

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 20 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 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 information and records before the ministry at reconsideration consisted of the following:

1. The appellant's **PWD Application** comprised of:
 - A Medical Report (MR) dated 28 March 2017, completed by a locum general practitioner (GP) at the appellant's medical clinic who has met the appellant once.
 - An Assessor Report (AR) dated 29 March 2017, completed by the same locum GP at the appellant's medical clinic who indicates he has seen the appellant 2-10 times in the past 12 months.
 - A Self Report (SR) dated 21 March 2017 completed by the appellant.
2. An MRI report dated 6 November 2016, which provides an impression of mild to moderate multi-level changes to the appellant's spine with the most prominent changes apparent in his lumbar spine.
3. **Request for Reconsideration** dated 6 July 2017, signed by the appellant and accompanied by:
 - A 1-page letter from the appellant explaining that she has had a speech problem and learning disability since childhood and attended special needs classes and a speech therapist in elementary school. In high school, a school district psychologist assessed her and she attended the special needs classroom for her core courses, as she was not able to keep up with the regular classes. After high school, she attended an employment and life skills training program at a local college and this helped her. She obtained employment as a cleaner/dishwasher but was laid off after a change in ownership. She has not been able to find full or part-time work again, but has worked a few times on a casual basis. She lives with her parents and would like to be more independent and is willing and able to work, but needs direction and can be slow at getting things done. She feels that she has been unsuccessful at job interviews because she is unable to think or speak clearly.
 - A 1-page letter from the appellant's mother explaining that the GP who completed the PWD application was new to her daughter and has only seen her a couple of times. The appellant has lived with her and her husband for her entire life. She explains that the appellant is able to do most tasks required for daily living, such as cooking or using transit, but often requires clarification of the steps required to accomplish them. For instance, she would need an instruction to *cross the street to catch a connecting bus*. She explained that the appellant often gets confused and tends to focus on one aspect of something, not considering the whole picture. The appellant's mother described the appellant's social circle as consisting of other students from the employment and life skills program and explained that the appellant is heavily dependent on her parents. She explained that the appellant becomes emotional and overreacts to pain, fear and loss. The appellant's mother provided the opinion that it would be very difficult for the appellant to live independently or effectively manage finances without ongoing help and support.

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:

- Other mental/learning disability – since birth

Severity of mental impairment

MR:

The GP indicates that the appellant has a longstanding life-long learning disability and speech impediment.

The GP indicates that the appellant has difficulties with communication and provides the comment: *learning disability*.

The GP indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of executive and memory.

AR:

The GP describes the appellant's mental impairments as life-long learning disability and speech impediment.

The GP assesses the appellant's ability to communicate as poor in relation to speaking (*speech impediment*) and good in the other areas, including: reading, writing and hearing.

The GP assess the appellant's cognitive and emotional functioning as having moderate impacts in the area of attention/concentration, executive and language. Minimal impacts are assessed in the areas of emotion, impulse control, insight and judgement and memory. The remaining areas are assessed as no impact. The GP provides the comment: *difficulty with attention and completing multi-step processes; unable to work independently*.

SR:

The appellant indicates that her disabilities have prevented her from being able to get the education she needs to get a good job and become independent. She believes that her speech problem costs her jobs at the interview step.

Severity of physical impairment

MR:

The GP does not provide a diagnosis relating to a physical impairment.

For functional skills, the GP indicates that the appellant is able to walk 4+ blocks unaided, climb 5+ steps unaided, lifting is unknown, and remain seated without limitation.

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

AR:

In relation to mobility and physical ability, the GP assesses the appellant as independent walking indoors and walking outdoors, climbing stairs, standing, lifting and carrying and holding.

SR:

The appellant describes does not describe a physical impairment in her self-report.

Ability to perform DLA

General

MR:
The GP indicates that the appellant has not been prescribed medications that interfere with her ability to perform DLA.

