

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated April 1, 2019, which found that the appellant did not meet one 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, that she has a severe mental impairment, her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted periodically for extended periods, and that, as a result of these restrictions, she 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.

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

- in the opinion of a medical practitioner or nurse practitioner, her severe mental impairment is likely to continue for at least 2 years.

The ministry also determined that the appellant is not in any of the classes of persons set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* who may be eligible for PWD designation on alternative grounds.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 2 and 2.1

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the Persons With Disabilities (PWD) Application comprised of the appellant's information and self-report dated October 18, 2018, a medical report (MR) dated November 28, 2018 completed by a general practitioner (GP) who had known the appellant for 3 months and had seen her 2 to 10 times in that time, and an assessor report (AR) dated January 9, 2019 completed by a social worker who had known the appellant for 6 months and had seen her 2 to 10 times.

The evidence also included the appellant's Request for Reconsideration dated March 22, 2019.

Diagnoses

In the MR, the GP diagnosed the appellant with depression, with an onset in 2018, anxiety with an onset in 2014, and bursitis in her left leg, with an onset in 2015. Asked to describe the appellant's mental or physical impairments that impact her ability to manage her daily living activities, the GP wrote in the AR: "depression/anxiety/PTSD [Post Traumatic Stress Disorder] symptoms that impact daily living activities and ability to engage in work; intermittent suicidal ideation."

In the reconsideration decision, the ministry found that the appellant met the age requirement, that she has a severe mental impairment, that her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted periodically for extended periods, and that, as a result of these restrictions, she 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.

Duration

In the MR and the AR, the GP reported:

- When asked if the impairment is likely to continue for 2 years or more, the GP indicated neither "yes" nor "no."
- In response to the request to explain the estimated duration of the impairment, the GP wrote: "unable to determine length of disability; physio and medications may help."

In her self-report, the appellant wrote:

- Physically, her hip and knee on her left side are injured from a fall. The Bursa Sacs are compromised causing extreme pain when she twists or walks.
- The pain affects her sleep pattern.
- Her ability to stand or walk for long distances has been reduced.
- Mentally, she suffers from PTSD, depression, anxiety, and panic attacks. She has been seeing a therapist and had an appointment to see a psychiatrist.
- She has panic attacks, severe sadness, and an inability to make conscious decisions.
- She "freaks out" and has to re-orient.

- The physical and mental pain has caused suicidal thoughts, and anxiety and anger because of this.
- Ordinary situations in life are very difficult for her. Going to the grocery store takes hours of convincing herself she can do it. In any social situation involving groups of people, she gets stressed, panicky, terrified, and physically ill.
- She is averaging about 4 hours of sleep a night. She has anxiety and panic attacks that wake her up. These happen 24 hours a day.

Additional information

In her Notice of Appeal dated April 6, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that her injury and mental health have already lasted over 2 years. Her previous physician has left the country and the more recent physician does not have enough history.

At the hearing, the appellant stated:

- Her impairments have been going on for more than 2 years.
- Her previous physician left the country and she had to find a new physician. The new physician was not aware of her situation. She had been living in another [politically unstable] country for a number of years and her mental health condition stems from this experience. Her current physician does not seem to understand the impact upon her as a result of this experience. She admits that she was not as comfortable with her new doctor as she was with her previous doctor and she did not disclose the full extent of her problems to her new doctor.
- She has now seen a psychiatrist 3 times and she has been seeing a clinician for close to a year.
- She is taking medications to help control her issues. She has great difficulty, both physically and mentally.
- It has been a year since her injury, and her hip and her knee are still painful. If she turns the wrong way, she is in severe pain and cannot walk. She had an injection of cortisone in her knee and hip and it has been suggested that she pursue physiotherapy as a treatment, but she cannot afford it.
- She first raised her mental health issues with her doctor in 2014 but there was no psychiatrist in her area at that time. Instead, she was referred to specialized health services but they could not fit her in. Her doctor was not comfortable to prescribe medications for a mental disorder.
- She "could not take it anymore" and went to a clinician at the hospital on a walk-in basis. She has been seeing the clinician every week or 2 weeks, starting in August 2018. She was at the point of considering suicide and she made the decision that she needed to see someone; however, the clinician could not prescribe medications. The clinician provided information to the social worker who completed the AR.
- She was also referred to a study program in November or December of 2017 that was 10 weeks of group sessions, like workshops, where they learned coping mechanisms. She put her name on a list at that time to meet with someone but she was not contacted.

- She started seeing her new doctor in October 2018. She was told there is a fee to transfer her medical records from her previous doctor to her new doctor and she does not have the money to pay this fee.
- In November of 2018, her doctor referred her to a psychiatrist. She is taking anti-anxiety/depression medication that is helping but she is still not where she wants to be.
- When she discussed her PWD application with her psychiatrist, it was suggested that she go back to her GP to have the assessment completed again. The psychiatrist was not yet prepared to make a prognosis.
- She is seeing the psychiatrist again in June and she is seeing the clinician next week. If anyone could tell her that her impairment would be gone tomorrow, that would be great. In the meantime, she is continuing with her medications.
- Her impairments are having very real impacts for her.

