

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“the ministry”) reconsideration decision dated March 25, 2020 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”). At reconsideration the ministry found that the appellant met the following requirements:

- age (at least 18 years of age);
- severe mental or physical impairment;
- direct and significant restriction of daily living activities (“DLA”) either continuously or periodically for extended periods; and
- need for 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 ministry was not satisfied that the evidence establishes that the appellant’s impairment is likely to continue for at least 2 years.

**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 September 12, 2019;
  - medical report ("MR") dated September 11, 2019 completed by Dr. R who has known the appellant for 1 year and who has seen the appellant between 2 - 10 times in the past 12 months;
  - assessor report ("AR") dated December 23, 2019 completed by Dr. M who has known the appellant for 3 months and who has seen the appellant between 2 - 10 times in the past 12 months;
- the appellant's request for reconsideration submitted February 25, 2020 with the following attachments:
  - ICBC counselling initial report dated February 24, 2020;
  - medical notes:
    - May 7, 2019 letter from Dr. S
    - August 6, 2019 letter from Dr. R
    - August 6, 2019 letter from Dr. H
    - August 29, 2019 letter from Dr. R
    - September 11, 2019 letter from Dr. R\November 29, 2019 letter from Dr. G
    - January 16, 2020 letter from Dr. M
    - February 21, 2020 letter from Dr. M;
- list of prescriptions and prescription receipts;
- letter from family friend ("D") describing appellant's need for mother's help to do everyday tasks;
- June 16, 2015 letter from the ministry denying the appellant's PWD application with attached Decision Denial Summary.

### PWD Application Summary

#### Duration

In the MR Dr. R was unable to determine if the appellant's impairments were likely to continue for 2 or more years, and commented: *"sometimes concussion symptoms with depression/anxiety can last longer than 2 years"*.

#### Diagnoses

In the MR Dr. R noted that the patient suffers from:

- Concussion post MVA (onset April 2019)
- Depression symptoms post MVA (onset April 2019)
- Anxiety symptoms post MVA (onset April 2019)

#### Mental Impairment

In the SR and Request for Reconsideration the appellant noted a 10 year history of anxiety which has not resolved and the presence of Attention Deficit Hyperactivity Disorder since childhood. The appellant also noted migraines, concussion, insomnia, depression and agoraphobia, which impact memory, communication and transportation since the concussion in March of 2019.

In the MR Dr. R reported that concussion and migraines have caused fatigue and brain foginess due to lack of sleep. Anxiety symptoms have left the appellant unable to leave home. Dr. R also indicated significant deficits in cognitive and emotional functioning specifically in the areas of consciousness, executive, memory, emotional disturbance, motor activity, motivation and attention/concentration. Dr. R added that concussion symptoms have

caused impaired ability to read and articulate words.

In the AR Dr. M noted extreme amotivation and inability to maintain relationships arising from the appellant's MVA. Dr. M added that anxiety and depression have deprived the appellant of productivity, use of transportation and have exacerbated cognitive difficulties. Dr. M identified major impacts to daily cognitive functioning in the areas of consciousness, emotion, impulse control, motivation and other areas and moderate impacts in managing bodily functions, attention/concentration, executive functioning and motor activity. In an additional note dated January 16, 2020 Dr. M. added that the appellant's anxiety and depression have caused panic attacks and reading, articulation and social difficulties as well as fear of riding in motor vehicles. Pain from migraines has resulted in hospital emergency visits on several occasions. Objective and subjective assessments place the appellant in the severe range of impairment.

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

In the MR Dr. R indicated that the appellant is continuously restricted in ability to perform housework, shopping, mobility and social functioning, and periodically restricted in self care and use of transportation.

In the AR Dr. M indicated that the appellant:

- takes significantly longer to perform basic housework, laundry, grooming, bathing, shopping, carrying purchases home, paying bills and using transportation;
- requires continuous support/supervision with motivation, functioning, making social decisions, developing/maintaining relationships and dealing appropriately with unexpected demands;
- has difficulty making decisions and problem-solving, requiring constant assistance from friends;
- has very disrupted functioning with immediate and extended social networks.

### **Assistance Required**

In the AR Dr. M reported that the appellant receives assistance from friends, health professionals and community service agencies.

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

In the Notice of Appeal dated April 1, 2020 the appellant reiterated that [mental impairments] have existed since childhood. The appellant also submitted a letter dated April 1, 2020 from the Assessor Dr. M, noting that the appellant suffers from depression which will not resolve within the next 2 years.

