

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated January 10, 2018 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age and that his impairment will continue for at least 2 years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration (“RFR”), the ministry was not satisfied that the following criteria were met:

- The appellant has a severe physical or mental impairment;
- The 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 these restrictions, he requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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 at Reconsideration

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

(1) A Request for Reconsideration dated December 21, 2017 to which the appellant attached the following:

- A self-statement in which he stated that he becomes delusional in stressful situations such as work environments; that when he is delusional he becomes stressed, cannot eat or sleep, and refuses to do normal day-to-day activities or speak. He also expresses concern about taking “the weight off of my family”;
- 2 pages of a student aid application completed by an MD other than the physician who completed the PWD application, (the “second MD”) stating that the appellant has a permanent disability, delusional disorder, which has cognitive and/or behavioural impacts on the appellant in areas of attention and concentration, stress management, communication, social interactions, and organization and time management. The second MD notes that during an episode the appellant would need an exemption from course work/exams. The second MD describes the severity of the disorder as “severe delusions episodically not associated with substance abuse”;
- A letter from the second MD dated December 11, 2017 in which he notes the appellant was admitted into a hospital in another province from January 21, 2016 through March 3, 2016; and
- A letter from the physician who completed the PWD application, addressed to the ministry, dated November 21, 2017 (the “November Letter”) in which he notes the appellant suffered his first delusional episode in January 2016 and was hospitalized until March 2016 in another province and that the episode may have started in the spring of 2015. The physician stated that the appellant is now well and has elected, in consultation with this psychiatrist to discontinue medication. The physician states concern that the appellant “is at risk of relapse” and that “should this recur, his social and occupational functioning will likely be severely compromised.”

(2) The ministry’s denial letter of November 30, 2017 with *Persons with Disabilities Designation Denial Decision Summary*.

(3) An OE Psychiatric Prog Note, dated June 17, 2016 (“Psychiatric Prog Note”), in which a third MD describes the appellant as “doing very well” and continuing to be free of psychotic symptoms or any delusional ideas or paranoia, and which sets out a plan for reducing and then discontinuing medication.

(4) An undated note from the appellant in which he notes that he was locked in a psych-ward within a hospital for 3 months due to his delusions.

(5) A ministry telephone log dated November 14, 2017 noting a call from the ministry to the physician requesting more information on the frequency and duration of intermittent symptoms.

(6) The PWD application, comprised of:

- The *Applicant Information - Self Report* (“SR”) signed by the appellant on September 12, 2017.
- A *Medical Report* (“MR”) completed by a general practitioner (the “physician”) on September 12, 2017, who has known the appellant for 2 years and has seen him 2-10 times in the past 12 months.
- An *Assessor Report* (“AR”), also completed by the physician on September 12, 2017, based on an interview and file/chart information.

The PWD application contained the following information.

Diagnoses

The physician diagnosed the appellant with delusional disorder, noting the impairment was likely to continue for two years or more, with a note, "Indefinite, with occasional worsening."

Functional Skills

In the MR, the physician reports that the appellant is able to walk unaided 4+ blocks and climb 5+ stairs, and has no limitations with respect to lifting or remaining seated. In the AR, the physician describes the appellant as independent in all aspects of mobility and physical ability.

In the MR, the physician also states the appellant has no difficulties with communication, but does have significant deficits with cognitive and emotional function in the areas of executive functions, emotional disturbance, motivation, and impulse control. He notes these impairments are intermittent, occurring when the appellant is delusional. In the AR, he again notes the appellant's good ability to communicate, but says these abilities are "impacted when delusional". With respect to cognitive and emotional functioning, the physician notes no or minimal impacts in bodily functions, consciousness, motor activity, language, other neuropsychological problems, and other emotional or mental problems such as hostility. He notes a moderate emotional impact, and major impacts in impulse control, insight and judgment, attention/concentration, executive, motivation, and psychotic symptoms (delusions). The physician writes "Intermittent severe symptoms when delusional impacting all activities" and that "symptoms have occurred in settings of work related stresses."

Daily Living Activities

In the AR, the physician reports the appellant to be independent in all DLA with the exception of social functioning. The physician indicates that the appellant needs periodic support/supervision to make appropriate social decisions (with the note "when judgment is impaired/delusional"), develop and maintain relationships, interact appropriately with others, and deal appropriately with unexpected demands. The physician notes the appellant has marginal functioning with both immediate and extended social networks but provides no additional comments.

