

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated March 30, 2020, in which the ministry found that the appellant was not eligible for designation as a Person with Disabilities ("PWD") under section 2 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA"). The ministry found that the appellant meets the age and duration requirements but was not satisfied that:

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

The ministry also found that the appellant is not one of the prescribed classes of persons who may be eligible for PWD designation on the alternative grounds set out in section 2.1 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). As there was no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be at issue in this appeal.

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 evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's record of decision indicating that the PWD application was received on November 14, 2019 and denied on February 18, 2020. On February 28, 2020, the appellant requested reconsideration and submitted his signed *Request for Reconsideration* ("RFR") on March 16, 2020. On March 30, 2020, the ministry completed the review of the RFR.

2. An RFR signed by the appellant on March 16, 2020, with a hand-written submission in which the appellant provides argument for the reconsideration. The appellant states that he filled out section 2 - Part D of the PWD application [*Medical Report* ("MR") - *Functional Skills*] without the help of his doctor. The appellant explains that the receptionist at the doctor's office asked him to fill out this section when the appellant was dropping off other information for his application. The appellant states that he did not understand what the questions meant, so he tried to get help from the receptionist who had "no idea." The appellant states that a long line up was forming in the office and he had a "severe panic/anxiety attack" while trying to fill out the form.

[Panel note: The advocate clarified at the hearing that the appellant completed items 1 to 3 in the MR (the information for walking, climbing stairs, and lifting). The difference in the handwriting indicates the doctor completed the rest of the MR].

The appellant states that he cannot walk without pain for any distance and has to live with more pain than usual if he tries to walk very far. The appellant states that he cannot walk up or down stairs without pain, and he only has the strength to walk up 2 stairs before he needs assistance. The appellant states that he cannot lift more than 2 to 4 lbs. without pain even though he has the strength to lift 7 kg. The appellant states that he has significant pain if he sits for more than 20 minutes and the pain is still there when he stands.

3. The PWD application comprised of:

- the *Applicant Information* (self-report - "SR") dated November 8, 2019, with hand-written submission;
- the MR [undated], signed by the appellant's general practitioner ("doctor") who has known the appellant since February 2019 and has seen the appellant 11 or more times in the past 12 months; and an
- *Assessor Report* ("AR") dated November, 12, 2019, completed by the doctor who based the assessment on an office interview with the appellant and file/chart information. The doctor indicates that his organization has provided "mental health, clinical counselling, and specialist assessment - rheumatology" to the appellant.

Summary of relevant evidence from the application:

Diagnoses

In the SR, the appellant states that he has been diagnosed with a number of physical and mental problems including fibromyalgia, supraventricular tachycardia, and bicuspid aortic valve disease. The appellant states that he has been diagnosed with "severe anxiety" (including panic attacks), social anxiety, moderate depression, and insomnia. The appellant states that the doctor has referred him to a neurologist and rheumatologist for additional diagnoses.

In the MR, the appellant is diagnosed with social anxiety (onset, June 2016), panic attacks (onset, December 2016), Generalized anxiety disorder (onset, June 2016), fibromyalgia (onset, September 2019), and Bicuspid aortic valve disease (onset, March 2009).

Under *Health History*, the doctor states that the appellant “experiences significant social anxiety and generalized anxiety almost on a daily basis. It is quite severe and these are negatively impacting his day-to-day activities.” The doctor states that the appellant experiences pain on a daily basis across most joints and muscles, and this incapacitates him from engaging in work that requires use of his joints and muscles. The doctor writes that the appellant is “often fatigued and as a result stays indoors.”

Functional skills

Self-report

The appellant states that his physical symptoms include “severe” joint pain; sporadic skin conditions including hives and rashes; intense migratory pain; golf and tennis elbow; runner’s knee; and tremors and shaking hands. The appellant writes that he started to suffer from “extreme depression” while in school and was hospitalized several times for related problems including two suicide attempts. The appellant states that he was unable to complete school or maintain employment due to “mental issues and regular debilitating anxiety attacks” and he also began to experience “severe physical pain” in his joints and back.

The appellant states that his physical condition has continued to deteriorate. He is able to stand for short periods of time but has “serious difficulty walking upstairs unaided.” The appellant writes that he “struggles lifting objects, bending or kneeling, and remaining focused on any particular tasks.” The appellant states that he “struggles with any amount of walking for longer than two minutes” which has a “severe effect” on his mental state.

