

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 28 July 2017 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in section 2 of 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 physical impairment that in the opinion of a prescribed professional

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

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

The ministry determined that the appellant satisfied the other 2 criteria: he has reached 18 years of age and his impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – sections 2 and 2.1.

PART E – Summary of Facts

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

1. The appellant's PWD Designation Application dated 20 March 2017. The Application contained:
 - A Medical Report (MR) dated 24 March 2017, completed by a health authority psychiatrist who has known the appellant for 4 months and seen him 11 or more times during that period.
 - An Assessor Report (AR) dated 24 March 2017, completed by the same psychiatrist.
 - The appellant chose not to complete a Self Report.
2. The appellant's Request for Reconsideration dated 29 June 2017, requesting an extension.

In the MR, the psychiatrist diagnoses the appellant with Obsessive Compulsive Disorder (onset December 2016) and Social Anxiety Disorder (onset December 2016).

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

Severity/health history

Physical impairment

MR:

Regarding functional skills, the psychiatrist reports that the appellant can walk 4+ blocks unaided, can climb 5+ steps unaided, his limitations in lifting are unknown and his limitations to remaining seated are unknown.

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

AR:

The GP assesses the appellant as independent for all aspects of mobility and physical ability: walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding

Mental impairment

MR:

Under Health History, the psychiatrist writes:

“[The appellant] has a severe form of Obsessive Compulsive Disorder which is associated with very significant functional impairment. He has recurring obsessions which are associated with significant distress. He is repetitive when anxious and unable to change/shift themes.”

Under Additional Comments, the psychiatrist writes, “Admitted twice under the mental health act in December 2016 and January 2017. Significant distress.”

The psychiatrist indicates that:

- The appellant has difficulties with communication, commenting: “Withdrawn, particularly when anxiety levels have increased.”
- The appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, and motor activity.

- The appellant has been prescribed medication and/or treatments that interfere with his ability to perform DLA, indicating that this leads to sedation and weight gain.

AR:

The psychiatrist assesses the appellant's ability to communicate as good for all listed aspects: speaking, reading, writing, and hearing.

Regarding cognitive and emotional functioning, the psychiatrist indicates that the appellant's mental impairment or brain injury has the following impacts in the specified areas:

- Major impact: none.
- Moderate impact: emotion, impulse control.
- Minimal impact: bodily functions, consciousness, insight and judgment, attention/concentration, executive, memory, organization, motor activity, and psychotic symptoms.
- No impact: language, other neuropsychological problems, and other emotional or mental problems.

Ability to perform DLA

MR:

The psychiatrist indicates that the appellant's impairment directly restricts his ability to perform DLA. She indicates that:

- The appellant is restricted in the following DLA: personal self-care, management of medications, daily shopping, mobility outside the home, use of transportation, and social functioning.
- He is not restricted for mobility inside the home.
- "Unknown" for meal preparation, basic housework, and management of finances.

Regarding social functioning, the psychiatrist writes, "Anxiety prevents him being able to interact with others as he experiences panic symptoms."

AR:

The psychiatrist provides the following assessments of help required in managing DLA (her comments in parentheses):

- Personal care: independent in all aspects except for periodic assistance from another person required for cleaning and bathing (Needs prompting).
- Basic housekeeping; periodic assistance from another person required for laundry; no assessment for basic housekeeping.
- Shopping: (Not known to me).
- Meals: (Not known to me).
- Pay rent and bills: (Not known. In debt).
- Medications: periodic assistance from another person required for filling/refilling prescriptions, taking as directed, and safe handling and storage (Parents provide support).
- Transportation: independent in all aspects

With respect to social functioning, the psychiatrist assesses the appellant as requiring periodic support/supervision (with no explanation/description given) for all listed areas: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

The psychiatrist assesses the impact of the appellant's mental impairment on his immediate social and extended social networks as very disrupted functioning. For immediate social network, she comments, "Recent admission associated with aggression to family." And for extended social networks, "Has no other social networks due to anxiety."

The psychiatrist does not describe support/supervision required which would help to maintain appellant in the community, and provides no additional comments, including the identification of any safety issues.

Help provided/required

PR:

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

AR:

The psychiatrist indicates that assistance is provided by family, health authority professionals, and community service agencies.

Regarding assistive devices, the psychiatrist does not indicate that the appellant routinely uses any of the listed devices to compensate for his impairment.

Notice of Appeal

The appellant's Notice of Appeal is dated 02 August 2017. Under Reasons, the appellant writes:

"Have to take medications due to my anxiety, trying to cope with several other problems such as major obsessive compulsive disorder."

The Hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The appellant provided a written submission. He writes:

"I [Name] am appealing the decision for income assistance. I have supporting evidence of my disability from the time I had spent in the hospital. The time I spent in the hospital was about two months, suffering from anxiety and significant obsessive compulsive disorder. Impulses of shouting out loud and panic attacks are just some of the disorders. I am still taking medication, especially for sleep which calms me down."

He also attached the MR completed by the psychiatrist.

The ministry's submission was a letter dated 22 August 2017. The ministry stated that it will rely on the reconsideration decision as its written submission for the appeal.

