



**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision dated August 1, 2019, which found that the appellant did not meet two 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”). Specifically the ministry found that the appellant meets the age requirement, her impairment is likely to continue for at least two years, and she has a severe mental impairment.

However, the ministry was not satisfied that the evidence establishes that the appellant has a severe mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods, and that as a result of direct and significant 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.

**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 before the Ministry at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included:

- the appellant's PWD Application comprised of the appellant's self report ("SR") dated April 29 2019, the MR and the AR dated May 13, 2019, both completed by the appellant's family physician ("the GP"), who has known the appellant for 5 years and who has seen the appellant 2 – 10 times in the past 12 months;
- the appellant's request for reconsideration submitted July 19, 2019 with additional comments by the appellant, which in this decision have been included in the SR and summarized below;
- psychiatric consultation report written by Dr. M dated September 4, 2013 diagnosing the appellant with Borderline Personality Disorder ("BPD") and advising a treatment plan consisting of self-help reading, group wellness therapy and Dialectical Behavioural Therapy ("DBT").

### **PWD Application Summary**

#### **Diagnoses**

In the MR the GP identified the following impairments:

- BPD, onset 2013;
- Mood Disorder (Depression and Anxiety), onset during childhood.

#### **Ability to Perform DLA**

In her SR the appellant wrote that:

- her BPD makes it difficult to sustain employment
- she spends too much money when shopping and is an impulse buyer
- her OCD causes anxiety in completing household chores
- she feels anxiety when she has to leave the house to attend to daily errands
- due to depression she has difficulty getting out of bed and is often late
- her concentration and short-term memory are impaired.

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

In the AR the GP indicated that the appellant:

- is independent in all areas of personal care, basic housekeeping, shopping, meals (including planning, preparation, cooking and safe storage of food), paying rent and bills and transportation.
- due to her mental impairment requires periodic support/supervision in all areas of social functioning, including: making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others;
- has very disrupted functioning with her immediate social network; and
- has marginal functioning with her extended social networks.

#### **Assistance Required**

In her SR the appellant noted that she has no additional support to assist with performance of DLA.

In the AR the GP noted that the appellant would benefit from therapy/counselling (DBT).

#### **Additional Information Received after Reconsideration**

In her notice of appeal dated August 9, 2019 the appellant noted that her BPD makes it hard to function, with anxiety and depression and eating regular meals.

#### Oral Evidence

At the hearing the appellant stated that she sometimes can't manage to care for her pet dog. She has a dog sitter to assist when necessary. She added that she has strained relationships with both of her adult children, one of

whom refuses to talk to her.

**Admissibility of Additional Information**

The ministry did not object to the admissibility of the oral evidence of the appellant. The panel admitted the appellant's additional information under EAA Section 22 (4)(b) as evidence in support of the information that was before the ministry at reconsideration because all of it was directly related to the issues under appeal and to information considered by the ministry at reconsideration, and did not contain substantively new information.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for designation as a PWD. The ministry found that the appellant meets the age requirement, her impairment is likely to continue for at least two years, and she has a severe mental impairment. However, the ministry was not satisfied that the evidence establishes that the appellant has a severe mental impairment that, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform DLA either continuously or periodically for extended periods, and that as a result of direct and significant 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.

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 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.

### 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.

### **Scope of the Appeal Decision**

At reconsideration the ministry determined that the appellant met the age requirement, her impairment is likely to continue for at least two years, and she has a severe mental impairment. This appeal decision will therefore be limited to the remaining criteria for PWD designation, namely:

1. restrictions in ability to perform DLA, and
2. assistance required to perform DLA.

### **1. Restrictions in Ability to Perform DLA**

The appellant argues that her ability to perform DLA is significantly restricted as a result of her severe mental impairment.

The ministry's position is that the appellant's impairment does not, in the opinion of a prescribed professional, directly and significantly restrict her ability to perform the DLA set out in the legislation.

#### Panel Decision

The legislative requirement respecting DLA 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, the ministry's determination as to whether or not it is satisfied is dependent upon the evidence from prescribed professionals. DLA are defined in section 2(1) of the EAPWDR and are listed in both the PR and the AR sections of the PWD application with direction provided to the prescribed professional to check marked boxes and provide additional narrative.

In the MR the GP noted that the appellant has not been prescribed medication that interferes with her ability to perform DLA. In the first part of Section C of the AR the GP assessed the appellant as being independent in the following areas of DLA: personal care, laundry, shopping, meals (including planning, food preparation, cooking, safe storage of food), paying rent and bills, managing medications, using transit and getting in and out of a vehicle.

In the "Social Functioning" portion of the AR the GP indicated that the appellant's DLA is restricted and requires periodic support or supervision in all listed areas, namely:

- making appropriate social decisions
- developing and maintaining relationships
- interacting appropriately with others
- dealing appropriately with unexpected demands
- securing assistance from others

The PWD form directed the Assessor (in this case, the GP) to include a description of the degree and duration of support/supervision required. No explanation or description was included by the GP in Part C of the AR, and under

Part E the GP did not provide additional information to describe the nature and extent of the appellant's impairment and its effect on DLA. It is therefore difficult for the ministry to ascertain whether the appellant is directly and significantly restricted in her social functioning either continuously or periodically for extended periods.

The GP noted that the appellant's mental impairment causes "very disrupted functioning" with her immediate social network and "marginal functioning" with extended social networks. This assessment corresponds with the evidence provided by the appellant. However, functional inability to interact with social networks is only one of the factors that must be considered by the ministry in assessing restrictions to DLA as related to social functioning. No additional information is provided by the prescribed professional to explain how frequently the appellant interacts with immediate and extended social networks and for what duration.

Due to the GP's assessment of the appellant's ability to perform DLA independently in all areas other than social functioning and given the lack of information provided to explain the frequency and duration of periodic assistance required in performing DLA related to social functioning the panel finds that the ministry reasonably determined that the information provided by the prescribed professional does not establish that the appellant's severe impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods.

## **2. Help in Performing DLA**

The ministry's position is that because the information did not establish that the appellant's DLA are significantly restricted it cannot be determined that an assistive device or significant help is required.

### Panel Decision

Neither the MR nor the AR indicates that the appellant requires help to perform DLA in the form of an assistive device, an assistance animal or the significant help or supervision of another person. The GP noted that the appellant would be assisted by access to therapy and counselling but that these programs were not readily available on a long-term basis.

Even if sufficient evidence had been tendered to establish that the appellant requires help to perform DLA the establishment of direct and significant restrictions to the performance of DLA remains a precondition of the "need for help" criterion. Because the panel found that the ministry reasonably determined that in the opinion of a prescribed professional 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.

## **CONCLUSION**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for PWD designation, was reasonably supported by the evidence, and confirms the decision. The appellant is not successful on appeal.

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**PART G – ORDER**

<b>THE PANEL DECISION IS: (Check one)</b>	<input checked="" type="checkbox"/> <b>UNANIMOUS</b>	<input type="checkbox"/> <b>BY MAJORITY</b>
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<b>THE PANEL</b>	<input checked="" type="checkbox"/> <b>CONFIRMS THE MINISTRY DECISION</b>	<input type="checkbox"/> <b>RESCINDS THE MINISTRY DECISION</b>
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> 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 <b>Joan Bubbs</b>	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) <b>2019/10/17</b>

PRINT NAME <b>Patrick Cooper</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2019/10/17</b>

PRINT NAME <b>Mel Donhauser</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2019/10/17</b>