Medical Report

Under section D, *Functional Skills*, the appellant can walk 2 to 4 blocks unaided on a flat surface; climb 2 to 5 steps unaided, and lift 5 to 15 lbs. (up to 7 kg.). The appellant has no limitation with remaining seated, and no difficulties with communication.

Under section D-6, when asked if there are any significant deficits with cognitive and emotional function, the doctor indicates yes and checks 2 of the 12 listed functions: *Emotional disturbance*, and *Motivation*. The doctor drew a line through the 2 sections on the form for *Additional Comments*.

Assessor Report

Under section B-2, *Ability to Communicate*, the doctor indicates the appellant’s ability to communicate is *good* in all areas: *Speaking, Reading, Writing, and Hearing*.

Under section B-3, *Mobility and Physical Ability*, the GP marks the appellant as independent with all functions: *Walking indoors, Walking outdoors, Climbing stairs, Standing, Lifting, and Carrying and holding*.

For section B-4, *Cognitive and Emotional Functioning*, the doctor provides information on impacts to functioning that are due to the appellant’s mental impairment:

- *No impact* in 11 of the 14 areas listed: *Bodily functions, Consciousness, Impulse control, Insight and judgment, Executive, Memory, Motor activity, Language, Psychotic symptoms, Other neuro-psychological problems, and Other emotional or mental problems*;

- *Minimal impact* in 1 area: *Attention/concentration*;
- *Major Impact* in 2 areas: *Emotion*, and *Motivation*.

Daily Living Activities

Self-report

The appellant writes that he experiences “high degrees of stress and anxiety” when he has to complete simple tasks such as following up with his doctors and dealing with daily tasks such as completing government forms, shopping, etc. The appellant states that while anxiety medications help mitigate some of his mental conditions, he cannot be in an environment where he needs to interact with people. The appellant gives an example of taking months to complete his *employment assistance* form.

The appellant states that he has “limited ability” to perform simple household chores independently, “such as vacuuming, dishes, laundry, etc.” The appellant states that he needs a family member’s physical assistance to complete these tasks.

Medical Report

The doctor check marks *No* when asked if the appellant is prescribed medications or treatments that interfere with the ability to perform DLA.

Assessor Report

In Part B, *Mental or Physical Impairment*, the doctor writes that “significant” social and generalized anxiety are the impairments that impact the appellant’s ability to manage DLA.

In Part C, *Daily Living Activities*, the doctor marks the appellant as independent with all areas for 6 (out of 8) DLA listed on the form:

- *Personal Care*: the appellant is independent with *Dressing, Grooming, Bathing, Toileting, Feeding self, Regulating diet, Transfers (in/out of bed), and Transfers (on/off chair)*;
- *Basic Housekeeping*: the appellant is independent with *Laundry, and Basic Housekeeping*;
- *Meals*: the appellant is independent with *Meal planning, Food preparation, Cooking, and Safe storage of food*;
- *Pay Rent and Bills*: the appellant is independent with *Banking, Budgeting, and Pay rent and bills*;
- *Medications*: the appellant is independent with *Filling/refilling prescriptions, Taking as directed, and Safe handling and storage*;
- *Transportation*: the appellant is independent with *Getting in and out of a vehicle, Using public transit, and Using transit schedules and arranging transportation*;

Restricted DLA

For 2 DLA, *Shopping* and *Social Functioning*, the doctor indicates the following restrictions:

Shopping

- The appellant takes significantly longer than typical with *Going to and from stores* (comment, “extreme fatigue”);

- The appellant takes significantly longer than typical with *Carrying purchases home* (comment, “fatigue, muscle aches”);
- The doctor drew a line through the section for *Additional Comments*.
- The doctor indicates the appellant is independent with the 3 remaining areas of *Shopping: Reading prices and labels*, *Making appropriate choices*, and *Paying for purchases*.

Social Functioning

- The appellant is restricted with 2 out of the 5 areas listed:
 - The doctor indicates the appellant needs continuous support/supervision for *Able to develop and maintain relationships* (comment, “patient requires ongoing mental health counselling to help in social engagement”); and
 - The appellant needs periodic support/supervision for *Interacts appropriately with others* (comment, “ongoing mental health counselling/support required”).
- The appellant is independent with the 3 remaining areas of *Social Functioning: Appropriate social decisions*; *Able to deal appropriately with unexpected demands*; and *Able to secure assistance from others*.
- The doctor checks that the appellant has *marginal functioning* with both their immediate and extended social networks.
- When asked what support/supervision is required to help maintain the appellant in the community, the doctor writes, “psychotherapy, cognitive behaviour therapy; +/- psychiatry.”
- The doctor left the space for *Additional Comments (including identification of any safety issues)* blank.

