

### **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 December 12, 2018, which held that the appellant did not meet 2 of the 5 statutory requirements of section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the requirements of having reached 18 years of age and of having a severe mental impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years.

However, the ministry was not satisfied that:

- 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 those restrictions, in the opinion of a prescribed professional, the appellant requires an assistive device, the significant help or supervision of another person, 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

### Information before the ministry at reconsideration

- The appellant's PWD application comprised of:
  - A Medical Report (MR) dated June 24, 2018, completed by the appellant's general practitioner (GP) of 9 years, who has seen the appellant 11 or more times in the past 12 months;
  - An Assessor Report (AR) dated July 10, 2018, also completed by the appellant's GP; and
  - The appellant's self-report (SR) section of the PWD application, dated May 28, 2018.
- Medical Report – Employability dated January 23, 2018, completed by the GP.
- Medical Report – Employability dated July 10, 2018, completed by the GP.
- Letter from the GP dated October 24, 2017.
- A 6-page Psychiatrist Initial Assessment respecting an assessment conducted on February 22, 2018.
- Request for Reconsideration, dated November 27, 2018.

### Documentation provided on appeal and admissibility

- The appellant's Notice of Appeal (NOA), dated December 21, 2018.
- The appellant's 2-page appeal submission dated January 8, 2019.
- By email dated January 14, 2019, the ministry indicated that its submission is the reconsideration summary provided in the Record of Ministry Decision.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit oral and written testimony that is in support of the information and records available at the time of reconsideration.

The ministry's appeal submission did not address admissibility of the information in the appellant's NOA or appeal submission. The panel determined that the information provided by the appellant on appeal is consistent with the information she previously provided in her SR and reconsideration submission. Accordingly, the panel admitted the additional information as written testimony that is in support of the information and records available at the time of reconsideration.

The arguments of both parties are set out in Part F of this decision.

### Summary of relevant evidence

#### Diagnoses and Health History

In the MR, the GP diagnoses:

- Generalized anxiety disorder (GAD) - "severe anxiety – difficult for her to leave the house, difficult in crowded situations (ex. bus) or new people."
- Depression - "decreased energy, decreased concentration, sleep disturbance."

The diagnoses GAD and depression are also confirmed by the GP in both Medical Report – Employability forms and the GP's letter confirms the diagnosis of depression.

#### Physical Impairment

The GP notes a myocardial infarction in 2013 but does not identify limitations with physical ability or mobility (walking, climbing stairs, standing, sitting, lifting, and carrying and holding).

The appellant does not describe limitations to her physical ability.

#### DLA

The GP reports:

- The appellant has not been prescribed medication and/or treatments that interfere with the ability to perform DLA.
- The ability to communicate is good for reading, writing and hearing. Speaking ability is poor ("When having anxiety freezes up and can't communicate. OK when no anxiety.")
- All listed aspects of mobility and physical ability (relates to DLA move about indoors and outdoors) are managed independently as are all listed tasks of the DLA personal care, basic housekeeping, meals, pay rent and bills, medications, and transportation (++) anxiety on public transit, difficult to go on public transit due to anxiety).
- For the DLA shopping, the appellant independently manages 4 of 5 listed tasks; periodic assistance from another person is required for the task of going to and from stores (brings mom with her to reduce anxiety level.)
- Respecting social functioning, 4 of 5 listed areas are managed independently (appropriate social decisions, ability to develop and maintain relationships, interact appropriately with others, and able to secure assistance from others). Periodic support/supervision is required for the remaining area - deal appropriately with unexpected demands.
- The appellant has marginal functioning with immediate and extended social networks.
- Help is described as "Sometimes requires others to go to store with her or others will go in her place."

In the psychiatrist's assessment, the appellant is noted as having reported a one year decline in her mood, with losing her job being a major precipitating stressor. The appellant reported that continuing with her job search is a daily activity on an average day. Otherwise, she reports that "she is mainly going to [city where the appellant's mother resides] to hang out with her mother." She reports that she and her mom will go on some outings to have

coffee with family and friends. The appellant endorses her average mood as persistently depressed and that there are occasional crying spells. She has noticed that in recent months she feels more panicky when out in public places, but has not had any full blown panic attacks and there are no overt avoidance behaviours. She reports having numerous supports in her network, including her mother, aunts and uncles, a best friend, and a long term family friend.