The appellant provided additional oral information at the hearing, summarized as follows:

- the symptoms of depression have worsened;
- Dr. R restricted his MR assessment of duration of impairment to concussion-related symptoms arising from the 2019 MVA and did not take into account chronic and longstanding mental health issues;
- Over the past year the appellant has been a patient of both Dr. R and Dr. M, who practice in the same clinic.

### **Admissibility of Additional Oral Information**

The ministry representative did not object to the admissibility of documentary or oral information received after reconsideration.

EAA Section 22 (4) states: "A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal." The panel

considered the documentary evidence and the appellant's additional oral information and determined that all of it should be admitted under EAA Section 22(4) because it provides additional information relevant to the outstanding issue under appeal, namely the duration of the appellant's impairment.

**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 determined that the appellant did not meet one of the five criteria for PWD designation set out in the *Employment and Assistance for Persons with Disabilities Act*, Section 2. Specifically, the ministry determined that the information provided established that the appellant met the following requirements:

- age (at least 18 years of age);
- severe mental or physical impairment;
- direct and significant restriction of daily living activities (“DLA”) either continuously or periodically for extended periods; and
- need for 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 ministry was not satisfied that the evidence establishes that the appellant’s impairment is likely to continue for at least 2 years.

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.

### Introduction

Section 24 of the Employment and Assistance Act requires a panel to determine if the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances. At reconsideration the ministry found that the appellant had met the 4 of the 5 criteria, namely:

1. the appellant is at least 18 years of age;
3. the appellant has a severe mental impairment;
4. in the opinion of a prescribed professional the severe impairment directly and significantly restricts ability to perform DLA either continuously or periodically for extended periods, and
5. as a result of those restrictions the person requires help in the form of an assistive device, the significant help of another person.

The panel reviewed all of the information upon which the ministry based its determination of Criteria 1, 3, 4 and 5 and considered the ministry's reasons for finding that each criterion had been met. Based on the information before the ministry at reconsideration, summarized in Part E of this appeal decision, the panel finds that the ministry reasonably determined that the appellant is at least 18 years old, has a severe mental impairment that in

the opinion of a prescribed professional directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods, and as a result of these restrictions requires the significant help or supervision of another person.

The remaining issue under appeal is whether the appellant's impairment is likely to continue for at least 2 years.

The appellant argues that the depression that forms part of the severe mental impairment will continue for at least 2 years.

The ministry's position is that the information provided at reconsideration did not establish that the appellant's impairment is likely to continue for at least 2 years in the opinion of a medical or nurse practitioner.

### **Panel Decision**

To meet the duration criterion EAPWDA Section 2(2) requires that a medical practitioner or nurse practitioner must provide an opinion that the appellant's impairment is likely to continue for at least 2 years. In the MR Dr. R diagnosed the appellant as suffering from post-MVA depression, anxiety and concussion with an onset date of April 2019. Dr. R was unable to confirm the likelihood that the conditions would persist beyond 2 years, but noted: *"sometimes concussion symptoms with depression and anxiety can last longer than 2 years"*. In Part E of the MR Dr. R commented: *"concussion symptoms worsening depression and anxiety symptoms"*.

At the hearing the appellant explained that Dr. R misunderstood the ambit of the PWD application and limited his assessments to symptoms arising from the concussion sustained in the MVA. The appellant's position is supported by comments contained in the Request for Reconsideration, in which she noted that she has suffered from depression for several years prior to the 2019 MVA.

After reconsideration the appellant submitted an April 1, 2020 letter from Dr. M. It is brief but states unequivocally that the appellant's depression will not resolve within the next 2 years. Because the panel admitted this letter under EAA Section 22 (4) this evidence must be considered in determining the reasonableness of the ministry's decision at reconsideration.

Based on the evidence of medical practitioner Dr. M and the appellant's explanation concerning the restricted ambit of the medical assessment provided by Dr. R the panel finds that the ministry's determination that it was unable to confirm that the impairment will continue for at least 2 years is not reasonably supported by the evidence.

### **Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's determination that the information does not establish that in the opinion of a medical practitioner or nurse practitioner the appellant's impairment will continue for 2 years is not reasonably supported by the evidence. All of the legislated criteria for PWD designation have therefore been met and the decision of the ministry is rescinded. The appellant is successful in this appeal.

APPEAL NUMBER 2020-00103

**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

Joan Bubbs

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/Apr/29

PRINT NAME

Joan Cotie

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Apr/29

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/Apr/29