Need for help

Self-report

The appellant states that he needs his family member’s “physical assistance” to finish household tasks such as vacuuming, and doing dishes and laundry.

Medical Report

In the MR, the doctor check marked *No*, the appellant does not require prostheses or aids for the impairment.

Assessor Report

In the AR, the doctor indicates the appellant lives with family. In section D - *Assistance Provided by other people*, the doctor check marked *Friends* and *Health Authority Professionals* (comment, “mental health counsellor/clinical counsellor”).

The doctor leaves the section on *Assistance provided through the use of Assistive Devices* blank. For *Assistance provided by Assistance Animals*, the doctor checked *No*.

4. The ministry’s *Decision Summary* with attached letter dated February 18, 2020, stating that the appellant does not meet all of the criteria for PWD designation.

Additional information

Neither party provided new evidence requiring an admissibility determination in accordance with section 22(4) of the *Employment and Assistance Act* ("EAA"). Subsequent to the reconsideration decision, the appellant filed a *Notice of Appeal* with a handwritten submission which the panel accepts as argument.

Procedural matters

The appellant did not attend the hearing but authorized an advocate (family member) to make submissions on the appellant's behalf.

Submissions at the hearing

Neither party submitted new evidence requiring an admissibility determination under section 22(4) of the EAA. Both parties made submissions on appeal which the panel accepts as argument.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that found the appellant ineligible for PWD designation is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. The panel's role is to determine whether the ministry was reasonable in finding that the following eligibility criteria in section 2 of the EAPWDA were not met:

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

The ministry based the reconsideration decision on the following 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.

(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,

Analysis

Severe mental or physical impairment

To be eligible for PWD designation, the legislation requires several criteria to be met including the minister being satisfied that the applicant has a severe mental or physical impairment. The ministry found the appellant was not eligible for PWD because not all of the criteria were met. “Severe” is not defined in the legislation but the diagnosis of a serious medical condition does not in itself establish a severe impairment of mental or physical functioning.

Mental impairment

To assess the severity of a mental impairment, the ministry considers the extent of any impact on daily functioning as evidenced by limitations/restrictions with mental functions and emotion. The ministry does not only look at the diagnosis or a medical practitioner’s comment that the condition is “severe” but considers the bigger picture including whether there are restrictions to DLA requiring mental/social functioning and whether significant help is required to manage DLA.

Arguments - mental impairment

Appellant

The appellant’s position, set out in the *Notice of Appeal*, is that the PWD forms did not allow him to fully show how “multiple disabilities” impact his life. In the SR, the appellant argues he did not understand “what the questions meant” and he could not get help with the form at his doctor’s office and had to leave the office abruptly due to a “severe panic/anxiety attack.”

The advocate argued that the combination of mental and physical impairments “are not captured in its totality” in the MR and AR. The advocate gave an example of “inaccurate information” in the AR regarding the appellant’s mental functioning; specifically, in Section B-4 (*Cognitive and Emotional Functioning*) the doctor ticked *No impact* for *Motor activity*. The advocate argues there is an impact.

The advocate stated that the appellant’s inability to function in daily life as not captured by the doctor and in reality, the appellant has no outside contacts, no friends, and no support network other than family. In response to questions, the advocate acknowledged that the appellant saw the doctor 11 or more times in the past year but explained that those visits were mostly not in relation to the appellant’s function.

The advocate stated that the conversation on the appellant's ability to function in his daily life "did not happen" because it is difficult to access doctors in the appellant's community and the doctors do not spend a lot of time with their patients. The advocate explained that the doctor did not go over the forms with the appellant. The appellant dropped off the forms and picked them up after the doctor filled them out.

The advocate noted that the appellant has had 20 counselling visits in the past year but "there is a huge barrier to access counselling" which contributes to the appellant's anxiety. The advocate noted that the appellant has a long history of contact with mental health services but the advocate does not know what happened to any assessments or clinical information or whether the appellant's current doctor (for the past 1.5 years) has the reports or reviewed them.

The advocate argued that it is challenging to go through the application process and understand what the requirements are and how to fill in the information gaps. The advocate submits that it was an injustice to the appellant to try and go through the application process for two years (after multiple denials due to not meeting the time limits or not providing all the required information) and still not understand what is required.

