

### **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 24 January 2018 that denied the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet 1 of 5 of the required criteria for PWD designation set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act*. Specifically, the ministry determined that the information provided did not establish that the appellant’s impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

The ministry determined that the appellant had satisfied the other 4 criteria:

- I. he has reached 18 years of age;
- II. he has a severe mental or physical impairment that in the opinion of a prescribed professional;
- III. directly and significantly restricts his ability to perform daily living activities (DLA) either continuously, or periodically for extended periods; and
- IV. as a result of those restrictions, she 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 and 2.1.

## **PART E – SUMMARY OF FACTS**

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

### **PWD Designation Application**

- The appellant's PWD Designation Application, which included:
- A Self Report (SR) dated 28 August 2017.
- A Medical Report (MR) dated 28 August 2017, completed by a general practitioner and addiction medicine specialist (the specialist) who has known the appellant for 13 months and seen him 11 or more times in the past 12 months.
- An Assessor Report (AR) dated 19 July 2017, completed by a social worker (SW) who has known the appellant since March 2017 and seen him 11 or more times in the past 12 months.
- A Cardiology Services referral form (undated), from the specialist requesting a Resting ECG for the appellant.

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

### Duration

#### **MR**

In response to the question: Is the impairment likely to continue for two years or more from today? the specialist has ticked "No" and provides the commentary: *Conditions are lifelong but impairment should not be.*

#### **AR**

In the Additional Information section of the AR, the SW writes: *I have consulted with [the GP] who saw the appellant extensively for over 1 year. She agreed that his depression has been longstanding and that many different treatments were tried in the course of her work with him. She also agrees that the appellant needs a long term plan of recovery [and] regular, consistent treatment of his depression [and] severe anxiety. [Staff] at the [recovery house] recommend that the appellant apply for PWD due to the longstanding nature of his depression [and] anxiety.*

#### **SR**

In the SR the appellant explains his medical conditions and their impacts on his ability to function as well as the support/assistance he requires.

### **Request for Reconsideration**

- The appellant's Request for Reconsideration (RFR) dated 21 December 2017. Accompanying the Request were the following documents:
- A letter from the appellant of the same date. In the letter the appellant states that he feels that he does meet the requirements for PWD. He explains that he noticed there were some blank pages in the application and he has attached 3 letters that provide more information about his condition. He explains that he has suffered with depression and

anxiety for many years, and continues to struggle despite treatment. The appellant describes the symptoms he suffers from as well as the treatment and supports he requires.

- A letter from the appellant's former general practitioner (the GP) dated 22 November 2017. The GP states that she was his family physician before he moved to the community where he now resides and since then she has remained peripherally involved in his care through updates on his condition from the appellant and his counselor. The GP explains that she saw the appellant more than 40 times between March 2015 and April 2016. She explains that he suffered from a longstanding severe major depressive disorder with major disruptions to his ability to function and perform daily living activities. Despite a variety of treatment options, his condition did not improve markedly. The GP states that she has no doubt that during the years she knew the appellant, he met all of the PWD criteria. The GP explains that since his move to another community, she understands that the appellant has better control over addiction issues but continues to suffer from depression that impacts his daily living activities in a similar way. The GP states that the appellant appears to continue to have major depressive disorder despite treatments and therapies.
- A letter from the appellant's social worker (SW) dated 29 November 2017. The SW states that she is the SW who completed the AR in the appellant's PWD application and supports his RFR. The SW explains that she is a trauma therapist for the appellant and has seen him weekly since March 2017. As well, she has discussed the appellant's daily support needs with the staff at the recovery house where the appellant resides. The SW states that the appellant requires regular support to address his ongoing depression and significant trauma from his past. The SW explains that the appellant struggles significantly on a daily basis. The SW states that the appellant's negative thoughts are severe and will take more than two years for the appellant to begin to experience improvement. The SW states that the appellant requires continuous support and ongoing therapy.
- A letter from an employee of the recovery house where the appellant resides dated 20 November 2017. The writer explains that the appellant has resided at the recovery house on two occasions. She states that he has a long history of substance use and consistently shows all of the symptoms of major depressive disorder. The writer explains the impacts of these conditions on the appellant's functioning.
- A Patient Medical History Report from a pharmacy in the appellant's community, printed on 17 November 2017. The report is a listing of prescriptions, including their fill dates and status.

