

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 29 June 2017, which denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the 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 mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and that as a result of those restrictions, she requires help to perform those activities.

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

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

1. The appellant's **PWD Application** comprised of:
 - A Medical Report (MR) dated 12 March 2017, completed by the appellant's general practitioner (GP) who has known the appellant for 7.5 years and has seen her 11 or more times in the past 12 months.
 - An Assessor Report (AR) dated 12 March 2017, completed by the appellant's GP.
 - A Self Report (SR) dated 22 January 2017 completed by the appellant.
2. A **Request for Reconsideration** dated July 2017, signed by the appellant that provided the following information:

I disagree with the decision due to my diminishing capabilities to perform daily living activities. I am not capable of many things and have no one to ask for help. I am becoming exceedingly worse and my quality of life is deteriorating rapidly. Please realize I am not capable of performing usual activities and self support. My depression and anxiety is increasing rapidly and my mother is no longer able to help me financially. I have attached a statement from my Dr. I do require help with my daily living activities, but have no one to ask. Another reason that I don't receive help with ADLs is that I have no one to ask.
3. A one-page letter from the appellant's GP, dated 12 June 2017, was included with the request for reconsideration. This letter explained that the appellant had visited the GP following the PWD denial decision and reported a marked increase in symptoms of depression and anxiety, including suicidal ideation, as a result of receiving the decision. The GP reported a PHQ9 score of 26 and GAD7 score of 21. The GP stated that the appellant reported impairment in her ability to perform activities of daily living (DLA) and must force herself to bathe every other day. As well, the GP reported that the appellant is relying on packaged foods and has difficulty getting herself to cook. The GP reported advising the appellant to seek care at the crisis clinic.

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:

- Major depressive disorder – onset 1998
- Generalized anxiety disorder – onset June 2011

Severity of mental impairment

MR:

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 area of memory, emotional disturbance, motivation and impulse control (*in the past – improving*)

AR:

The GP describes the appellant's mental or physical impairments as: *Depressive and anxiety symptoms result in [the appellant] isolating herself at home and not purchasing/preparing food.*

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

The GP assess the appellant's cognitive and emotional functioning as having no impact in the areas of consciousness, impulse control, insight and judgement, attention/concentration, executive, motor activity, language, psychotic symptoms and other neuropsychological problems. The GP assesses minimal impacts on daily functioning in the areas of memory and motivation. Moderate impacts on daily functioning are assessed for other emotional or mental problems (*irritability*) with major impacts assessed for bodily functions and emotion.

SR:

The appellant indicates that she has severe depression and anxiety that she is progressively less able to control. She has tried prescription medications but cannot tolerate the side effects; self-care programs have been helpful. Over the past year the appellant has frequently felt suicidal in response to family or work stresses. The severity of her depression and anxiety make it difficult for the appellant to perform normally and she is unable to cope with common everyday occurrences. She also experiences migraines and is more susceptible to illness. She is unable to perform in long shifts at work and often calls in sick or turns down shifts. She cannot work enough hours to support herself, despite being 'low maintenance' and not spending much money. She often isolates herself to prevent stress and anxiety and has sleep problems that lead to fatigue, irritability and memory problems.

Severity of physical impairment

MR:

The GP has not provided a physical impairment diagnosis.

For functional skills, the GP indicates that the appellant is not able to walk unaided or climb stairs unaided, she can lift 2 to 7 kg. (5 to 15 lbs.), and remain seated without limitation.

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 does not describe a physical impairment.

Ability to perform DLA

General

MR:

The GP indicates that the appellant has been prescribed medications that interfere with her ability to perform DLA, explaining: *she has tried various psychotropic medications but has not tolerated the side effects.*

EAPWDR - Section 2(1)(a) DLA

Prepare own meals

AR:

The GP indicates that the appellant is independent with the meals activities of meal planning, food preparation, cooking and safe storage of food.

Manage personal finances

AR:

The GP indicates that the appellant is independent in the pay rent and bills activities of banking and budgeting, and requires continuous assistance or is unable in the pay rent and bills DLA (*mother pays ½ of rent*).

Shop for personal needs

AR:

The GP indicates that the appellant is independent in the following shopping activities: 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 the transportation DLA of getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation. The GP provides the comment "*N/A because she drives, but would be able*" in relation to using public transit and using transit schedules and arranging transportation.

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

MR:

The GP indicates that the appellant is unable to walk unaided on a flat surface and unable to climb stairs unaided.

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 the personal care DLA of dressing, grooming, bathing, toileting, feeding self, regulating diet (*somewhat reliant on mother to shop for and prepare food*) 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: reading labels, making appropriate choices, and paying for purchases; all meals DLA, including safe storage of food; the pay rent and bills DLA of banking and budgeting; all medications DLA; and the transportation DLA of using transit schedules and arranging transportation (*N/A because she drives, but would be able*). The GP indicates that the appellant requires continuous assistance or is unable in relation to the DLA of pay rent and bills (*mother pays ½ of rent*).