The psychiatrist's finding included the following:

**Mental Status Examination:**

- Affect downcast at times but also euthymic at other times;
- Thought form was linear;
- No delusional beliefs or suicidal thoughts;
- No perceptual disturbances;
- Alert and oriented; and
- Insight and judgement are good.

**Assessment:** Major depressive disorder with anxious distress.

**Safety Assessment:**

- No manic or psychotic symptoms; and
- Reports good rapport with family doctor, who she follows up with on a regular basis; also reports other numerous supports in the community.

In the July 2018 Medical Report – Employability, the GP reports that GAD/depression result in decreased concentration, anxiety around people and fatigue. No restrictions specific to GAD/depression were identified in the June 2018 Medical Report – Employability.

In the SR, the appellant reports that her disability is depression and anxiety. She gets panicky and anxious around new people and crowds, which makes travel on public transit very hard and also affects shopping (entering stores that are busy). She does not have the energy or focus to do every day things. She can't find the energy to motivate herself to do anything. When at its worst, she won't eat or won't stop eating. She has to force herself to shower or brush her teeth and at times can't be bothered to get dressed.

In her Request for Reconsideration submission, the appellant writes that she needs someone with her when she goes anywhere, not just for shopping. She even finds it difficult to go to her doctor's office because she has to wait with others in the waiting room. The appellant states that she does not have a social network, just her elderly mother and elderly extended family. Her life has become that of a hermit. She also describes her inability to work, or even look for work.

In her NOA, the appellant reports that she cannot go anywhere outside the home without someone with her. She cannot live or function outside her home "without anxiety attacks from public places." She does not sleep because she is constantly worrying about what is happening to her.

In her appeal submission, the appellant reports that her depression and anxiety have gotten worse since the PWD application was completed. Self-care is a chore as are everyday chores. She rarely leaves her home. Her mother takes care of her – cooks meals, washes clothes, and does basic housekeeping. She does not have friends with whom she connects, only family, but even they are not always available to help when needed. She would have provided additional information from her doctor but was unable to get a letter from her doctor as he is away on

holiday.

*Need for Help*

The GP indicates that help required for DLA is provided by family. "If no help available patient will stay at home."  
The appellant does not use or require equipment or devices and does not have an assistance animal.

## PART F – REASONS FOR PANEL DECISION

### Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant was not eligible for PWD designation because she did not meet the requirements of section 2(2) of the EAPWDA?

### Relevant Legislation

#### 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 of 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

### Definitions for Act

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.

(3) The definition of "parent" in section 1 (1) applies for the purposes of the definition of "dependent child" in section 1 (1) of the Act.

## PANEL DECISION

### Severe Impairment

Section 2(2) of the EAPWDA requires that the ministry is satisfied that an applicant has a severe mental or physical impairment; an applicant need not have both a severe physical and severe mental impairment, though the ministry will consider whether the evidence establishes both a severe physical and mental impairment.

### *Physical Impairment*

The ministry's position is that the information respecting the appellant's physical functioning did not establish a severe physical impairment. The panel considers this conclusion to be reasonable given that neither the appellant nor her GP report any limitations to physical mobility or ability.

### *Mental Impairment*

As the ministry was satisfied that the appellant has a severe mental impairment, this legislative requirement has been met.

### Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the EAPWDA requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's 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 it is satisfied, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods. Inherently, any analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is 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.

DLA are defined in section 2(1) of the EAPWDR and are listed in both the MR and the AR sections of the PWD application with the opportunity for the prescribed professional to check marked boxes and provide additional narrative. DLA, as defined in the legislation, do not include the ability to work.

The appellant's position is that her depression and anxiety have worsened since the PWD application was completed and that some of the information relied on by the ministry is incorrect, including that assistance is only required for going to and from stores. She argues that everything in her daily life is a chore and questions how that is not accepted as something that stops her from having normal living activities.

