

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation, renamed the Ministry of Social Development and Poverty Reduction (the ministry) dated June 14, 2017 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that a medical practitioner confirmed that the appellant has an impairment that is likely to continue for at least 2 years.

The ministry was not satisfied that the appellant:

- has a severe physical or mental impairment.
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods.
- that the appellant requires assistance with daily living activities and requires significant help or supervision of another person to perform those activities.

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

Summary of Facts

Information before the ministry at reconsideration

- Application for Persons with Disabilities Designation, dated February 26, 2017 and received by the Ministry on the March 14, 2017. Included is a Medical Report (MR) dated February 27, 2017 which was completed by the appellant's general practitioner (GP) and an Assessor Report (AR) dated the March 7, 2017 completed by a Registered Nurse (RN)
- A letter dated May 23, 2017 from the appellant.
- The appellant's request for reconsideration dated May 31, 2017.

Information provided on appeal

- The appellants Notice of Appeal.
- Appellant's Submission dated September 6, 2017
- Letter from Health Authority dated June 19, 2017
- Geriatric Outreach Assessment dated June 30, 2017
- Health Authority, Patient Care Record for the period of October 26, 2016 to August 25, 2017.
- Psychiatrist Communication Sheet dated November 18, 2016

The Ministry did not object to the admission of additional evidence.

Summary of the Additional information provided by Appellant.

Letter from Health Authority dated June 19, 2017

The Health Authority letter indicates that the appellant experiences major impacts in the areas of: sleep disturbances; confusion, emotion, impulse control, attention (needs constant re-directing and reminders); executive (significant difficulties developing and executing simple tasks); memory (decreased episodic memory) and emotional hostility (outbursts of anger and inappropriate comments). That the appellant experiences moderate impact in the areas of: motivation and language. The appellant's impairment is mental and not physical and "within a year, this patient has gone from being fully independent to relying daily on his housemate for assistance". The letter also states that the appellants mental impairment is very disruptive with respect to his immediate social network and he avoids contact with his extended social network.

Geriatric Outreach Assessment dated June 30, 2017

The Geriatric Outreach Assessment goes into depth on what tests, specialists, medications, medical reports that effect the appellant's mental health. The Consultant, had concluded that 'does meet the criteria for a major neurocognitive disorder' and 'I do think his symptoms do relate to an underlying dementia syndrome which is yet to be defined.'

Health Authority Patient Care Record for the period of October 26, 2016 to August 25, 2017

The Appellant's Patient Record from the health authority, dating from October 26, 2016 to August 25, 2017, outlines a number of neurocognitive disorder/dementia consultations. Contained in this record is a letter dated August 25, 2017 from the GP with a diagnoses of "Frontal lobe early dementia, like a Pick's disease" with a list of medications prescribed to the Appellant and the effect of those prescriptions.

Psychiatrist Communication Sheet dated November 16, 2016

States that following a motor vehicle accident in February of 2016. The Appellant has little memory of the accident. That there were “severe changes to his personality”.

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit into evidence the information and records before the Ministry when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made.

The panel finds that the Additional Evidence was in support of the information and records before the Ministry and therefore admits the additional evidence.

Summary of evidence

Physical Impairment:

No physical impairment was reported by the Appellants GP or RN. The Appellant confirmed, at the hearing, that he did not suffer from a physical impairment.

Mental Impairment:

The MR indicates that a CT scan ‘revealed mild generalized cerebral parenchymal volume loss with frontal lobe predominance and mild chronic small vessel ischemia’. Significant deficits are identified for the following areas of cognitive and emotional function: consciousness, executive, language (expression), memory, perceptual psychomotor, motivation, impulse control, and attention or sustained concentration. The GP writes that “impairments are moderate and include memory loss (short term)”; decreased executive functioning; mood and concentration; and increased irritability. The full extent of the current illness which affects the appellant’s brain is pending further assessment from the consulting neurologist. The appellant states that he becomes confused easily and has found himself in situations inside and outside his residence.

In the AR, the RN identifies a major impact on daily functioning in the areas of consciousness, emotion and executive. Moderate impacts are identified for bodily functions, impulse control, insight and judgment, attention/concentration, memory, and motivation. No additional comments are provided.