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 speaking, reading, writing and hearing.

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

Help required

MR:

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

AR:

The GP indicates that the appellant receives assistance from family, with the comment: *when mother lives with her ~ 6months of the year, she provides assistance with meal preparation, shopping, housework. She also pays ½ of rent because she lives there half of the year.*

The GP indicates that the appellant does not receive assistance from assistive devices and does not receive assistance from assistance animals.

Notice of Appeal

In her Notice of Appeal dated 10 July 2017, the appellant gives as Reasons for Appeal: *I do have a severe impairment (depression and anxiety). I have tried several medications and therapy, etc. My daily living activities are restricted. I am not capable of performing daily living activities. My impairment is severe and I am not sure why it is not being taken seriously.*

Additional Information

The appellant has provided a one-page letter dated 2 August 2017, from her GP. The letter stated that the appellant had recently attended psychiatric emergency services and is being connected to a therapy group. The letter describes the appellant as experiencing fatigue and lack of motivation that prevent her from bathing, cooking healthy meals and cleaning her house. The appellant has significant anxiety leaving the house and is impaired in her ability to work more than

a few hours, use public transportation or go shopping. Difficulty with concentration, memory and task prioritization are severely impairing her ability to function in and out of the house.

At the Hearing

The appellant's mother attended the hearing and provided information. She stated that she has given up her residence, which did not allow young people, in order to live with her daughter and be her caregiver. The appellant's mother explained that the appellant is getting worse not better and her ability to do everything has declined in the past year; bad days now far outnumber good days. She stated that the appellant has disclosed childhood abuse. She explained that the appellant spends much more time in bed and, despite wanting to help, cannot do things around the house and often misses work. The appellant's mother provides help with shopping, cooking, dog walking, bill payment and management of medications. She stated that the appellant has difficulty coping when something goes wrong, such as a car problem or missed bill payment. At these times, the appellant retreats to bed and is completely non-functional. The appellant's mother explained that in addition to her mental health conditions, the appellant has blinding migraines and allergies as well. She worries that the appellant has little social contact as her work is with a single client and friendships have fallen away as the appellant's mental health has deteriorated.

The appellant stated that she disagrees with the ministry decision. She explained that the PWD application package does not capture the severity of her situation. She stated that she did not have an advocate and has had communication problems with the GP; she believes this to be a part of the problem. At her last visit the GP was more attentive and has explained things a bit better in the 2 August letter; this is the information the appellant wanted in the PWD application. The appellant explained that her mother does most of the housekeeping and shopping. She stated that she has a lack of energy and motivation and can have anxiety attacks going to the store. She described having problems with decision making and being unable make healthy choices when shopping. She explained that she uses the drive through banking window instead of going into the bank and pays her bills online, but has some difficulty remembering to pay the bills that are not automatically withdrawn. The appellant explained that she has tried several medications but they cause suicidal ideation and she is not on any medications now. She is switching doctors and the new GP will help with new medications.

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 and by the appellant and her mother at the hearing is consistent with and, therefore, in support of the information and records before the ministry at reconsideration. In particular, the appellant and her mother have elaborated on the information in the SR which was part of the ministry's record at reconsideration, by providing greater detail about the appellant's medical history, symptoms and their impacts on her daily function as well as the help that she receives from her mother. 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 in the 2 August letter from the appellant's GP provides information that is consistent with, and therefore in support of the information provided in the various commentary sections of the MR and AR. The panel notes that the ministry did not object to the admission of this letter. The panel therefore admits this information 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's reconsideration decision that determined that the appellant did not meet three 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 prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, she 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.

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 legislation makes it clear that the determination of severity is at the discretion of the minister, considering all of the evidence, including that of the appellant. The diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine the severity of an 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 mental impairment. The ministry acknowledged that the appellant’s depression and anxiety are connected to limitations in cognitive, emotional and social functioning but determined that the information provided in the GP’s assessments did not establish that the appellant has a severe mental impairment. The ministry first noted that that the GP has assessed the appellants communication skills as “good”. The ministry then considered the GP’s indication of significant deficits with cognitive and emotional functioning in the areas of memory, emotional disturbance, motivation and impulse control in the MR and the GP’s indication that all areas of cognitive and emotional functioning were noted as having two major impacts (bodily functions and emotion) and one moderate impact (emotional or other mental problems - *irritability*). The ministry observed that the remaining areas were assessed as minimally or not impacted. The ministry went on to conclude that the assessment in the AR did not demonstrate that the appellant requires significant assistance with making decisions about personal activities, care or finances. The ministry noted that the GP indicates that the appellant does not require support/supervision with any aspect of social functioning, describes good functioning in immediate and extended social networks and does not describe support/supervision required to maintain the appellant in her community or any safety issues. The ministry goes on to note that the GP describes the appellant’s level of functioning as variable depending on symptoms of depression and anxiety; but the GP has not provided information about the frequency or duration of the periods during which the appellant shuts down and self-isolates. The ministry further noted that the GP does not indicate that there is a restriction in the appellant’s social functioning relating to, communicating or interacting with others effectively. The ministry also considered the GP’s 12 June letter, noting that a re-assessment of cognitive, emotional and social functioning has not been provided. The ministry considered that the letter does re-iterate impairment in the appellant’s ability to perform DLA, including forcing herself to bathe every other day, relying on packaged foods for meals, and eating cereal for dinner as she has trouble getting herself to cook. The ministry notes that the GP has referred the appellant to a crisis clinic.