EAPWDR - Section 2(1)(a) DLA

Prepare own meals

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

Manage personal finances

AR:
The GP indicates that the appellant is independent the pay rent and bills activities of banking and budgeting and requires periodic assistance from another person for paying rent and bills.

Shop for personal needs

AR:
The GP indicates that the appellant is independent in all 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: getting in and out of a vehicle, 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 independently able to manage laundry and basic housekeeping.

Move about indoors and outdoors

MR:
The GP indicates that the appellant is able to walk 4+ blocks unaided on a flat surface and can climb 5+ 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 all personal care DLA, including: dressing, grooming, bathing, toileting, feeding self, 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 reading labels, making appropriate choices, and paying for purchases; all meals DLA, including safe storage of food; all pay rent and bills DLA; all medications DLA; and the transportation DLA of using transit schedules and arranging transportation.

Relate to, communicate or interact with others effectively

MR:

The GP indicates that the appellant has difficulties with communication due to a learning disability.

AR:

The GP assesses the appellant's ability to communicate as poor for speaking and good for 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 has assessed the appellant's functioning in immediate and extended social networks as good.

Help required

MR:

The GP indicates that the appellant has a reasonable level of independent function but struggles with complex tasks, multi-step processes.

AR:

The GP indicates that the appellant receives assistance from family with the comment: *tasks requiring multiple steps or detailed explanation.*

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

Notice of Appeal

In her Notice of Appeal dated 5 May 2017, the appellant gives the following as Reasons for Appeal: *My disability is real. I am currently dependent on my family for help on a daily basis. My previous doctors have retired and my history is not all at my clinic. We are trying to get more information to support my claim.*

Additional Information

Prior to the hearing the appellant submitted several documents, including:

- An email from the appellant's mother explaining that psychologists reports are also available but not in pdf format and would be available at the hearing;
- A 3-page letter dated 2 March 1995 from a pediatric neurologist;
- A 2-page letter from a consulting pediatrician dated 23 March 1994;
- A 1-page referral dated 6 April 1994 from the consulting pediatrician requesting that the pediatric neurologist provide an assessment;
- A 1-page letter from an otolaryngologist dated 8 February 1994;

- A palate fluoro exam report dated 23 December 1993; and
- An appointment notification for a 28 July 1994 appointment at BC children's hospital.

At the Hearing

The appellant's mother spoke on behalf of the appellant. She explained that the appellant has a documented learning problem and speech deficit. She described the records relied upon in preparation of the PWD application as being incomplete and explained that the GP prepared the application package based on answers to a few direct questions asked of the appellant. For instance, she argued that his assessment of the appellant's ability to manage finances was based on her positive answer to the question of whether she could open a bank account and his assessment of her social functioning was based on the appellant's positive answer to the question of whether she has friends. The appellant's mother explained that the appellant does have friends from the employment and life skills program she attended, which she would not have attended but for her disability. The appellant's mother explained that she believes that both herself and the GP did not understand the consequences of the answers he provided in the PWD application.

The appellant's mother explained that in addition to the psychologists' reports submitted, there was another assessment in high school that has not been located. The appellant's mother explained that the appellant's classes at high school were in a learning assistance classroom and she did finish with a leaving school certificate rather than a Dogwood diploma because she could not complete regular curriculum requirements for math and comprehension. She explained that she does not believe the appellant can make a good life without considerable outside help. The appellant cannot follow long or complicated instructions and could never have completed the PWD forms on her own. Mathematics is an ongoing problem because the appellant does not understand the concept of how math works. The appellant is able to cook some things but cannot follow a complex recipe. She explained that the appellant would be "OK" with medications management, basic housework, mobility and transportation but sometimes needs help with routes and schedules. She described the appellant as being able to complete shopping "up to a point" as she would not be capable of planning what she would need for the next 5 days for instance. She explained that the appellant has never paid bills or managed finances and has difficulty with math. Communication is sometimes a problem as the appellant is often not able to answer yes/no questions and tends to provide lengthy explanations, she is shy with strangers and her comprehension is sometimes just not there.