The appellant states that he becomes confused easily. On his PWD application, the appellant completed the “Do you need help completing this application” with a Yes – Help organizing thoughts and putting them into writing.

The Geriatric Outreach Assessment dated June 30, 2017, states “does meet the criteria for a major neurocognitive disorder’ and “his symptoms do relate to an underlying dementia syndrome” prepared by Dr. M of the Geriatric Outreach Team. The report also states that the appellant meets the criteria for possible Lewy Body dementia and has been referred to the Alzheimer Clinic for further imaging. This is reflected by the GP in the MR.

DLA

The GP indicates that for DLA's, the appellant is continuously restricted with all DLA except basic housework and moving about indoors and outdoors. Assistance needed is described as help from family with cooking, meals, shopping, finances need to be managed by family. The GP also comments under the degree of restriction, that decreased executive functioning affects cooking & meal prep, shopping, finances and meds. The Appellant is unable to operate a motor vehicle and relies on others to assist is mobility to appointments, shopping or other functions. Cognitive difficulty with communication due to short term memory loss and needs assistance with histories from family members.

The AR indicates that the appellant is independent in the area of Personal Care and Basic housekeeping. The Appellant required continuous assistance—"requires constant prompting/reminding of appropriate choice/payment." with shopping and financial matters. The appellant requires periodic assistance with meal preparation. The appellant has somewhere between marginal and very disrupted functioning with his immediate social network and marginal functioning with his extended social network and he is unable to handle crowds.

In the Appellant's self-reporting he states:

- Forgets to take medication
- Has woken up in the mornings without memory of opening windows, doors, standing on a ladder 25 feet up while in darkness or has woken up standing in a bush.
- Unable to be around kids.
- Violent outburst of anger
- Unable to manager money or pay bills
- Locked himself out of his house or car.
- Attended doctor's appointment without memory of why he was there or missed appointments.
- Becomes confused very easily
- Has cooked since the age of 10 years and now there are days when I have trouble making soup.
- Unable to be around large crowds or people or kids.
- On April 20, 2016 he woke up at 6 AM in the States (USA) and until 10:30 AM I could not remember anything.

The ministry did not provide additional evidence on appeal, and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

- The appellant did not have a severe physical or mental impairment.
- the appellants daily living activities (DLA), in the opinion of a prescribed professional, were not directly and significantly restricted and
- as a result of those restrictions, the appellant does not require help to perform his DLA

Relevant Legislation

EAPWDA

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

EAPWDR

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 selfcare;

(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 authorized under an enactment to practice the profession of

(a) medical practitioner,

(b) registered psychologist,

(c) registered nurse or registered psychiatric nurse,

(d) occupational therapist,

(e) physical therapist,

(f) social worker,

(g) chiropractor, or

(h) nurse practitioner.

Severe Physical Impairment

As no physical conditions were diagnosed and the appellant does not argue he has a physical impairment, the ministry was reasonable in not being satisfied that a severe physical impairment is established.

Severe Mental Impairment

The appellant argues that his mental impairment is severe and as a result he requires daily assistance from others. The Ministry argues that while they recognize that the applicant does have some cognitive/emotional deficits and major impacts are indicated, the evidence does not establish the severity of that impact on the appellant's functioning. The Ministry states it required a more complete understanding of the severity of the condition once the assessment from the neurologist is

completed. The ministry notes that the CT scan is reported to identify “mild” conditions, the GP describes the appellant’s impairment as “moderate, and that comments are lacking by the GP & RN about cognitive and emotional deficits and impact on daily functioning. The ministry also notes that while continuous restrictions are identified with many DLA by the GP, the RN indicates that the appellant independently manages most DLA and that continuous assistance is only indicated for shopping and managing finances. Additionally, the RN reports that social functioning is either independently managed, or requires periodic assistance, and that when asked to describe the support/supervision required, the RN responded “n/a”. The ministry is therefore not satisfied that the information proved to date demonstrates a severe mental impairment.

