

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated 6 November 2017, which determined that the appellant was not eligible for persons with disabilities designation (PWD) because he had not met all of the legislated criteria under section 2 the *Employment and Assistance for Persons with Disabilities Act*. The ministry determined that the appellant had demonstrated that 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. The ministry further determined that the appellant had not demonstrated that he has a severe mental or physical impairment; the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and as a result of direct and significant restrictions, he requires help 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

PART E – SUMMARY OF FACTS

Evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Application

The Application contained:

- A Medical Report (MR) dated 9 August 2017, completed by the appellant's general practitioner (GP) who has seen the appellant 2-10 or more times in the past 12 months and has known the appellant for 1 year.
- An Assessor Report (AR) dated 9 August 2017, completed by the appellant's GP.
- A Self Report (SR) dated 5 August 2017, completed by the appellant.

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

Diagnoses

In the MR, the GP specifies the following diagnoses as related to the appellant's impairment:

- Paranoid schizophrenia
- Anxiety disorder with agoraphobia

In the Health History section of the MR, the GP provides the following commentary: *he has been hospitalized in [another province] and also here. Frank psychotic behaviour in [another province]. Dx (diagnosis) paranoid schizophrenia. Anxiety state with agoraphobia.*

In the AR, the GP has responded to the question "What are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities?" with the comments: *psychologic illness which makes functioning in society difficult.*

Severity of mental impairment

MR:

The GP indicates that the appellant suffers from paranoid schizophrenia and anxiety disorder with agoraphobia.

The GP indicates that the appellant has difficulties with communication and provides the commentary: *he has some difficulty conceptually – concrete thinker.*

The GP indicates that the appellant has significant deficits with cognitive and emotional functioning in the areas of executive, memory, psychotic symptoms, emotional disturbance and attention. The GP comments: *these accompany the psychiatric disorder.*

AR:

The GP assesses the appellant's ability to communicate as satisfactory in all areas (speaking, reading, writing and hearing).

The GP assess the appellant's cognitive and emotional functioning as having minimal impacts on daily functioning in the area of bodily function, consciousness, motor activity, language, and other emotional or mental problems. Moderate impacts on daily functioning are assessed in the areas of emotion, impulse control, insight and judgement, attention/concentration, executive, memory, motivation, psychotic symptoms and other neuropsychological problems.

SR:

The appellant reports that he has really bad anxiety and depression that get in the way of life. He has also been told he may have PTSD. He reports being nervous and uncomfortable around people, which affects him going out and working. He reports having panic attacks all the time and would not be able to cope without his medication. He

states that he has tried to work but his anxiety causes him to miss work and he gets fired; he has lost 4 jobs in the past 10 months and has lost his home. The appellant also reports bad sleeping conditions, not wanting to be in public, low/minimal self esteem, loss of focus and concentration, bad communication and other things.

Severity of physical impairment

MR:

For functional skills, the GP indicates that the appellant can walk 4+ blocks unaided, climb 5+ steps unaided, has no lifting limitations, and remain seated without limitation.

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

AR:

The GP assesses the appellant as independent with walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding.

SR:

The appellant does not provide any information relating to a physical impairment.

Ability to perform DLA

MR:

The GP indicates that the appellant has not been prescribed medication that interferes with his ability to perform DLA.

The GP indicates that the appellant requires continuous assistance with mobility outside of the home and use of transportation and periodic assistance with personal self-care, management of medications, and management of finances. The GP indicates that it is unknown whether the appellant's ability to perform basic housework and daily shopping are restricted. The GP indicates that the appellant's social functioning is restricted but does not indicate whether the restriction is periodic or continuous. The GP indicates that the appellant's ability to perform mobility inside the home is not restricted.

AR:

The GP indicates that the appellant is independent with all activities in the following listed areas: personal care; basic housekeeping; shopping; and transportation.

The GP assesses the appellant as independent with some meals activities (meal planning and safe storage of food) and requires periodic assistance with others (food preparation and cooking). The GP indicates that the appellant requires periodic assistance with all pay rent and bills activities (banking, budgeting and pay rent and bills). The GP assess the appellant as independent with the medications activity of filling/refilling prescriptions and indicates that he requires periodic assistance with taking as directed and safe handling and storage.

SR:

The appellant does not provide any information relating to the DLA listed in the PWD application.

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

MR:

The GP indicates that it is unknown whether the appellant's ability to perform daily shopping is restricted.

The GP indicates that continuous assistance is required with transportation.

The GP indicates that the appellant's ability to perform self-care, management of medication and management of finances is periodically restricted.

AR:

The GP indicates that the appellant is independent with all personal care, the shopping activities of readings labels, making appropriate choices, and paying for purchases; the meals activities of meal planning and safe storage; the medication activity of filling/refilling prescriptions; and the transportation activity of using transit schedules and arranging transportation.

