

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of Ministry of Social Development and Poverty Reduction (the ministry), dated September 22, 2017, in which the ministry found that the appellant had not met all 5 statutory requirements set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act* for persons with disabilities (PWD) designation.

The ministry was satisfied that:

- the appellant has met the age requirement;
- the appellant has a severe mental impairment;
- the appellant's severe impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (DLA) continuously or periodically; and
- as a result of those restrictions, the appellant requires help to perform DLA.

The ministry was not satisfied that the appellant's impairment, in the opinion of a medical practitioner, is likely to continue for at least two years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 2

PART E – Summary of Facts

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

- The appellant's **PWD Application**. The Application included:
 - A Medical Report (MR) dated 15 June 2017, completed by a medical doctor (MD) who is psychiatry specialist and has known the appellant for 7 months. The MD has seen the appellant 2-10 times in the past 12 months.
 - An Assessor Report (AR) dated 15 June 2017, completed by the MD.
 - A Self Report (SR) dated 08 June 2017, signed by the appellant with a ticked box next to the statement: "I choose not to complete this self-report".
- A **Request for Reconsideration** (RFR) dated 11 September 2017, in which the appellant states: *My appeal is based on the fact that [the MD] has focused on the incident that prompted me to start attending sessions with him and not my complete history with mental illness. I have suffered severe depression and anxiety since the age of 11. I have had many suicide attempts and continue to suffer severe anxiety attacks, in the public, home and workplace. My condition has been a barrier to maintain employment or any completion of tasks. Since Dec. 2016 I have attended regular sessions with mental health and [the MD] with no significant change. I feel with the amount of time passed (Dec. 2016-present) and my past mental health issues that your decision to deny my application based on not enough evidence that this will last past 2 years didn't have my whole history nor events since Dec. 2016 including witnessing the aftermath of a fatal shooting.*

The panel will first summarize the evidence from the PWD Application as it relates to the sole legislative criterion at issue in this appeal.

Duration

In the MR, the MD has indicated that the appellant's impairment is not likely to continue for two years or more. The MD has provided the following comments: *Though it has continued for 7 months, I hope it will resolve over the next 2 years. That being said, he was only modestly able to function when well.*

Notice of Appeal

In his Notice of Appeal (NOA) dated 2017, the appellant gives as Reasons for Appeal: *The psychiatrist is focusing solely on one incident (my door being kicked in), not the fatal shooting on my doorstep or any of my prior issues. It took me all week to fill this out and bring it in due to anxiety and not feeling safe in the area of the welfare office.*

The Hearing

At the hearing, the appellant explained that he understands that the reason for denial of his PWD application was because the doctor said he hopes it won't last for two years. The appellant explained that he disagrees with the doctor's assessment. He explained it has already been about a year since the incident where his door was kicked in and he went to hospital. He explained that things are not better, nothing has changed. He stated that he doesn't go out alone unless he has to, and then it is only to get prescriptions or food. He explained that he doesn't go out with friends and doesn't have many friends anymore.

The appellant also explained that he has had other issues before and after this incident (the appellant's door being kicked in) that the doctor doesn't seem to want to focus on. The appellant explained that he believes that the psychiatrist's only focus is on the incident with door being kicked in and the appellant being unable to return to work afterwards. The appellant stated that he believes the doctor is basing his opinion on this one specific incident and nothing before or after. He explained

that he suffered physical and psychological abuse as a child and attempted suicide in grade 6. The appellant described being a “cutter” during his teens and early twenties and was able to stop when he began smoking marijuana. He also explained that there was a shooting at his building in April.

The ministry relied on the reconsideration decision.

Admissibility of new information

The panel finds that the information provided by the appellant in the Notice of Appeal is consistent with and, therefore, in support of the information and records before the ministry at reconsideration. The panel admits this information in accordance with section 22(4) of the *Employment and Assistance Act*.

The panel finds that the information provided by the appellant at the hearing is consistent with, and provides some elaboration on, information and records before the ministry at reconsideration. The panel admits this information in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision, which determined that the appellant did not meet one 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's severe mental or physical impairment, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

The ministry was satisfied that:

- the appellant has met the age requirement;
- the appellant has a severe mental impairment;
- the appellant's severe impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (DLA) continuously or periodically; and
- as a result of those restrictions, the appellant requires help 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 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.

Duration

For PWD designation the legislation requires, at section 2(2)(a), that the person have a severe mental or physical impairment that in the opinion of a medical practitioner or nurse practitioner is likely to last for at least 2 years. The legislation makes it clear that the opinion of a medical practitioner or nurse practitioner, in this case the appellant's MD, is necessary for this criterion to be met.

The ministry found in its reconsideration decision that the appellant had not met this criterion. In reaching this conclusion, the ministry noted that when asked if the appellant's impairments are likely to continue for two years, the MD indicated "no". The ministry also made reference to the comments from the MD in the MR, in which he stated: *though it has continued for 7 months, I hope it will resolve over the next 2 years. That being said, he was only modestly able to function when well.*

The panel notes that the information provided by the MD in the MR is that the appellant's impairment is not likely to continue for two years. The panel acknowledges the appellant's disagreement with this assessment and his argument that the MD has not considered events before or after one particular incident. However, the legislation is clear that the assessment of anticipated duration must be in the opinion of a medical practitioner or nurse practitioner. As such, the panel finds that the ministry's reconsideration decision on this criterion was reasonable.

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 confirms the ministry's decision. The appellant is not successful on appeal.