While the ministry correctly notes that GP describes the appellant’s impairment as “moderate”, the GP also reports significant deficits in most areas of cognitive and emotional function and indicates continuous restrictions with the majority of DLA for which the appellant requires the assistance of his family or other persons. The RN also identifies a major impact on daily functioning in 3 areas as well as moderate impacts on 6 additional areas which the panel finds to be at odds with the level of independence with which the RN reports that DLA are managed. The panel concluded that the information from the GP and the RN respecting the significant deficits and impact on daily cognitive functioning is supported by the information from the physician who conducted the Geriatric assessment. That physician concluded that the appellant does meet the criteria for a major neurocognitive disorder. Based on this analysis, the panel concluded that the ministry was unreasonable in finding that a severe mental impairment was not established.

Restrictions in the ability to perform DLA

The appellants position is that he is significantly restricted in performing his DLA on a continuous basis as evidenced by the medical reports submitted with his application. He is dependent on family and others for assistance on a continuous or periodic basis to be able to complete the DLA and function day to day. His cognitive and emotional functioning with his immediate social network or extended social network is only marginal and he is isolating himself due to his violent outbursts of anger and irritability. He is unable to be in the company of children or large crowds of people without loss of tolerance of the situation.

The Ministry states that the MR and AR are contradictory in some areas related to the appellant’s ability to perform daily living activities (DLAs). Where the MR indicates in several areas the appellant is continuously restricted (meal preparation, management of medications, daily shopping, use of transportation and financial management), the AR indicates that the appellant is independent with most DLA, including medications and transportation and that only periodic assistance is required with meals. The ministry notes that the RN indicates that continuous assistance is needed in the areas of shopping, but notes that the appellant is also reported as taking significantly longer, so it is unclear if the appellant is capable of performing these tasks if given more time. The ministry recognizes that both the GP and RN agree that the appellant experiences a continuous restriction with financial management, but is not satisfied that this restriction, by itself, confirms an overall significant restriction in the appellant’s ability to perform DLA. The ministry also determined that the information respecting social functioning identified some impacts but that a significant restriction has not been confirmed. In particular, the ministry noted that “n/a” was the RN’s response when asked to describe help needed to maintain the appellant in his community and argued that if the restriction was significant, it would be expected that the appellant would benefit from help from a counsellor or other mental health professional. Both the MR and AR agree that assistance is required for daily living activities and is provided by family and others.

In the MR, the GP assessed as the Appellant as being continuously restricted in 6 DLA's. In the supplementary letter dated June 19, 2017, it is stated that the appellant experiences a major impact with Sleep disturbance – constant. Also identified are: confusion – needs frequent daily task reminders by house mate; Emotion – volatile, angers and verbally lashes out frequently; Impulse control – unable to keep his comment and behaviours under control; Attention – worsening, requires constant re-direct and reminders; Memory – decreased episodic memory; Emotional Hostility – increase in outbursts of anger and hate; in the area of Motivation – extreme apathy; and, Language – constant difficulty finding the correct words. Under the DLA's the GP notes that "Within a year, this patient has gone from being fully independent to relying daily on his housemate for assistance" for Personal Care, Basic Housekeeping, Shopping, Meals, Finance and Transportation.

As previously mentioned, the panel considered the major and moderate impacts on the majority of aspects of daily cognitive and emotional functioning identified by the RV to be somewhat at odds with the RN's assessment of the appellants DLA.

Based on the RN's assessment of a major impact on daily functioning in most areas of cognitive and emotional functioning, together with the GP's assessment of significant deficits with cognitive and emotional functioning that result in continuous restrictions in the appellant's ability to manage most DLA, the panel concludes that the ministry was unreasonable to determined that direct and significant continuous restrictions in the ability to perform DLA were not established

Help to perform DLA

The appellant's position is that due to his mental impairments, he requires the daily assistance and supervision of his family or others to manage his DLA.

The Ministry acknowledges that the appellant has certain limitations as a result of his medical condition but finds that because the information provided does not establish that the impairment significantly restricts daily living activities continuously or periodically for extended periods it cannot be determined that significant help is required from other persons. No assistive devices are 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, a person requires help to perform those activities. 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 finds that the information establishes that the appellant requires daily assistance from another person to manage the majority of his DLA. Accordingly, the panel concludes that the ministry unreasonably determined that the appellant does not require the significant assistance of another person to perform DLA.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was not reasonably supported by the evidence, and therefore the Panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.