The GP indicates that the appellant is periodically restricted with food preparation and cooking; all pay rent and bills activities; and the medications activities of taking as directed and safe handling and storage.

*Relate to, communicate or interact with others effectively***

MR:

The GP indicates that the appellant has difficulties with communication.

The GP indicates that the appellant's social functioning is restricted.

The GP has provide the Additional Functional Skills comments:

- *he is anxious in public;*
- *he shies away from confrontation;*
- *would avoid going to work;*
- *has difficulty with interpersonal relations and communication;*
- *poor self-esteem.*

AR:

The GP assesses the appellant's ability to communicate as satisfactory in all areas. In assessing social functioning DLA, the GP indicates that the appellant is independent with appropriate social decisions and requires periodic support/supervision to develop and maintain relationships; interact appropriately with others (*has difficulties talking with others*); deal appropriately with unexpected demands (*does not deal well with changes*); and secure assistance from others. The GP indicates that the appellant has marginal functioning in both immediate social networks and extended social networks and comments: *has few*.

SR:

The appellant states that he has bad communication.

Help required

MR:

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

The GP comments that the appellant needs assistance to arrange his life, find a suitable job and accommodation.

AR:

The GP does not describe the type and amount of assistance required for any DLA.

The GP indicates that health authority professionals provide help required for daily living activities.

In response to the prompt to specify what help is required but there is none available, the GP answers: *community service for advice/decision making*.

The GP indicates "N/A" in relation to assistive devices required by appellant.

The GP has not responded to whether or not the appellant has an assistance animal.

2. Request for Reconsideration

In the Request for Reconsideration, dated 23 October 2017, the appellant wrote that his panic/anxiety attacks are very severe and not under his control, causing him to lose several jobs. This has put him in a position where he cannot keep a job and has lost several in the past few months. He is on medication and this is a serious problem for him. He has tried alternatives with no success. His anxiety has put him on the street; as a result of losing work, he has lost his home. This is an example of how serious this problem is for him. He hopes the reconsideration is passed. He plans to volunteer while on disability to test his anxiety and panic attacks and get back into the work force.

3. Reconsideration Documents

A letter dated 23 October 2017, from the appellant's GP, which stated: *[Appellant] suffers from an anxiety disorder which causes him to avoid situations where he feels uncomfortable. This will include his not going to work if he feels challenged. He has lost 4 jobs in he past few months because of this anxiety reaction. He is in need of support and hopefully this situation will become less of a factor in his life in the future.*

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal dated 21 November 2017, the appellant wrote as reasons for appeal: *They claim that me being not fit to work does not interfere with my daily living. Unfortunately I strongly disagree.*

Hearing Submissions

Appellant

The appellant explained that he disagrees with the ministry about work not being a part of daily living; he argued that a job is a major part of daily living. He stated that he told the ministry he has had trouble finding work and holding a job and he has been on the street for 5 months. The appellant explained that he cannot control his anxiety and panic attacks and this affects his life, his relationships, employment and his living situation. He explained that he is frustrated and upset because he has a serious condition and is on a lot of medication; he has his doctor's support and thought this would help. He is in a really bad spot. He explained that he has a hard time being around people and talking about his conditions; he needs help to get his life back together.

Ministry

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that there is no information before it that would require an admissibility determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

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 PWD designation 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;
- that the appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, he requires help to perform those activities.

The following section of the *EAPWDA* applies to this appeal:

Persons with disabilities

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 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).

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 the evidence, including that of the appellant. Diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment.

Severity of physical impairment

In the reconsideration decision, the ministry determined that it was not satisfied that this criterion had been met. In making this determination, the ministry considered the functional skills assessment by the GP noting that the appellant is able to walk 4+ blocks unaided, climb 5+ unaided, has no limitations with lifting and can remain seated without limitation.

The panel finds that the ministry's determination was reasonable. The panel notes that the appellant has not argued that he suffers from a severe physical impairment in the request for reconsideration submission, notice of appeal or at the hearing. The panel notes that the information provided by the GP in the MR and AR does not speak to a physical impairment or provide a diagnosis relating to a physical impairment. The panel notes that the GP's assessments of the appellant's functional capacity and mobility and physical ability reflect a physically independent individual who has some difficulty with mental functioning. The panel finds that the evidence reasonably supports the ministry's determination that a severe physical impairment has not been established.