The ministry relied on the reconsideration decision as summarized at the hearing. At the hearing, the ministry stated that at the time the GP completed the MR, he was “unable to determine” the length of the appellant’s disability and suggested that “medications may help.” This may just be a matter of time to obtain an opinion from a medical practitioner that the impairment is likely to continue for at least 2 years, particularly since the appellant has been prescribed anti-anxiety and depression medication.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PWD designation, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the evidence does not establish that, in the opinion of a medical practitioner or a nurse practitioner, the appellant's severe mental impairment is likely to continue for at least 2 years.

The criteria for being designated as a PWD are set out in Section 2 of the EAPWDA as follows:

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 EAPWDR provides as follows:

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.

Part 1.1 — Persons with Disabilities

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [persons with disabilities] of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the Community Living Authority Act to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the Canada Pension Plan (Canada).

Eligibility under section 2.1 of the EAPWDR

In the absence of any evidence or argument respecting eligibility for PWD designation under section 2.1 of the EAPWDR, the panel finds that the ministry reasonably determined that it has not been established that the appellant falls within the prescribed classes of persons under that section. The panel's discussion below is limited to eligibility for PWD designation under section 2 of the EAPWDA and section 2 of the EAPWDR.

Eligibility under section 2 of the EAPWDA

The ministry found that there was sufficient information to establish that the appellant met the age requirement, that she has a severe mental impairment, her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted periodically for extended periods, and that, as a result of these restrictions, she 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.

However, the ministry was not satisfied the evidence establishes that, in the opinion of a medical practitioner or nurse practitioner, the appellant's severe mental impairment is likely to continue for at least 2 years.

Duration

In the reconsideration decision, the ministry wrote that the GP did not indicate in the MR that the appellant's impairment is likely to continue for 2 years or more from the date of the report, and the GP commented "unable to determine length of disability; physio and medications may help."

In her self-report, the appellant wrote that her hip and knee on her left side are injured from a fall causing extreme pain when she twists or walks, and also affecting her sleep pattern. The

appellant wrote that she suffers from PTSD, depression, anxiety, and panic attacks, which also result in severe sadness and an inability to make conscious decisions. The appellant wrote that the physical and mental pain have caused suicidal thoughts. Ordinary life situations are very difficult for her and she gets stressed, panicky, terrified, and physically ill in any social situation. The appellant wrote that she has anxiety and panic attacks that wake her up and these happen 24 hours a day.

In her Notice of Appeal, the appellant wrote that her injury and mental health have already lasted over 2 years. The appellant wrote that her previous physician left the country and the more recent physician was not fully aware of her situation. At the hearing, the appellant stated that she did not feel as comfortable disclosing details to the new physician and she cannot afford the fee to transfer her medical records to the new physician. The appellant stated at the hearing that she first raised her mental health issues with her doctor in 2014 but there was no psychiatrist in her area at that time. The appellant stated that she has been seeing a clinician every week or two weeks since August 2018 because she was at the point of considering suicide and made the decision that she had to talk to someone. She was referred to a psychiatrist in November 2018 who prescribed medications that seem to be helping. The appellant stated that she still has great difficulty, both physically and mentally. The appellant stated that the psychiatrist suggested that she go back to her GP to have the assessment completed again as the psychiatrist was not yet prepared to make a prognosis. There was no additional information from the GP or the psychiatrist available at the time of the appeal.

Section 2(2)(a) of the EAPWDA stipulates that the ministry must be satisfied that the appellant's severe mental impairment is, in the opinion of a medical practitioner or nurse practitioner, likely to continue for at least 2 years. The appellant argued that she first raised her mental health issues with her doctor in 2014 and her impairment has, therefore, lasted more than 2 years. In the MR, the GP, as the medical practitioner, confirmed a diagnosis of depression with an onset in August 2018 and anxiety with an onset in 2014; however, the requirement is that the medical practitioner provides an opinion, and the ministry is satisfied, that the impairment of the appellant's mental functioning is likely to *continue* for at least 2 years.

The GP did not respond by indicating either "yes" or "no" to the question in the MR whether the impairment is likely to continue for 2 years or more from that date, and the GP wrote that he was "unable to determine length of disability" and "physio and medications may help." The appellant stated at the hearing that the psychiatrist was not yet prepared to make a prognosis and suggested that the appellant consult again with the GP for another assessment to be completed. The appellant stated that the medications prescribed by the psychiatrist are helping but she is still having great difficulty both mentally and physically. The panel finds that the ministry reasonably concluded that, with the information before the ministry at the time, there was insufficient evidence to establish that, in the opinion of the medical practitioner, her severe mental impairment is likely to continue for at least 2 years.

Conclusion

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