In its letter, the ministry stated that it would like to provide some clarification regarding the timelines for the request for reconsideration, as follows:

- 29 June 2017: the appellant's advocate submitted the signed Request for Reconsideration, in which a request for an extension was made. The ministry approved this request for an extension to 28 July 2017.
- 28 July 2017: the reconsideration officer completed the review and at that time no additional information had been provided from the client or advocate.

- 31 July 2017: the appellant's advocate submitted additional information from a medical practitioner further clarifying the appellant's impairment; however, as the information was submitted out of time, the ministry did not take the additional information into consideration. The ministry attached the information from the appellant's medical practitioner.

The additional information is in the form of an advocate-prepared questionnaire completed and signed by a physician, dated 28 July 2017. The physician confirms the diagnoses of Obsessive Compulsive Disorder and Social Anxiety Disorder, describes restrictions and assistance needed regarding sitting, basic mobility, and other DLA, describes social functioning restrictions and support required, and assesses major impacts of his mental impairment on 7 areas of cognitive and emotional functioning.

Admissibility of additional information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the minister when the decision being appealed was made and "oral or written testimony in support of the information and records" before the minister when the decision being appealed was made." These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – that is, panels are limited to determining if the ministry's decision is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Thus, panels are not to assume the role of decision-makers of the first instance by considering information that presents a new or different picture of the impairment or restrictions than that which was before the ministry when it made its reconsideration decision.

The panel notes that, despite the questionnaire not being addressed in the reconsideration decision, it was not the appellant or his advocate who submitted this document for the hearing. Instead, the questionnaire was submitted by the ministry.

The panel finds the questionnaire attached to the ministry's letter is not in support of the information and records before the ministry at reconsideration. The information provided by the physician in the questionnaire provides new and different assessments of the appellant's restrictions and help required, including assessments in areas for which the psychiatrist in the MR and PR had marked as "unknown" or "not known to me," and several major impacts of mental impairment on cognitive and emotional functioning while the psychiatrist had assessed moderate or minor impacts, not major impacts. Accordingly, the information provided in the questionnaire cannot be said to corroborate or substantiate the information before the ministry at reconsideration as set out in the MR and AR. Pursuant to section 22(4) of the EAA, the panel therefore does not admit as evidence the information provided in the questionnaire.

The panel admits as evidence the information provided in the appellant's written submission for the hearing, as it tends to corroborate the information provided by the psychiatrist in the MR and AR.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry 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. The ministry found that the appellant met the age requirement and that, in the opinion of a medical practitioner, his 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 DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

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 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 sections 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.

Analysis

Severity of impairment

General considerations

The legislation is clear that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment.

For the minister to be "satisfied" that the person's impairment is severe, the panel considers it reasonable for the ministry to expect that the information provided by the independent and professional medical practitioner and the prescribed professional permits the ministry to form a clear picture of the nature and extent of the impacts of the person's medical conditions on daily functioning. It is therefore reasonable for the ministry to expect that the MR and the AR include explanations, descriptions or examples in the spaces provided.

Physical impairment

In the reconsideration decision, the ministry was not satisfied that the information provided establishes a severe physical impairment. In reaching this conclusion, the ministry reviewed the appellant's basic physical functional skills reported by the psychiatrist in the MR (able to walk 4+ blocks unaided, climb 5+ stairs, with lifting and remaining seated indicated as "unknown,") and the psychiatrist's assessments of his mobility and physical ability as reported in the AR (independent for walking, climbing stairs, etc.).

Given that the psychiatrist has not diagnosed a physical health condition, and considering her assessments of the appellant's basic physical functioning and mobility and physical ability, the panel finds that the ministry was reasonable in determining that a severe physical impairment has not been established

Mental impairment

In the reconsideration decision, the ministry determined that the information provided does not establish that the appellant has a severe mental impairment. The ministry noted that the psychiatrist had stated under Health History that the appellant “has a severe form of Obsessive Compulsive Disorder which is associated with very significant functional impairment.” The ministry noted that the diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. To assess the severity of mental impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning, as evidenced by limitations in cognitive/emotional functioning and social functioning. Considering the focus of the legislation on restrictions and help required, the panel considers this a reasonable approach for the ministry to take when analyzing the information provided regarding severity of impairment.

In keeping with this approach, the ministry analyzed the information provided by the psychiatrist and found that:

- While the psychiatrist indicates in the MR that the appellant has difficulty with communication, in the AR, she reports good ability with all listed areas of communication
- While the psychiatrist indicates in the MR that the appellant has *significant* deficits with cognitive and emotional functioning in the areas of emotional disturbance, motivation and motor activity, in the AR she reports only moderate impact to cognitive and emotional functioning in the area of emotional functioning and minimal impact in the other two areas
- In the AR, the psychiatrist assesses moderate impacts to 2 areas of cognitive and emotional functioning, minimal impacts to 9 areas, and no impacts to 3 areas. The cumulative impact to cognitive and emotional functioning of these assessments is not considered indicative of a severe impairment of mental function.
- In the AR, the psychiatrist does not describe the frequency of periodic support/supervision required with all listed areas of social functioning. While the psychiatrist indicates restrictions in these areas, she does not describe the support/supervision required to help the appellant maintain in the community and makes no indication of safety issues with regard to social functioning.

