

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 3, 2018, which found that the appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that the appellant's impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- As a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

### **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 appellant did not attend the hearing. After confirming that the appellant was not in attendance and had been notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation

### **Information before the ministry at reconsideration**

A PWD application comprised of the appellant's Self-Report (SR) dated November 1, 2017, a Medical Report (MR) and an Assessor Report (AR) both dated December 4, 2017 and completed by the appellant's general practitioner locum (GP) who has seen the appellant 2-10 times in the past 12 months.

A Mental Health Assessment Report dated December 4, 2017 which concluded that the appellant has a history of substance abuse, disordered eating, depression, anxiety, sleep dysfunction and emotional dysregulation and difficulties with impulse control which are currently not managed well. She is currently not considered well-resourced for full-time training or employment. She is encouraged to receive regular monitoring through her GP and follow through with her upcoming psychiatry appointment. She is also encouraged to seek some assistance for her symptoms through psychotherapy with a qualified professional. Taking care of her physical and psychological health should be considered her first step in achieving employment. After a period of stability (when her physical health is taken care of, her mood stabilized and the majority of her symptoms are in remission) the appellant may be able to restart her journey toward employment.

A Support Letter dated March 26, 2018 from the appellant's GP who writes that the appellant has advised her this date that she experiences symptoms related to Intermittent Explosive Disorder and Generalized Anxiety Disorder daily.

The appellant's Request for Reconsideration (RFR) dated March 14, 2018 in which she indicated that she was feeling positive when her GP filled out the application and that she communicates well when talking to the GP.

### **Diagnoses**

In the MR, the GP diagnosed the appellant with "query" Intermittent Explosive Disorder, onset not indicated.

In the AR where asked to describe the appellant's mental or physical impairments that impact her ability to manage daily living activities, the GP wrote Mental Impairment – "explosive, impulsive anger outbursts, verbal and physical anger towards others".

### **Physical Impairment**

In the MR, the GP reported:

- The appellant does not require any prostheses or aids for her impairment.
- For functional skills, it is unknown how far the appellant can walk unaided on a flat surface, how many stairs she can climb unaided, what her limitations are with lifting and how long she can remain seated.

In the AR, the GP reported:

- The appellant is independent with walking indoors/ outdoors, with climbing stairs, standing, lifting and with carrying and holding.

## **Mental Impairment**

In the MR, the GP reported:

- In terms of health history, the appellant has “anger problems”, is easily irritated, can be “explosive” and “impulsive”, is verbal and physical towards others, and depends on situation but usually verbal anger manifests by shouting and swearing. Her outbursts are not premeditated and are out of proportion to the situation and she can't control behaviours which have resulted in difficulty getting and maintaining employment even though she has been diligent in trying to find work. She has physical anger towards others, punching, bit a child, physical aggression to animals. As with sleep, she has primary and secondary insomnia and fatigue. She had bulimia in her 20's.
- The appellant' has no difficulties with communication.
- The appellant has significant deficits with her cognitive and emotional function with emotional disturbance and impulse control.

In the AR, the GP reported:

- The appellant has a good level of ability to communicate in all areas; speaking, reading, writing and hearing.
- While the appellant has not been identified with a brain injury, it was noted that she has a major impact to cognitive and emotional functioning in the areas of emotion, impulse control and other emotional or mental problems as well as a moderate impact to bodily functions, consciousness and executive. Minimal impacts were noted for insight and judgement, attention/concentration, memory and motivation. No impacts were noted for motor activity, language, psychotic symptoms and other neuropsychological problems.

In her Self-Report and Request for Reconsideration, the appellant stated that she was recently diagnosed with Intermittent Explosive Disorder. This affects her ability to control emotional outbursts, interrupts daily living as she suffers from irritability and manic highs. “This has affected employment as unable to control.” She indicates that there is a daily incident often to do with employment, although also in the community while grocery shopping and driving. There are multiple outbursts each week. Anxiety has been a major factor in her daily living since an infant. She has anger issues that affect her daily life and result in loss of income and affected relations in the community. She is anxious and has been diagnosed with depression in the past. She recognizes in job interviews or challenging situations that this explosive disorder and anxiety cause low self-confidence. She has a limited social network and has been isolated because of her explosive disorder for over a decade. She can swing from overly submissive to aggressive without finding an assertive balance. The appellant does not sleep at night and her sleep disorder affects her irritability. Her sleep patterns need to be considered because she does not go to sleep before 6:00 am and she will not sleep if she has to work in the morning. This results in heavy sleep eventually and sleep patterns that are disordered. When unemployed she suffers from depression and this causes excessive sleep and lethargy. She requires an extremely flexible schedule to be successful. When she is treated unjustly or feels she has been, the outcome will be completely predictable. The appellant has a long history with bulimia.

