

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 12, 2017, which 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 the *Employment and Assistance for Persons with Disabilities Act*, Section 2. Specifically, the ministry determined that the information provided did not establish that in the opinion of a prescribed professional the appellant's severe mental impairment:

- (i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, she requires help to perform those activities.

The ministry determined that the appellant satisfied the other 3 criteria: she has a severe mental impairment, has reached 18 years of age and in the opinion of a medical practitioner her impairment 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

### **Evidence before the Ministry at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's self report (SR) dated January 21, 2017, a medical report (MR) and an Assessor Report (AR) dated June 11, 2017, both completed by the appellant's psychiatrist (Dr X), who has known the appellant since May 2, 2016 and who has seen the appellant 2 to 10 times in the past 12 months.

The evidence available at reconsideration also included the following documents:

- appellant's Request for Reconsideration received by the ministry on August 28, 2017 in which the appellant writes that:
  - her anxiety and depression have substantially impacted her daily life;
  - although she lives independently she does not do it successfully;
  - her home is poorly taken care of, with poor cleanliness and dishes piled up for weeks on end, and she is ashamed to ask for help;
  - she finds it difficult to attend appointments or scheduled plans, and it keeps her from sleeping days before the scheduled event.
- supplementary letter to the ministry from Dr. X dated August 22, 2017, which includes the following information:
  - the appellant's moderate to severe anxiety disorder has interfered with her ability to leave home, establish and maintain relationships and use public transportation;
  - she has suffered anxiety attacks of up to an hour's duration, with symptoms including tremors, rapid heart rate, breathlessness, stomach cramps, a need to flee;
  - despite trials of several medications she continues to have symptoms which cause ongoing disability;
  - she has extremely poor stress tolerance;
  - her chronic pain (consistent with Fibromyalgia) has a significant impact on her mood disorder; and
  - as a result of her chronic depression, anxiety and pain she has been unable to maintain employment over the past 5 years.

The PWD application is summarized as follows:

### **Diagnosis**

In the MR Dr. X diagnoses the appellant as suffering from chronic depression/dysthymia, anxiety disorder/social phobia, query Fibromyalgia and episodic THC use.

### **Physical Impairment**

In the MR the Dr. X reported that the appellant can walk 4+ blocks unaided, climb 5+ steps unaided and has no limitation in remaining seated. Her ability to lift is unknown. He notes that other than asthma the appellant is generally in good physical health but complains of vague physical pain.

In the AR Dr. X reported that the appellant is independently able to manage all areas of mobility and physical ability, and does not require prostheses or aids to help with physical functioning.

### **Mental Impairment**

In her SR the appellant states that she has always suffered from anxiety and by the age of 19 it had escalated beyond her control. Medication has helped but has not been enough to help with employment anxieties. Her anxiety has created problems with depression and insomnia, making it impossible to hold a job or succeed in the workplace.

In the MR Dr. X noted that the appellant's psychiatric symptoms began during her mid/late teens and progressed during her adulthood to the point that she was no longer capable of finding and maintaining employment. Her symptoms have remained chronic despite trials with a number of different psychotropic medications. Dr. X indicated that the appellant has significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration.

In the AR Dr. X noted that the appellant suffers from profound social anxiety and low grade depression. He indicated that the appellant's mental impairment has the following impacts on cognitive and emotional functioning:

- major impact in the area of emotion;
- moderate impact in the areas of attention/concentration and motivation;
- minimal impact in the areas of executive functioning; and
- no impact in the areas of bodily functions, consciousness, impulse control, insight and judgement; motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems.

### **Daily Living Activities (DLA)**

In the MR Dr X noted that the appellant is continuously restricted with social functioning (*"Her social anxiety has resulted in her having most of her social contact with family members. She spends most of her time isolating in her trailer"*) and is periodically restricted in daily shopping, mobility outside the home and use of transportation (*"Her anxiety attacks and social anxiety can prevent her from going out in the community. She has difficulty using public transportation"*). Dr. X adds that for the past 5 years the appellant has had extremely poor employment functioning and has been totally disabled for the past 2 years. Her future employment prognosis is poor.