Severity of mental impairment

In the reconsideration decision, the ministry found that the appellant does not have a severe mental impairment. The ministry noted that the GP's assessment in the MR indicates that the appellant has difficulties with communication and in the AR indicates that the appellant's communication skills are satisfactory. The ministry considered that in the MR the GP indicates significant deficits with cognitive and emotional functioning in the areas of executive, memory, psychotic symptoms, emotional disturbance and attention/sustained concentration and in the AR the GP assesses moderate impacts in the areas of emotion, impulse control, insight and judgement, attention/concentration, executive, memory, motivation, psychotic symptoms and other neuropsychological problems and minimal impacts in the areas of bodily functions, consciousness, motor activity, language, and other emotional or mental problems. The ministry noted that no major impacts were indicated. The ministry also considered the GP's assessment of the appellant's ability to manage DLA and concluded that the assessment in the AR of the appellant's ability to make decisions about personal activities care and finances did not indicate that his abilities were severely restricted. As well, the ministry considered the GP's assessment of the appellant's social functioning abilities. In this reconsideration, the ministry noted that the GP has indicated that the appellant requires periodic assistance/supervision with some areas of social functioning but did not indicate the nature frequency or duration of support/supervision the appellant receives. The ministry noted that the GP has indicated that the appellant has marginal functioning in his immediate and extended social networks. The ministry also considered that the GP did not provide information in relation to the presence of any safety issues or support/supervision required to maintain the appellant in the community. The ministry concluded that the information provided did not establish a severe impairment in mental functioning.

The panel notes that the appellant has argued at reconsideration and on appeal that he suffers from severe anxiety and panic attacks that are beyond his control and have impacted his life and his ability to maintain employment and housing. He argued that he has his doctor's support and is taking several medications; he has tried to cope and cannot. The panel finds that the ministry's determination that a severe mental impairment has not been established was reasonable. The panel finds that while the information provided in the PWD application, SR, Request for Reconsideration and at the hearing with respect to the appellant's mental impairment reflect an individual with serious mental health diagnoses the information provided does not sufficiently or coherently reflect a severe impairment resulting from these diagnoses. The appellant's evidence at the hearing is consistent with this conclusion. The panel notes that the information provided by the appellant and the GP emphasize the appellant's inability to work and, as noted by the ministry in the reconsideration decision, work or employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the EAPWDA, nor is it listed among the prescribed daily living activities in section 2 of the EAPWDR. The panel also notes the absence of safety concerns or a need for support or supervision to maintain the appellant in his community. The panel finds that the evidence reasonably supported the ministry's conclusion that the information provided does not establish a severe mental impairment.

Direct and significant restrictions in the ability to perform DLA

The legislation specifies that the minister assess direct and significant restrictions in the ability to perform DLA in consideration of the opinion of a prescribed professional, in this case the appellant's GP. This does not mean that other evidence should not be considered, but it is clear that a prescribed professional's evidence is fundamental. At issue in this assessment 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 applicable to a person with a severe mental or physical impairment.

The ministry was not satisfied that the appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA. In reaching this conclusion, the ministry noted that the appellant has not been prescribed medication or treatment that impacts his ability to perform DLA. The ministry noted that the GP had completed section E of the MR as well as the AR and that the assessments were not entirely consistent with one another. The ministry noted that in the MR the GP indicated that the appellant requires continuous assistance with mobility outside of the home and use of transportation but in the AR the GP indicated that the appellant is independently able to manage shopping and use of public and private transportation. The ministry considered the GP's assessment in the MR that the appellant requires periodic assistance with personal self care, medications and finances and in the AR indicates that the appellant requires periodic assistance with finances and two aspects of medications but is independent with all aspects of self care. The ministry considered that the GP indicates in the AR that the appellant requires periodic assistance in several activities (food preparation, cooking, banking, budgeting, paying rent and bills, taking medications as directed and safe handling and storage of medications). However, the ministry noted that the GP did not provide information about the nature frequency or duration of assistance required and concluded that this makes it difficult to determine if the assistance required is for prolonged periods of time and may be considered significant. The ministry noted that the appellant is assessed as independent in all other activities of daily living, and noted the absence of additional information about DLA at reconsideration.

The panel finds that the ministry's determination that the assessments provided by the GP do not establish that a severe impairment significantly restricts the appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The panel notes that the GP has provided incomplete, and in some cases inconsistent, assessments of restrictions to the appellant's ability to perform DLA in the MR and AR. The panel notes that the legislation requires that where restrictions are assessed as periodic they must be restricted for extended periods. As such, the panel finds it appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met. The panel notes that this information has not been provided in the assessments completed by the GP. The panel also notes that the appellant did not argue at the hearing or at reconsideration that his ability to perform any of the listed DLA is restricted. Rather, the appellant stated that he disagrees that working is not an aspect of daily living. As such, the panel concludes that the evidence reasonably supported the ministry's determination on this criterion.

Help Required

The legislation 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. 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, 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 determined that because it had not been established that appellant's ability to perform DLA were significantly restricted, it cannot be determined that significant help is required. The information provided by the GP is that the appellant needs assistance to arrange his life, find a suitable job and accommodation. The GP also stated that the appellant requires, but does not receive, assistance from community services for advice/decision making. The appellant did not argue that he requires assistance to perform any listed DLA. As noted above, the panel finds that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established. As such, 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, determining that the appellant had not met all of the legislated criteria for PWD designation, was a reasonable application of the legislation in the circumstances of the appellant and reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.