Assistance Required

The MR states the appellant does not require any prostheses or aids for his impairment. While the appellant has been prescribed medication that interferes with his ability to perform daily living activities, the physician notes the appellant is not currently taking that medication. The AR notes that help is provided by family, friends, and Health Authority Professionals (physicians) but provides no further comment about what sort of help is provided specifically for DLA. The AR does not list any assistive devices, nor does it indicate that the appellant has an assistance animal.

Submissions and Evidence on Appeal

In his notice of appeal, the appellant states his mental illness prevents him from maintaining any work and that, without future support, he will severely deteriorate. The appellant also submitted further documents on appeal:

- (1) A letter from the physician dated January 30, 2018 (the "January Letter") in which the physician states, "[the appellant] notes that he is generally free of symptoms of psychosis, but has had several episodes when he feared that he was going to relapse"; that the "First and Last time he had an episode requiring hospitalization was March 2015"; and that "Symptoms are generally mild, but with relapse severity is

likely to be severe and will likely requires [sic] hospitalization.” The physician also states that the appellant has been unable to tolerate medications due to side effects.

- (2) A fax from a health provider in another province dated November 17, 2017 attaching:
- a. A request from the physician for information from the health provider in the other province;
 - b. A discharge summary from the hospital in the other province concerning the appellant’s hospitalization from January 21, 2016 to March 3, 2016; and
 - c. An Inpatient Consultation Document completed by a psychiatrist in the other province dated February 26, 2016. The Inpatient Consultation Document describes the events leading to the appellant’s hospitalization and his treatment and medications in the hospital. In recommending the appellant’s discharge, the psychiatrist writes, “At this time, there was limited evidence for further psychosis outside of his delusions” and that “Overall, should his antipsychotic medication lessen the delusions, his prognosis appears to be reasonably favourable.”

The ministry took no objection to the admission of these documents. The panel admitted the new documents on appeal pursuant to the *Employment and Assistance Act*, s. 22(4) as being information in support of the evidence that was before the ministry at reconsideration. In particular, the January Letter and the November 17, 2017 fax from the health provider in another province (including attachments) provide additional information about the appellant’s delusional disorder and 2016 hospitalization in another province—information that was before the ministry at reconsideration.

At the hearing, the appellant described how the frequency of his symptoms are hard to nail down as they depend on the stress in his life. His symptoms of relapse include trouble sleeping and eating, and a curiosity in topics related to his previous delusional episode, for example texting his mother about lie detector tests. He has tried working, but cannot manage to do so without symptoms and has had to quick jobs to keep himself from slipping into a relapse. He hopes that he can one day be self-employed in painting and welding. Sometimes he functions normally and can go for an entire month without any symptoms. His family and girlfriend assist him by pointing out unusual behaviour or delusions and suggesting when he needs to seek mental health assistance. He usually visits a mental health drop in clinic about once a week even when not having symptoms. He is currently not taking medications and functioning well without them. In closing, the appellant noted that his symptoms are intermittent, coming in waves.

The ministry relied on the reconsideration decision. The ministry also pointed out that in the January Letter, the physician wrote that the appellant is generally free of symptoms of psychosis. And that the Psychiatric Prog Note also notes the appellant to be doing very well and free of psychotic symptoms or any delusional ideas or paranoia.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision of January 10, 2018 in which the ministry found the appellant was not eligible for designation as a PWD because he did not meet all of the criteria in section 2(2) of the EAPWDA was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The ministry was satisfied that the appellant had reached 18 years of age and that his impairment would continue for at least 2 years. However, based on the information provided in the PWD application and Request for Reconsideration, the ministry was not satisfied that, the appellant had a severe physical or mental impairment; in the opinion of a prescribed professional, the appellant's impairment directly and significantly restricts his ability to perform DLA either continuously or periodically for extended periods; and as a result of these restrictions he requires help to perform DLA through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

The eligibility criteria for PWD designation are set out in section 2(2) of the EAPWDA as follows:

2(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.

The "daily living activities" referred to in EAPWDA section 2(2)(b)(i) are defined in section 2 of the EAPWDR:

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;

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.

Analysis

Severe Impairment

The appellant does not dispute the ministry's determination of no physical impairment. The appellant disputes the finding of no severe mental impairment on the basis that the physician described a severe impairment and the second MD described how that impairment is chronic and intermittent.

The ministry was not satisfied that the information established a severe mental impairment, noting that although the appellant had experienced a temporary period of severe delusional disorder, the information provided indicates he is not currently experiencing impacts to mental functioning, and while there is a likelihood of relapse into severe symptoms, the medical assessments do not establish a certainty of relapse and do not describe expected frequency or duration of periods of severe symptoms.