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

In the MR, the GP reports that the appellant has not been prescribed medication that interferes with her ability to perform DLA.

The GP leaves the DLA section of the Medical Report blank.

In the AR, the GP reports the appellant to be independent in all DLA with the exception of Social Functioning. Relating to Social Functioning, it is reported that the appellant is independent under appropriate social decisions, able to develop and maintain relationships and interacts appropriately with others; it is noted in these areas "independent although her anger problems have a negative impact on her social functioning". The GP also indicates that the appellant is not independent under able to deal appropriately with unexpected demands with a comment that she responds with irritability and/or anger. Under able to secure assistance from others the appellant is indicated by her GP as independent.

The GP reports the appellant has very disrupted functioning with both immediate and extended social networks.

### **Need for Help**

In the MR when asked "What assistance does your patient need with DLA?" the GP does not respond.

In the AR, the GP indicates under assistance provided by others, Community Service Agencies.

### **Notice of Appeal**

In her Notice of Appeal dated April 10, 2018, the appellant writes that on a daily basis she has disruptive interactions and continually applies for work sometimes successfully but cannot manage to hold onto it due to conflicts with employers, employees and the public, repetitively.

### **Hearing**

The ministry stood by the reconsideration decision.

## **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 designation as a person with disabilities is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The ministry found that the appellant met the age requirement and that the appellant's impairment is likely to continue for at least two years.

However, the ministry was not satisfied that the evidence establishes that:

- the appellant has a severe physical or mental impairment;
- the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

### **The following Sections of the EAPWDA apply 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 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.

### **Severe Impairment**

In the reconsideration decision, the ministry was not satisfied that the information provided is evidence of a severe physical or mental impairment. Determining a severe physical or mental impairment requires weighing the evidence provided against the nature of the impairment and its reported functional skill limitations. A diagnosis of a serious medical condition does not in itself determine PWD eligibility or establish a severe impairment. "Impairment" is a medical condition that results in restrictions to a person's ability to function independently or effectively for a reasonable duration. To assess the severity of impairment, the ministry must consider the nature of the impairment and the extent of its impact on daily functioning. Considering the emphasis in the legislation on restrictions in the ability to perform DLA and help required, the panel finds the ministry's approach outlined above to be reasonable.

### **Severe Physical Impairment**

In the MR, the GP reported: that the appellant does not require any prostheses or aids for her impairment. For functional skills, it is unknown how far the appellant can walk unaided on a flat surface, how many stairs she can climb unaided, what her limitations are with lifting and how long she can remain seated.

In the AR, the GP reported the appellant is independent with walking indoors/ outdoors, with climbing stairs, standing, lifting and with carrying and holding. The appellant does not describe any physical impairment in her application or request for reconsideration.

Based on the above information, the panel finds that the evidence does not demonstrate that the appellant has limitations to her physical functioning. The panel also notes that the appellant did not present any arguments related to a severe physical impairment. The panel concludes that the ministry was reasonable to determine that the GP's assessment of current physical functioning does not reflect a severe physical impairment. Therefore, the panel finds that the ministry was reasonable in its determination that the evidence does not support a finding that the appellant suffers from a severe physical impairment pursuant to Section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