The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable. The panel notes two major impacts to cognitive and emotional functioning assessed by the GP, as well as one moderate impact. The panel also notes that there are no safety concerns noted by the GP in the MR or AR and she assesses the appellant as independent with all aspects of social functioning and decision making. The panel notes that the information provided by the GP in the PWD application in relation to the appellant's ability to function is not entirely clear. The GP indicates in her commentary in the AR that the appellant is *somewhat reliant* on her mother for shopping and preparing food, but assesses the appellant as independent in all areas including shopping and preparing food. As well, in the 2 August letter the GP indicates that the appellant is experiencing fatigue and lack of motivation that prevent her from engaging in some activities; however, it is not clear whether this information is a re-assessment of the appellant's functioning at the time of the PWD application or an assessment of her functioning after a 27 July visit to psychiatric emergency services. As well, the panel notes that the appellant argued at the hearing that the PWD application does not capture the severity of her circumstances, due to communication difficulties with her doctor. She argued that there are restrictions in her ability to function that were not adequately discussed in the PWD application or at reconsideration. The panel notes that this information was not before the ministry at reconsideration and acknowledges the ministry's argument that the ministry staff have to make decisions based on the black and white of the information before them. As such, 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

In the reconsideration decision, the ministry found that the GP had not provided any diagnosis for a medical condition that would generate a severe physical impairment. The ministry observed that the GP has assessed the appellant as unable to walk on a flat surface or climb stairs in the MR, which is not consistent with the assessment of independence with walking indoors/outdoors and climbing stairs in the AR. The ministry concluded that the information provided in the assessments does not establish a severe physical impairment.

The panel notes that there is no diagnosis connecting to a physical impairment. The panel further notes that while the appellant has indicated that she suffers from migraines in the SR, she has attributed this to her mental health condition and has not argued at the hearing or in any of the documents submitted that she has a severe physical impairment. As such, 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. The legislative language makes it clear that a prescribed professional's evidence is fundamental to the analysis of restrictions with DLA. 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. Regarding the degree of the restriction, section 2(2)(b)(i) of the EAPWDA requires activities to be directly and significantly restricted either continuously or periodically for extended periods. 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 provided did not establish that the appellant's impairment significantly restricts her ability to perform DLA continuously or periodically for extended periods. The ministry noted that the GP indicated the appellant requires continuous assistance from her mother for paying rent and bills but concluded that her mother paying bills when she lives with the appellant for half of the year cannot be attributed to an impairment on the

appellant's part. The ministry also concluded that the appellant's mother assisting with housework, meals and shopping was indicative of the "normal division of labour and resources which occurs between family members living together." The ministry noted that the GP has assessed the appellant as independent in all DLA, except for pay rent and bills, and the 12 June letter provided at reconsideration does not include a global re-assessment of the appellant's ability to manage DLA. The ministry acknowledged that the appellant does have some restrictions to DLA but concluded that the appellant's GP has not provided enough information to establish a significant restriction in the appellant's ability to perform DLA and significant assistance from others is required to manage them.

The panel finds that the ministry's determination that the information provided does not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. While the GP has assessed the appellant as requiring continuous assistance with paying rent and bills, all other DLA are assessed as independent in the PWD application. The panel notes that, in addition to the lack of clarity in the PWD application (as discussed above), neither the 12 June or 2 August letters from the GP provided a global re-assessment of the appellant's ability to manage DLA. The panel finds that the information provided by the appellant and her mother at the hearing do speak more extensively to the appellant's ability to manage DLA and, in some instances, contradict the assessments provided by the GP in the MR and AR. The panel finds, however, that the legislation requires that direct and significant restrictions in DLA must be "in the opinion of a prescribed professional practitioner" - in this case the appellant's GP. Without sufficient detail from the GP to confirm that DLA are directly and significantly restricted either continuously or periodically for extended periods, the panel finds that the ministry reasonably determined that this legislative criterion was not met.

Help required

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. The confirmation by a prescribed professional of direct and significant restrictions with DLA under section 2(2)(b)(i), is a precondition to 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 concluded that, as it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The panel notes that, in the Request for Reconsideration, the appellant states that she does require help with DLA but does not receive assistance because she has no one to ask. The panel also notes that the information presented by the appellant and her mother at the hearing indicates that the appellant does receive assistance from her mother. 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 a result, 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.