The ministry indicates that it relies on the medical opinion and expertise of medical practitioners and other prescribed professionals to determine if a person's impairment significantly restricts the ability to perform DLA. The ministry's position is that the GP's assessment of the appellant's ability to perform DLA does not establish that impairment significantly restricts DLA, either continuously or periodically for extended periods. The ministry



notes that periodic assistance is required for going to and from stores but that the appellant is assessed as independently managing the majority of DLA, including using public transit which the GP describes as being difficult due to anxiety. Regarding social functioning, the ministry notes that the appellant manages most listed areas independently and that for the one area requiring periodic support/supervision, there is no description of the degree or duration of the required support/supervision, information the minister finds valuable in determining the significance of the restriction.

The panel notes that section 2(b)(i) of the EAPWDA requires that a person's severe physical or mental impairment directly and significantly restricts the person's ability to perform the DLA defined in the legislation. While there is potentially some crossover between restrictions impacting the ability to work and those impacting the ability to perform DLA, only restrictions on the ability to perform the DLA set out in the legislation are considered under section 2(b)(i) of the EAPWDA. And, as noted above, the restriction is to be in the opinion of a prescribed professional. Both the GP and the psychiatrist who completed the Psychiatrist Initial Assessment are prescribed professionals as defined in the legislation.

The GP assesses the appellant as independently managing all listed tasks relating to the DLA move about indoors and outdoors, personal care, basic housekeeping, meals, pay rent and bills, medications, and transportation. As noted by the ministry, while the GP notes that one of the listed tasks of transportation, using public transit, is difficult due to anxiety, the appellant is reported as still being able to independently manage this activity without any assistance. For the DLA shopping, most listed tasks are managed independently; the exception is going to and from stores, with the GP reporting that the appellant brings her mom with her to reduce anxiety and that the appellant sometimes requires others to go the store with her or that others will go in the appellant's place. When asked to describe the assistance provided for DLA, the GP responds that if no help is available the appellant will stay at home. The GP does not directly relate this comment to a particular DLA, but given that the GP assesses the appellant as independently managing all DLA tasks but for going to and from stores and one area of social functioning (dealing appropriately with unexpected demands), the panel finds that it is likely that this comment also relates to going to and from stores. The July 2018 Medical Report – Employability form, in which the GP notes decreased concentration, anxiety around people and fatigue, offers little, if any, insight as to the degree of impact on the ability to perform the prescribed DLA.

Respecting the two DLA specific to mental impairment - make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively – the ministry was reasonable in concluding that the evidence does not support the existence of significant restrictions. The GP assesses the appellant as independently managing all decision-making tasks related to personal care, shopping, meals, pay rent and bills, medications, and transportation. With the exception of requiring periodic support/supervision, which is not established as being for extended periods, for dealing appropriately with unexpected demands, the appellant is assessed as having independent social functioning. Additionally, the panel finds that the psychiatrist's assessment does not identify difficulties with decision-making or social functioning, with the psychiatrist relying on the appellant's own description of her social support network.

The panel acknowledges the appellant's description of restrictions in her ability to perform DLA in her SR and reconsideration and appeal submissions, but finds that the information from the GP and the psychiatrist does not reflect the same degree of restriction, nor is there information from a prescribed professional confirming that the appellant's functioning has worsened since the PWD application was completed. As noted above, the legislation requires that the ministry be satisfied that, in the opinion of a prescribed professional, a person's ability to perform DLA is directly and significantly restricted.

Based on the available information, the panel concludes that the ministry was reasonable to determine that,

while the appellant experiences some restrictions to DLA as a result of her medical condition, most notably with going to and from stores, the information from a prescribed professional does not establish that impairment significantly restricts the ability to perform DLA either continuously or periodically for extended periods.

#### Help to perform DLA

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 DLA.

The establishment of direct and significant restrictions with daily living “activities” is a precondition of requiring “help to perform those activities.” Having found that the ministry was reasonable to conclude that this precondition was not met, the panel also finds that the ministry reasonably concluded that it cannot be determined that the appellant requires help to perform “those activities” as a result of direct and significant restrictions with daily living “activities” as required by section 2(2)(b)(ii) of the EAPWDA.

#### Conclusion

The panel finds that the ministry’s reconsideration decision, which determined that the appellant had not met all requirements set out under section 2(2) of the EAPWDA for designation as a PWD, was reasonably supported by the evidence. The ministry’s decision is confirmed and the appellant is not successful on appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/30

PRINT NAME

Sean Carberry

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/30

PRINT NAME

Gurjit Chaplin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/01/30