Ministry

The ministry argues that the information in the PWD application does not establish a severe mental impairment. The ministry argues that the information in the MR and AR, when looked at cumulatively, indicates the appellant does not have significant deficits in most areas of cognitive and emotional functioning and that the appellant's mental health conditions have no impact on most areas as well. The ministry notes that the appellant is assessed as independent in most areas of the *Social Functioning* DLA and even though the doctor indicates the appellant has *marginal functioning* with his social networks, the appellant still gets assistance from friends, and no safety issues are identified.

At the hearing, the ministry explained that the ministry assumes that the information provided in the PWD application is true and accurate. If the information that is given to the ministry is not true, the decision is still made on the basis of what was submitted. The ministry explained that it "relies heavily" on the information from medical professionals and "cannot go off the [appellant's/advocate's] personal opinion" because all of the information must be "documented and auditable."

The ministry stated that if the information was misconstrued, the applicant can reapply for PWD with new information, but in the appellant's case the information provided at this time "was not sufficient to confirm all of the legislative criteria." The ministry stated that "a lot of people have anxiety and motivation issues but the ministry has to look at the medical professional's information on functional skills limitations and DLA."

Panel's decision - mental impairment

The panel has considered the evidence in its entirety and finds that the ministry's determination of no severe mental impairment is reasonably supported by the evidence. In the MR under *Health History*, the doctor describes the appellant's anxiety as "significant", occurring "almost daily" but indicates the appellant has significant deficits with only 2 (out of the 12) areas that are listed in the form: *Emotional disturbance* and *Motivation*. In the AR, the doctor confirms that the appellant's anxiety has a *major impact* in the areas of *Emotion* and *Motivation* but states (in the MR) that the appellant "stays indoors" because he is "often fatigued" and the impact of social anxiety remains unclear.

In the AR, the appellant's social functioning varies from independent in most areas to marginal (with his social networks) but as noted by the ministry, the doctor indicates the appellant has ongoing family and mental health supports despite his marginal functioning and the need for continuous support with relationships.

In the AR, the doctor indicates the appellant's anxiety disorders have *No impact* in most areas of cognitive and emotional functioning including *Bodily functions* such as sleep. The appellant states in the SR that he is diagnosed with insomnia but this is not confirmed by the doctor. In the AR, the doctor states that the appellant experiences "extreme fatigue" but indicates that fatigue is related to the appellant's physical impairments. As well, the appellant is assessed as independent with daily activities that require motivation such as personal care, and managing personal finances and medications.

The panel has considered the information in the PWD application as well as the submissions for the reconsideration and appeal. The panel finds that the ministry was reasonable in finding that a severe impairment of mental functioning has not been established because very few cognitive and emotional deficits and impacts on cognitive and emotional functioning are reported in the MR and AR. As well, the appellant is independent with most areas of social functioning, and has family and community (mental health) support despite his difficulties with social interactions.

No safety issues are identified at the time of the reports despite the appellant's past history with suicide attempts and hospitalizations for his mental health. In the SR, the appellant states that he has "moderate" depression. The panel finds that the ministry's determination that a *severe* mental impairment under section 2(2) of the EAPWDA was not established on the evidence is a reasonable application of the legislation.

Physical impairment

To assess whether the applicant has a severe physical impairment, the ministry considers the information on the degree of restrictions to physical functioning, restrictions to DLA involving movement, and whether the applicant requires significant help or any assistive devices to manage DLA.

Arguments - physical impairment

Appellant

The appellant argues he "was not in the mental state" to answer the questions in Section 2 - Part D of the MR form correctly (i.e., the tick boxes for physical functions such as walking, climbing stairs, and lifting). In the SR, the appellant argues that he did not understand "what the questions meant" and he could not get help with the form at his doctor's office and had to leave the office abruptly due to an anxiety attack.

The appellant argues that he cannot walk any distance without pain; he cannot climb more than 2 stairs without assistance; he cannot lift more than 2 to 4 lbs. without pain, and even though he is able to write the RFR submission, the process of writing is "agonizing" due to sitting and writing, and he will "not be pain free" for "quite awhile" afterward.

The appellant submits that he is in pain regardless of whether he is standing or walking and he has difficulty bending and kneeling. The advocate argued that the doctor provided inaccurate information and did not disclose that the appellant needs assistive devices.