A the hearing the appellant submitted the following documents:

- A school district Report of Psychologist – Initial Assessment dated 29 November 1993; and
- A school district Report of Psychologist dated 10 October 1997.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided by the appellant in the Notice of Appeal, the information provided by the appellant's mother at the hearing, and the documents submitted prior to the hearing and at the hearing are all in support of the information and records before the ministry at reconsideration as they provide elaboration on the appellant's medical conditions and associated difficulties she experiences. The panel, therefore, admits this information in accordance with section 22(4)(b) of the *Employment and Assistance Act*. The panel notes that the ministry made no objection to the admission of the documentary information presented, but indicated its position was that the documents were of little value given their age.

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. Impairment is defined in the PWD application as 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 physical impairment

In the reconsideration decision, the ministry found that the information provided did not establish that the appellant has a severe physical impairment. In reaching this conclusion, the ministry considered the functional skills and mobility and physical ability assessments provided by the GP in the MR and AR. As well, the ministry noted that no aids or prostheses were required.

The panel notes that there is no diagnosis connecting to a physical impairment. The panel further notes that the appellant 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.

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 considered the GP’s indication of difficulties with communication due to a learning disability along with the assessment of communication skills noting that while speaking was “poor”, the other aspects of communication were “good”. The ministry considered the assessment of significant deficits in the MR and the assessment of impacts in the AR, noting that there were no major impacts indicated, some moderate and minor impacts, and some areas with no impacts. The ministry concluded that impacts to the appellant’s cognitive functioning are moderate to minimal in nature and noted that the assessment s provided did not reflect a need for significant assistance with decision making or a need for support/supervision for social functioning; no safety issues were indicated. The ministry acknowledged that the appellant experiences some impacts as a result of her learning disability and speech impediment but concluded that the information did not establish a severe impairment.

The panel finds that the ministry’s determination that a severe mental impairment has not been established was reasonable. The panel notes that no major impacts to cognitive and emotional

functioning were assessed by the GP. The panel also notes that there are no safety concerns noted by the GP in the MR or AR and he assesses the appellant as independent with all aspects of social functioning and all DLA involving decision-making, except for the paying rent and bills. The panel notes that the information provided by the appellant's mother does provide some clarification and elaboration but is, in some areas, inconsistent with the information provided by the GP in the PWD application in relation to the appellant's ability to function. As well, the panel notes that the appellant submitted a number of documents at the hearing relating to assessments during her childhood. In addition to acknowledging that these documents were not before the ministry at reconsideration, the panel agrees with the ministry's position that they are of limited utility given their age. The appellant's mother argued at the hearing that the PWD application does not adequately reflect her daughter's abilities due to missing records and the GP's lack of familiarity with the appellant. The panel acknowledges this assertion but recognizes that while additional information and more recent assessments may exist, the ministry's argument that its staff must make decisions based on the information before them is reasonable. 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.

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 locum GP. The legislation is clear that a prescribed professional's opinion 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 no restrictions to DLA were assessed, except for management of finances in the MR and paying rent and bills in the AR. The ministry noted that some restrictions would be expected given the nature of the appellant's impairment, but concluded that the not enough evidence was provided by the medical practitioner to establish significant restrictions to the appellant's ability to perform DLA.

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. The GP has, in the PWD application, assessed the appellant as independent in all areas, except for management of finances. The panel notes that the information provided by the appellant's mother at the hearing does speak more extensively to the appellant's ability to manage DLA and provides a more nuanced picture of the appellant's abilities. The panel notes that the appellant's mother describes an individual who is physically capable of performing most DLA but requires assistance and direction in relation to the cognitive aspects of planning and executing the performance of these activities. 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 locum 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 from other persons. The panel notes that, in the Notice of Appeal, the appellant states that she is dependent on her family for help on a daily basis. The panel also notes that the information presented by the appellant's mother at the hearing indicates that the appellant does receive assistance from her parents.

The panel has concluded (above) 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 also 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.