found that the information provided did establish that the appellant has reached 18 years of age.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 2

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- The appellant's **PWD Application**. The Application contained:
 - A Medical Report (MR) dated 14 March 2017, completed by the appellant's general practitioner (GP) who has known the appellant since November 2016. The GP has seen the appellant 2-10 times in the past 12 months.
 - An Assessor Report (AR) dated 14 March 2017, completed by the appellant's GP.
 - A Self Report (SR) dated 16 March 2017, completed by the appellant.
- A **Request for Reconsideration (RFR)** dated 31 April 2017, in which the appellant states: *I am requesting reconsideration again after my appeal and believe that I need to continue my prescription of [omitted]. The doctor agrees I need to be on P.W.D.*

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

Diagnoses

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

- Dysthymia – onset Nov 2016
- Alcohol use disorder – onset unspecified

In the AR, the GP describes the appellant's mental or physical impairments as: *low mood resulting in inability to focus and concentrate.*

Severity of mental impairment

MR:

The GP has provided diagnoses of dysthymia and alcohol use disorder.

Under Health History, the GP writes: *dysthymia resulting in inability to focus and concentrate for a long period of time. Lack of motivation. Complicating mood disorder is alcohol use disorder.*

The GP indicates that the appellant has no difficulties with communication.

The GP indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of memory, emotion, motivation and attention.

AR:

The GP assesses the appellant's ability to communicate as good in the areas of speaking, reading, writing and hearing.

The GP assessed the appellant's cognitive and emotional functioning as having moderate impacts in the areas of emotion, attention/concentration and motivation and minimal impacts in the area of memory. The GP assesses no impacts in the remaining areas of cognitive and emotional functioning.

The GP indicates that the appellant is independent in all social functioning DLA and has good functioning in immediate and extended social networks.

SR:

The appellant reports difficulties in concentrating and focusing and a need to take medication in order to feel normal. The appellant also states that he attends AA meetings for alcohol addiction. The appellant indicates difficulties with sleeping, an inability to find work, and being depressed.

Severity of physical impairment

MR:

The GP has not provided a diagnosis relating to physical impairment.

For functional skills, the GP indicates that the appellant has no restriction with walking unaided on a flat surface, no restriction with climbing stairs unaided, and is able to lift 15-35 lbs. unaided. The GP has indicated "unknown" in the assessment of the appellant's abilities with remaining seated.

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

AR:

The GP indicates the appellant's mobility and physical ability as independent for walking indoors, walking outdoors, climbing stairs, standing, lifting and carrying and holding.

SR:

The appellant describes needing to take Tylenol every day for neck pain arising from a car accident. The appellant explains needing to go to the chiropractor for close to a year to help with his back, which restricts his ability to work for long periods.

Ability to perform DLA

General

MR:

The GP indicates that the appellant has not been prescribed medication that interferes with his ability to perform DLA.

AR:

The GP indicates that the appellant is independent in all DLA.

Section 2(1)(a) DLA

Prepare own meals

AR:

The GP indicates that the appellant is independent in all meals activities.

Manage personal finances

AR:

The GP indicates that the appellant is independent in all pay rent and bills activities.

Shop for personal needs

AR:

The GP indicates that the appellant is independent in all listed shopping activities, including: going to and from stores, reading prices and labels, making appropriate choices, paying for purchases and carrying purchases home.

Use public or personal transportation facilities

AR:

The GP indicates that the appellant is independent in all transportation DLA.

Perform housework to maintain the person's place of residence

AR:

The GP indicates that the appellant is independent with laundry and basic housekeeping.

Move about indoors and outdoors

AR:

The GP indicates that the appellant is independent with walking indoors and outdoors, climbing stairs and standing.

Perform personal hygiene and self-care

AR:

The GP indicates that the appellant is independent with all personal care DLA, including: dressing, grooming, bathing, toileting, feeding self, and regulating diet and transfers in/out of bed and on/off chair.

Manage personal medication

AR:

The GP indicates that the appellant is independent in all medications DLA.

Section 2(1)(b) DLA

The following DLA are applicable to a person who has a severe mental impairment:

Make decisions about personal activities, care or finances

AR:

The GP indicates that the appellant is independent with the shopping DLA of readings labels, making appropriate choices, and paying for purchases; all meals DLA, including meal planning and safe storage; all pay rent and bills DLA; all medications DLA; the transportation DLA of using transit schedules and arranging transportation; and all social functioning DLA.

Relate to, communicate or interact with others effectively

MR:

The GP indicates that the appellant has no difficulties with communication.

AR:

The GP assesses the appellant's ability to communicate as good for all areas, including speaking, reading, and hearing and writing.

The GP indicates that the appellant is independent in all social functioning DLA (appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others) and has good functioning in his immediate and extended social networks.

Help required

MR:

The GP indicates that the appellant does not require an aid or prosthesis for his impairment.

AR:

The GP indicates “N/A” in response to the section of the AR dealing with help required for daily living activities. The GP indicates that the appellant does not receive assistance from assistive devices or assistance animals.

SR:

The appellant states that his mother cooks for him and brings food for him and that his girlfriend helps with laundry.

Notice of Appeal

In his Notice of Appeal (NOA) dated 31 May 2017, the appellant gives as Reasons for Appeal: *I disagree with the ministry’s decision as I need medical attention and assistance.*

A 1-page letter (the Letter) from the appellant’s GP, dated June 16, 2017, was submitted with the Notice of Appeal. The letter stated:

This letter is a follow-up letter to May 24, 2017 written in support of [appellant’s] PWD application. I have re-assessed [appellant] and I believe that his impairment is likely to last at least two years or more. He suffers with depression/dysthymia and substance use disorder and it is hard to establish exact timeline of when he will recover given his condition. His condition has hindered his ability to do daily activities and focus on tasks.