### **Notice of Appeal**

In the Notice of Appeal, dated 30 January 2018, the appellant provides the following reasons for appeal: *Because I know my impairment will last longer than two years.*

### **Additional Documents**

Prior to the hearing, the appellant submitted a second MR (MR2) dated 9 February 2018, completed by his former GP. In response to the question: *Is the impairment likely to continue for two years or more from today?* the GP has ticked "Yes" and provides the commentary: *Both his MDD [major depressive disorder] and GAD [generalized anxiety disorder] have been present at least 10 years. He has seen multiple physicians over the years for this, and has tried many*

*different treatment options without major improvement. I suspect that he will deal with these issues over the course of much of his life, given the longevity thus far.*

### **The hearing**

At the hearing, the appellant stated that he disagrees with the reconsideration decision because he has been living with his impairment for more than ten years, so it is false to assume it won't continue. He explained that the doctor who filled out the MR is his methadone doctor and not his GP. He stated that he does not have a strong relationship with this doctor. He explained that he still considers his former GP to be his family doctor and he had her fill out a second MR.

The appellant's SW attended the hearing as his advocate. She stated that while the appellant has been living away from his former GP for about a year, there has been regular contact with the GP. The SW stated that she sees the appellant weekly and has been communicating with the GP. As well, the SW argued that people who are working closely with the appellant, including herself, the GP and recovery house staff all agree that the appellant's impairment will go on for more than two years.

The ministry referred to the reconsideration decision, stating that the decision was made with the information available to it at that time. The ministry noted that new information (contained in MR2) has since become available. The ministry stated that if this information been available at reconsideration, the reconsideration decision could have been different.

### **Admissibility**

The panel finds that the information provided by the appellant in the Notice of Appeal as well as the information provided by the appellant and his advocate at the hearing consists of argument and will be considered on that basis.

The panel finds that the information relating to the duration criterion provided in MR2 is in support of the information and records before the ministry at reconsideration. Specifically, the panel notes that the reconsideration letter from the SW indicates that the appellant requires "continuous support for an extended period of time"; she specifies that it "will take more than two years for [the appellant] to begin to experience improvement". The SW also states "[i]t is clear that [the appellant] needs continuous support from staff, for an extended period of time (beyond two years), and ongoing therapy...". As such, the panel finds this information admissible in accordance with section 22(4) of the *Employment and Assistance Act*. In reaching this conclusion, the panel notes that the ministry did not object to the admission of MR2.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the ministry's decision that the appellant did not meet one 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's impairment in the opinion of a medical practitioner is likely to continue for at least 2 years. The ministry was satisfied that the other four criteria were met.

The legislation provides:

### **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 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).

### **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.

Section 2 of the EAPWDA allows the minister to grant PWD designation to a person if the following five criteria are met: 1) the person has reached 18 years of age; 2) the person is in a prescribed class of persons or that the person has a severe mental or physical impairment; 3) the impairment, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years; 4) the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods; and 5) as a result of those restrictions, the person requires help to perform those activities. The only issue in this appeal is the duration criterion, which requires that the appellant's impairment, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least 2 years.

In the reconsideration decision the ministry noted that the information provided in the MR indicated that the appellant's impairment is not likely to continue for two years or more. As well, the ministry considered the GP's letter provided at reconsideration and noted that the information in this letter provided information about the duration of the appellant's medical condition as opposed to the duration of his impairment. In addition, the ministry found that the GP's letter spoke to the fact that the appellant's medical condition has lasted for more than two years but did not establish that the appellant's medical condition is expected to continue for two years or more. The ministry also considered the reconsideration letters provided by the SW and recovery house employee, which the ministry found reflected the writers' expectations that the appellant's impairment would continue for more than two years. However, the ministry also noted that neither of these letters was written by a medical practitioner or nurse practitioner. The ministry concluded that it cannot be established that in the opinion of a medical practitioner or nurse practitioner the appellant's impairment is likely to continue for at least 2 years.

The panel notes the legislation requires an opinion from a nurse practitioner or medical practitioner that the impairment is likely to continue for at least two years; however, the information in the PWD application confirmed that the appellant's medical conditions would be life-long but indicated that his impairment should not be. As noted by the ministry the information provided at reconsideration by both the SW and recovery house employee indicate that the appellant's impairment is expected to continue for more than two years. In MR2, which the panel has determined to be admissible, the GP confirms that the appellant's impairment will continue for more than two years (*Both his MDD [major depressive disorder] and GAD [generalized anxiety disorder] have been present at least 10 years. He has seen multiple physicians over the years for this, and has tried many different treatment options without major improvement. I suspect that he will deal with these issues over the course of much of his life, given the longevity thus far.*). As such, the panel finds that there is sufficient evidence to demonstrate that this criterion has been met. The panel therefore finds that the ministry's conclusion that the information in the MR provides a medical opinion that the impairment will not last for two years or more is not reasonably supported by the evidence.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which held that the appellant was not eligible for PWD designation because he did not meet all of the legislated criteria in section 2 of the EAPWDA, is not reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.