In the AR Dr. X described the appellant as independent in all listed aspects of personal care, basic housekeeping, shopping, meal planning and cooking, paying rent and bills, medication management and transportation, with the following exceptions:

- she requires periodic assistance from another person in going to and from stores (*"due to social anxiety"*);
- she requires periodic assistance from another person in using public transit (*"rarely uses public transportation due to her severe anxiety and social phobia"*).

In the area of social functioning Dr. X indicated that the appellant is independent in making appropriate social decisions, interacting appropriately with others and securing assistance from others. She requires periodic support/supervision in developing and maintaining relationships and dealing appropriately with unexpected demands. She has good functioning with her immediate social network but marginal functioning (little more than basic acts to fulfill basic needs) with extended social networks. Dr. X comments: *"[The appellant] depends heavily on her family for emotional support and to deal with stressors when they arise."*

### **Assistance Required**

In the MR Dr. X did not complete the question: "What assistance does your patient need with DLA?"

In the AR Dr. X indicated that the appellant receives help from family members. She does not require an assistive device or assistance animal.

### **Additional Information received after Reconsideration**

The appellant submitted a letter with her Notice of Appeal dated September 21, 2017, summarized as follows:

- prior to reconsideration she did not sufficiently explain her restrictions on DLA;
- her dishes pile up for weeks on end, and the cleanliness of her home is very poor;
- she has trouble asking for help because she doesn't want anyone to see the way she lives;
- at times she remains at home for up to 72 hours, and eats cans of soup;
- she finds it difficult to plan or prepare a full meal;
- her personal care is at a bare minimum;
- her yard is unkempt and overgrown, and she leaves many outdoor jobs unfinished;
- she is reluctant to engage in conversation with neighbours and reluctant to ask them for help;
- she manages her medication independently;
- she is finding it difficult to meet all her monthly expenses;
- she depends heavily on her family for emotional support. Her mother usually accompanies her during grocery shopping and tries to make sure that she buys groceries when she needs them; and
- her father helps her with finances and major life decisions because she gets overwhelmed and ignores the problems until they become worse.

### **Additional Information at the Hearing**

At the hearing the appellant repeated much of what was contained in her letter of September 21, 2017 but added the following:

- most of her activities involve seeing family members, including her mother, stepsister, sister and niece;
- following a visit to family she comes home and sleeps;
- typically, she sleeps until 1 – 3 pm and then curls up in front of the TV. She tries to tackle at least one household chore each day;
- she doesn't remember the last time she cleaned her bathroom;
- she has no physical barriers to cooking, but usually cooks frozen or packaged meals;
- she does her laundry on a weekly basis; and
- she usually showers daily, but doesn't do much with her hair or makeup.

### **Admissibility of Additional Information**

The ministry representative objected to the admissibility of the appellant's letter of September 21, 2017 on the grounds that it contained information that was not available to the ministry at reconsideration. The panel finds that the letter submitted with the Notice of Appeal and the appellant's oral evidence at the hearing is admissible under EAA Section 22 (4)(b) as evidence in support of the information that was before the ministry at reconsideration. The information provided in the letter and at the hearing was directly related to, and provided elaboration on, the information provided by the appellant in Section 3 of her request for reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for PWD designation. The ministry determined that the appellant did not meet all of the required 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 in the opinion of a prescribed professional the appellant's severe mental impairment:

- (i) directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions, she requires help to perform those activities.

The relevant legislation is as follows:

### 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.

### 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 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.

At reconsideration the ministry found that the information established that the appellant suffers from a severe mental impairment, but did not establish that:

1. the impairment significantly restricts DLA either continuously or periodically for extended periods, and
2. because direct and significant restriction of DLA was not established it could not be determined that significant help was required from other persons.