Considering this analysis and ministry findings, and in particular that the psychiatrist has not identified any major impacts of the appellant's diagnosed conditions on cognitive and emotional functioning and has not provided a clear picture of how his mental impairment effects daily functioning by providing any explanation or description of the support/supervision required for social functioning, the panel finds the ministry was reasonable in determining that a severe mental impairment has not been established.

Direct and significant restrictions in the ability to perform DLA

According to the legislation, the direct and significant restriction in the ability to perform DLA must be a result of a severe impairment, not established in this application. 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 psychiatrist.

In its decision, the ministry also noted that the legislation requires that the restrictions in the ability to perform DLA must be both significant and either continuous or periodic for extended periods. The ministry acknowledged that while the legislation does not specifically require the frequency and duration of the restrictions to be explained, the ministry finds this information valuable in determining the significance of the restrictions. Considering that for the minister to be “satisfied,” the panel finds it is reasonable for the ministry to expect that the prescribed professional provide a clear picture of the

degree to which the ability to perform DLA is restricted by providing such frequency and duration information.

The ministry reviewed the information provided by the psychiatrist, noting that:

- In the MR, the psychiatrist indicates that the appellant has been prescribed medication that interferes with his ability to perform DLA.
- In the MR, the psychiatrist indicates that the appellant's impairment directly restricts his ability to perform DLA, indicating specifically that a) he has restrictions with personal self-care, management of medications ("Parents provide support"), daily shopping, mobility outside the home, and use of transportation; b) that his restrictions with regard to meal preparation, basic housework and management of finances is unknown; c) and that he is not restricted with mobility inside the home. The psychiatrist does not describe the frequency of the restrictions indicated and does not describe the nature or severity of the restrictions.
- In the AR, the psychiatrist indicates that the appellant requires periodic assistance from another person with grooming and bathing ("Needs prompting"), and indicates that he is independent with the remaining 6 listed areas of personal care. He requires periodic assistance from another person with laundry. Regarding all areas of shopping, meals, and paying rent and bills, the psychiatrist indicates that any restrictions are unknown. The psychiatrist indicates that the appellant is independent with all listed areas of transportation.

The ministry noted that in the AR the psychiatrist does not describe the frequency or duration of periodic assistance from another person required for those DLA where such assistance is indicated. The ministry also noted that restrictions are not indicated for the majority of listed DLA.

The panel notes that for the DLA of moving about indoors and outdoors, in the AR the psychiatrist assesses the appellant as independent are all listed activities of mobility and physical ability (walking indoors, etc.).

The panel notes that in this section of its decision the ministry did not specifically address the 2 "social functioning" DLA applicable to a person with a severe mental impairment – not established in this appeal, though some of this was covered under severity of mental impairment. These 2 DLA are set out in section 2(1)(b) of the EAPWDR – make decisions about personal activities, care or finances (the "decision-making" DLA); and relate to, communicate or interact with others effectively (the "relating to effectively" DLA).

In the AR, the psychiatrist assesses the appellant as requiring periodic support/supervision for the social functioning areas of making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others. However, as discussed above under Severity of mental impairment, she has not provided any description of the nature and type or frequency and duration of such assistance. Further, a footnote in the AR explains that "periodic assistance" refers to the need for significant help for an activity some of the time, as would be the case where a person required help due to the episodic nature of the impairment. The psychiatrist has not provided any information that the appellant's impairment is episodic in nature.

Regarding decision-making, the psychiatrist has not provided an explanation as to whether the help from the appellant's family for managing means help in making decisions in this respect.

In terms of the "relating to effectively" DLA, the psychiatrist assesses the impact of the appellant's mental impairment on his immediate social and extended social networks as very disrupted functioning, for immediate social network commenting, "Recent admission associated with aggression

to family,” and for extended social networks, “Has no other social networks due to anxiety.” However, the psychiatrist has not provided any further information that would demonstrate how, how often and to what degree his mental health conditions restrict him in relating to, communicating or interacting with others effectively.

Taking into account that a severe impairment has not been established, and considering the extent to which the psychiatrist has assessed the appellant's ability to manage his DLA as independent or unknown and the lack of information provided regarding those activities for which periodic assistance/support/supervision is indicated, the panel finds that the ministry was reasonable in determining that there was insufficient evidence to establish that, as a result of his impairment, her ability to perform the prescribed DLA is directly and significantly restricted, either continuously or periodically for extended periods.

Help with DLA

In the reconsideration decision, the ministry held that, as it has not been established that DLA are significantly restricted either continuously or periodically for extended periods, it cannot be determined that significant help is 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. That is, the establishment of direct and significant restrictions under section 2(2)(b)(i) is a precondition of meeting the need for help criterion. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

The panel notes that the psychiatrist in the MR and AR provides little information on the nature and type or frequency or duration of the help the appellant requires in managing his DLA. Since the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel finds that the ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA it cannot be determined that the appellant requires help to perform DLA.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful on appeal.