Panel's Decision:

The legislation provides that the minister has the discretion to make a PWD designation if satisfied that the person has a severe impairment, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the PWD analysis is the evidence from a prescribed professional about the nature of the impairment and its impact on daily functioning. Here, there is no evidence of a severe physical impairment. The PWD application shows that the appellant is capable of walking, climbing, lifting and sitting, without restriction and is independent in all aspects of mobility and physical ability. Accordingly, the panel finds the ministry's decision that the appellant did not have a severe physical disability to be reasonably supported by the evidence.

With respect to severity of the appellant's mental impairment, it is clear from the medical evidence in the PWD application and the materials from other MDs submitted with the RFR and on appeal that the appellant suffered from one severe episode of delusional disorder requiring him to be hospitalized. However, it is also apparent from the medical information that the appellant is currently doing well, and that any impairments are intermittent during delusional episodes. While the physician, in his November 21 Letter, states the appellant "is at risk of relapse" and that "should this recur, his social and occupational functioning will likely be severely compromised," he does not explain the expected frequency or duration of periods of severe impairment of mental functioning. Similarly, information provided by the second MD does not speak to the severity of impacts or the frequency or duration of episodic impacts, and the Psychiatric Prog Note indicates that the appellant is doing well. As recently as the January Letter, the physician notes the appellant is generally free of symptoms and that symptoms are generally mild, but if a relapse were to occur the symptoms would likely be severe. On the whole, this evidence shows the appellant had an episode during which he experienced severe impairments; he faces a risk of relapse and severe symptoms; but he is currently doing well. In the absence of medical evidence to show current severe impairments to mental functioning, or evidence about the expected frequency and duration of expected future relapses, the panel finds the ministry's decision that the appellant did not have a severe mental impairment to be reasonably supported by the evidence.

Impairment's Affect on DLA

The appellant submits that he often functions normally, but he relies on family and friends to monitor him and tell him when he needs to get help. He also relies on his family for help with food, living, and driving him around.

The ministry notes that the PWD application shows the appellant to be independent with all listed areas of DLA. The ministry says that while the PWD application states periodic support /supervision is needed for social functioning, the information provided does not establish the frequency or duration of support/supervision required, nor the nature of the support supervision required. The ministry's position is there is not enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA continuously or periodically for extended periods

Panel's Decision:

The legislative requirement respecting DLAs set out in section 2(2)(b) of the EAPWDA is 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. 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. DLAs are defined in section 2(1) of the EAPWDR and are listed in the PWD application with the opportunity for the prescribed professionals to check marked boxes and provide written comments.

Here, the evidence before the ministry at reconsideration showed the appellant to be independent in all DLA listed in section 2 (1)(a) of the EAPWDR. The physician noted that the appellant's medication interferes with his ability to perform DLA, but the information before the panel shows the appellant is not currently taking any medication. On appeal, the appellant explained that he relies on family and friends to help him know when to seek help, and in the AR the physician notes the appellant requires periodic support/supervision with social functioning but does not describe the frequency or duration of periodic help, or the nature of the help required. While the panel acknowledges the appellant receives help from family and friends in monitoring his symptoms, without more information from a medical professional on the frequency, duration, and nature of help required, it is difficult to assess whether the appellant's condition directly and significantly restricts his ability in relation to DLA set out in EAPWDR s. 2(1)(b) (i.e., making decisions about personal activities, care or finances, or relating to, communicating or interacting with others effectively continuously or periodically for extended periods). The panel notes that some activities in these areas (e.g., the ability to do banking, budgeting, and paying rent and bills) are marked at "independent" in the AR. Based on the information that was before the panel, the panel finds that the ministry reasonably determined that the information did not establish that the appellant's impairment directly and significantly restricts his DLA as required by section 2(2)(b)(i) of the EAPWDA.

Need for Assistance

The appellant submits that he needs help from family and friends in monitoring his condition and helping him know when to seek assistance.

The ministry states that as it has not been established that DLAs are significantly restricted, it cannot be determined that significant help is required.

Panel's Decision:

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 establishment of direct and significant restrictions with DLA is a precondition of the need for help criterion because the need for help must be as a result of those restrictions. 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.

Further, other than the AR stating that help is provided by family, friends and Health Authority Professionals, there is no description from a medical practitioner of what sort of help the appellant needs or is provided with respect to his DLA.

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant is not eligible for PWD designation under section 2 of the EAPWDA was reasonably supported by the evidence. The panel confirms the decision pursuant to section 24 of the EAA and the appellant is not successful in his appeal.