### **1. Restrictions in Ability to Perform DLA**

The appellant argues that her severe mental impairment directly and significantly restricts her ability to perform DLA.

The ministry's position is that insufficient evidence was provided by the prescribed professional to establish that the appellant's impairment significantly restricts DLA either continuously or periodically for extended periods.

#### Panel Decision

The panel notes that in her SR, request for reconsideration, letter of September 21, 2017 and oral evidence the appellant provided a detailed description of the several ways in which her DLA are directly and significantly restricted as a result of her severe mental impairment. She manages only the most basic level of hygiene, is unable to maintain her home and yard and eats basic prepared and frozen meals because she finds it difficult to plan and prepare meals. She finds it difficult to leave her home without the support of a family member, and cannot utilize public transit due to anxiety and panic attacks.

However, the legislative requirement respecting DLA set out in Section 2 (2) (b) of the EAPWDA specifies that the minister be satisfied that as a result of a severe physical or mental impairment a person is, *in the opinion of a prescribed professional*, directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods. Consequently, while other evidence may be considered for clarification or support, the ministry's determination as to whether or

not it is satisfied is dependent upon the evidence from “prescribed professionals”. DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application. The MR and AR provide the opportunity for the prescribed professional to check marked boxes and provide additional comments when describing the nature, frequency and degree of any restriction(s) to DLA.

In the MR, Dr. X does not answer the question in Section 2-E asking if the appellant’s impairment directly restricts her ability to perform DLA. When commenting on the periodic restrictions to shopping, mobility outside the home and use of transportation Dr. X states: “*anxiety attacks and social anxiety can prevent her from going out in the community*”. He does not comment on the degree, frequency or duration of the anxiety episodes. In his additional comments Dr. X addresses the poor employment functioning and poor prognosis regarding future employment, but employability is not one of the criteria included in the PWD legislation.

In the AR, Dr. X described the appellant as independent in all listed aspects of personal care, basic housekeeping, shopping, meal planning and cooking, paying rent and bills, medication management and transportation except that she requires periodic assistance when going to and from stores and using public transit. He does not describe the degree and duration of support/supervision required as requested on the AR form. In the area of social functioning Dr. X does not address the degree and duration of the periodic support required by the appellant in developing and maintaining relationships and dealing appropriately with unexpected demands. Although he notes that the appellant depends heavily on her family for emotional support and dealing with stressors as they arise, he does not describe the frequency or degree of assistance required.

In his August 22, 2017 letter to the ministry Dr. X notes that the appellant’s anxiety disorder has interfered with her ability to leave home and maintain relationships, but does not provide additional details as to the frequency or severity of the interference. He reiterates that she has been unable to maintain employment for the past 5 years, which as stated earlier is not a consideration contained in the PWD legislation.

In conclusion, the panel finds that the ministry reasonably determined that the information provided by the prescribed professional was insufficient to establish that the appellant’s impairment significantly restricts her ability to perform DLA either continuously or periodically for extended periods.

## **2. Help in Performing DLA**

The appellant argues that she requires the significant help of the members of her family to perform her DLA.

The ministry’s position is that because it has not been established that DLA are significantly restricted it cannot be determined that significant help is required from other persons.

### *Panel Decision*

The appellant and Dr. X both indicate that due to her severe anxiety and chronic depression the appellant periodically requires significant help from family members to perform DLA, particularly those activities that require the appellant to go out into the community.

However, Section 2(2) (b) (ii) of the EAPWDA can only be met if, as a result of direct and significant restrictions with ability to perform DLA, the person requires help. In other words, the establishment of direct and significant restrictions to DLA is a precondition of the need for help criterion. As the panel

found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform DLA as required by section 2(2)(b)(ii) of the EAPWDA.

**Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation because the legislative criteria were not met, was reasonably supported by the evidence, and confirms the decision. The appellant is not successful on appeal.