The hearing

The appellant did not attend the hearing.

The ministry relied on the reconsideration decision.

Admissibility of new information

The panel finds that the information provided by the appellant in the Notice of Appeal is consistent with and, therefore, in support of the information and records before the ministry at reconsideration. The panel therefore admits this information in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel finds that the information provided by the GP in the letter submitted with the Notice of Appeal is relevant; however, the information in the letter conflicts with, and does not corroborate or substantiate, the information and records before the ministry at reconsideration and is therefore not admissible in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet four 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 has a severe mental or severe physical impairment;
- the appellant's severe mental or physical impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years;
- the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, he requires help to perform those activities.

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;

(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.

Duration

For PWD designation, the legislation requires the person has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to last for at least 2 years. The legislation makes it clear that the opinion of a medical practitioner, in this case the appellant's GP, is necessary for this criterion to be met.

The ministry found in its reconsideration decision that the appellant had not met this criterion. In reaching this conclusion, the ministry referred to the GP's assessment that degree and course of impairment is 6 months. The panel notes that the legislation requires that the assessment of anticipated duration must be in the opinion of a medical practitioner and the information from the GP, in both the MR and AR, states that the appellant is expected to make a recovery within 6 months. As such, the panel finds the reconsideration decision on this criterion was reasonable.

The panel notes that at the hearing, the ministry acknowledged that the GP has provided a letter, submitted with the Notice of Appeal, indicating that she has re-assessed the appellant and *believe[s] that his impairment is likely to last at least two years or more*. The ministry's position at the hearing was that this letter does shed light on the anticipated duration of the appellant's impairment and conceded at the hearing that the appellant has now demonstrated that this criterion has been met.

Severity of impairment

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The determination of severity is at the discretion of the minister, considering all the evidence, including that of the appellant. Diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment. An impairment is a loss or abnormality of psychological, anatomical or physiological functioning causing restriction in the ability to function independently, appropriately, effectively or for a reasonable duration.

Severity of mental impairment

In the reconsideration decision, the ministry found that the information provided did not establish that the appellant has a severe impairment of his mental functioning. The ministry first noted that the GP has assessed significant deficits in several areas but when assessing the impact of cognitive and emotional functioning on daily living, the GP does not report any major impacts. The panel notes that the GP has assessed moderate and minimal impacts in some areas and no impacts in the remaining areas. The ministry noted that the GP has indicated no communication difficulties. The ministry

acknowledged that the appellant experiences some deficits in daily functioning as a result of his cognitive and emotional functioning but concluded it was not satisfied that the information demonstrates that the appellant is impaired to a significant degree.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable. In addition to the considerations discussed by the ministry, the panel notes the absence of safety concerns noted by the GP as well as indications that the appellant is independent with all aspects of social functioning and all DLA applicable to a person with a severe mental impairment. The panel finds that the ministry reasonably concluded that the information provided does not establish a severe mental impairment and that this criterion was not met.

Severity of physical impairment

The ministry determined that the information provided does not establish that the appellant has a severe physical impairment. In making this determination, the ministry considered the functional skills assessed by the GP, noting that the appellant has no restriction with walking unaided, no restriction with climbing steps unaided, can lift 15-35 lbs. while his ability to remain seated is unknown. The ministry considered the GP's assessment in the AR, noting that the appellant is assessed by the GP as independent in all physical ability and mobility areas. The ministry noted that the GP indicated no aids or prostheses were required.

The panel finds that the ministry's determination that a severe physical impairment has not been established was reasonable. The panel notes that the GP's assessments of the appellant's functional capacity and mobility and physical ability assessments reflect an ability to function independently in these areas. Furthermore, the panel notes that the information provided by the appellant in his SR about back pain discusses the appellant's inability to work for long periods but does not discuss other restrictions to the appellant's functioning. The panel notes that employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the EAPWDA, nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. The panel finds that the ministry's determination that a severe physical impairment has not been established is reasonable.

Direct and significant restrictions in the ability to perform DLA

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 chiropractor are prescribed professionals. At issue is the degree of restriction in the appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR applicable to a person with a severe mental or physical impairment. 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 not established in this appeal.

In the reconsideration decision, the ministry found that the information from the appellant's prescribed professional did not establish that the appellant's impairment significantly restricts his ability to perform DLA continuously or periodically for extended periods. The ministry noted that the GP has assessed the appellant as independently able to perform all DLA. The ministry also noted that the GP reported that the appellant is independently able to manage all areas of social functioning and has good functioning in his immediate and extended social networks.

The panel finds that the ministry's determination that the assessments provided by the medical practitioner do not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The panel notes that the Letter states: *His condition has hindered his ability to do daily activities and focus on tasks.*

However, the panel finds that the GP has not provided sufficient information in relation to the nature, degree and duration of the assistance required by the appellant to establish that there are significant restrictions for extended periods in the appellant's ability to perform DLA. As such, the panel concludes that the ministry's determination that this criterion was not met is reasonable.

Help required

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. 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, significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

In the reconsideration decision, the ministry found that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. While the appellant has indicated in the SR that he benefits from help with meals from his mother and laundry from his girlfriend, the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established. As such, 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 a reasonable application of the legislation in the appellant's circumstances and was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful on appeal.