In the reconsideration decision, the ministry determined that based on the information provided the appellant does not have a severe mental impairment. The ministry noted that the GP's assessment indicates that the appellant has no difficulties with communication and notes her level of ability with speaking, reading, writing and hearing are good. The ministry considered that in the MR the GP indicated significant deficits with cognitive and emotional functioning in the areas of emotional

disturbance and impulse control. In the AR the GP assesses major impacts in the areas of emotion, impulse control and other emotional or mental problems; moderate impacts in the areas of bodily functions, consciousness and executive and minimal impacts in the areas of insight and judgement, attention/concentration, memory and motivation. The ministry noted that no impacts were assessed for the remaining four areas of motor activity, language, psychotic symptoms and other neuropsychological problems. The ministry acknowledged that the appellant's health history includes anger problems; she is easily irritated, can be "explosive" and "impulsive", is verbal and physical towards others, depends on situation but usually verbal anger manifests by shouting and swearing. Her outbursts are not premeditated and are out of proportion to the situation, she can't control behaviours. She has physical anger towards others, punching others, bit a child, and physical aggression to animals. She suffers from primary and secondary insomnia and fatigue. The ministry concluded that information provided by the appellant's GP demonstrates that the appellant experiences verbal and physical anger towards others that is not premeditated and which she cannot control. However; the ministry noted that the GP does not describe the support/supervision the appellant requires to maintain in the community. The ministry determined that the information provided does not establish a severe impairment in mental functioning.

The legislation requires that the minister must be satisfied that a person has a severe mental or physical impairment. While the panel notes that the appellant has stated that on a daily basis she has disruptive interactions and cannot manage to hold onto a job due to conflicts with employers, employees and the public; for the purposes of determining eligibility for PWD designation, an applicant's employability or ability to work is not taken into consideration by the ministry. Based on the information provided by the appellant's GP, in the view of the panel, there was not a confirmed diagnosis of Intermittent Explosive Disorder given that the word "query" preceded the diagnosis. Additionally, the evidence points to the appellant's psychological abnormality causing a restriction in her ability to function independently, effectively or appropriately in only one DLA - relate to, communicate or interact with others effectively – and this on an intermittent, random basis, without much information on how this might impact on other areas of daily functioning (e.g. shopping, transportation, decision making.). Without such information, it would be difficult for the ministry to find that she has a severe impairment of mental functioning. Therefore, the panel finds that the ministry reasonably determined that the assessment provided by the prescribed professional did not establish a severe mental impairment pursuant to Section 2(2) of the EAPWDA.

### **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. 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 her ability to perform daily living activities set out in the legislation. The GP notes that the appellant has not been prescribed medication that interferes with her ability to perform DLA and reports the appellant to be independent in all DLA with the exception of social functioning.

The ministry considered the GP's assessment of the appellant's social functioning abilities where it was reported that she is independent under appropriate social decisions, able to develop and maintain relationships and interacts appropriately with others; while clarifying these areas "independent although her anger problems have a negative impact on her social functioning". Under the areas of interacts appropriately with others and able to deal appropriately with unexpected demands, no indication was made in the form to indicate a level of independence or support, however comments were provided for each. For the first the same comment quoted above was applied. For the latter area, the GP stated" No;

responds [with] instability [with] anger". The panel interprets both as The GP also indicates that the appellant is not independent under able to deal appropriately with unexpected demands with a comment that she responds with irritability and/or anger. The GP notes the appellant has very disrupted functioning with both immediate and extended social networks and does not describe the support/supervision required to maintain the appellant in the community. Considering the appellant's medical history, the ministry concluded that the appellant would encounter some restrictions to her ability to perform DLA and require assistance as a result.

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 not assessed any restrictions to any DLA, though the evidence seems to suggest that she is restricted for one of the Section 2(1)(b) DLA, that of relating to, communication or interacting with others effectively. However, for this criterion, more than one DLA must be significantly restricted, to the point where help is required, in this case the significant help or supervision of another person. The panel also notes that the appellant did not present any arguments at reconsideration that her ability to perform DLA is restricted. Therefore, the panel finds that the ministry's determination on this criterion was reasonably supported by the evidence.

### **Help Required**

The ministry finds that as it has not been established that DLA are significantly restricted continuously or periodically for extended periods, it therefore cannot be determined that significant help is required from other persons.

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.

With consideration for the above, the panel finds that the ministry reasonably determined that as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions, as defined by Section 2(3)(b) of the EAPWDA.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation under Section 2 of the EAPWDA, was reasonably supported by the evidence and therefore confirms the decision. The appellant's appeal, therefore, is not successful.