Ministry

The ministry accepts the information in Section 2 - Part D of the MR as being the doctor's assessment of the appellant's physical functions. The ministry notes that although the appellant said he filled in the information himself, the report was signed by the doctor. The ministry argues that the restrictions that are reported for walking (1 to 2 blocks unaided), climbing stairs (2 to 5 steps), and lifting (5 to 15 lbs.) do not demonstrate a *severe* impairment of physical functioning, especially given that the appellant is independent with all of these functions in the AR.

The ministry argues that being able to walk 1 to 2 blocks and climb 2 to 5 steps unaided indicates a moderate impairment of physical functioning as opposed to a *severe* impairment. The ministry argues that being able to lift 5 to 15 lbs. demonstrates an adequate ability to lift a variety of household/shopping items and does not indicate a severe impairment. At the hearing, the ministry acknowledged that the information from the doctor contradicts the appellant's self-assessments but explained that the ministry adjudicator relies on the medical opinion to corroborate any self-reported limitations. The ministry suggested taking the ministry's *PWD - Denial Decision Summary* to the doctor to explain where the gaps are and what information is needed.

Panel's decision - physical impairment

The panel finds that the ministry's decision on physical impairment (no *severe* impairment) is reasonably supported by the evidence. The panel has considered the ratings provided by the doctor in the MR for physical functional skills and notes that the appellant is assessed as having a moderate degree of restriction with walking (1 to 2 blocks unaided), climbing stairs (2 to 5 steps unaided), and lifting (5 to 15 lbs.). The doctor indicates the appellant has no limitation with sitting even though the appellant reports pain with sitting and writing a submission.

In the AR, the doctor assesses the appellant as independent with all of the physical functions listed: *Walking indoors, Walking outdoors, Climbing stairs, Standing, Lifting, and Carrying/holding*. *Lifting and Carrying/holding* are marked as independent in the AR despite the appellant taking significantly longer with *Carrying purchases home*, due to fatigue and muscle aches. Although the doctor states in the MR (*Health History*) that the appellant experiences pain on a daily basis across most joints and muscles, the doctor's assessments of physical skills and abilities do not indicate a *severe* impairment.

The appellant indicates that he is far more limited with walking, climbing stairs, lifting, sitting, and standing than the doctor reports. The appellant argues that the doctor's information is inaccurate because the doctor didn't go over the information with the appellant. The ministry explained that it bases the reconsideration decision on the information provided and while the appellant provided additional self-assessment with the RFR, the panel notes that no further medical reports/information was submitted.

The panel concludes that the ministry reasonably determined there is insufficient information about functional restrictions to support a finding of *severe* physical impairment. The evidence indicates that despite the appellant's daily pain symptoms, most physical functions are restricted to a moderate as opposed to severe degree on the rating scales in the MR. Furthermore the appellant is independent with all of the physical functions listed in the AR. The panel finds that the ministry's determination that the appellant does not have a *severe* physical impairment under section 2(2) of the EAPWDA is reasonably supported by the evidence.

Restrictions in the ability to perform daily living activities

Subsection 2(2)(b)(i) of the EAPWDA requires the ministry to be satisfied that, in the opinion of a prescribed professional, a severe impairment directly and significantly restricts a person's ability to perform DLA either continuously, or periodically for extended periods. This means that restrictions to DLA must be confirmed by the appellant's doctor or one of the practitioners named in the legislation such as an occupational therapist or a registered psychologist.

The term "directly" means that the severe impairment must cause or result in restrictions to activities. The direct restriction must also be significant. This means that not being able to do DLA without a lot of help or support will have a large impact on the person's life.

Finally, there is a time or duration factor: the restriction may be either *continuous* or *periodic* under the legislation. Continuous means that the activity must generally be restricted all the time. If periodic (e.g., the activity is restricted a few times a week but not every day), the restriction must be for longer periods of time (e.g., the whole day on the days that the person cannot do the activity without help or support). Accordingly, where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require information on the duration and frequency of the restriction, and the help or support that is needed, in order to be satisfied that this criterion is met.

DLA are defined in section 2(1) of the EAPWDR and are also listed in the MR, with additional details in the AR. Therefore, the doctor or other practitioner completing these forms has the opportunity to indicate which, if any, DLA are significantly restricted by the applicant's impairments either continuously or periodically for extended periods and to provide additional details. **DLA, as defined in the legislation, does not include the ability to work.**

Arguments - DLA

Appellant

In the submission on appeal, the appellant argues that the PWD forms did not allow him to fully show how "multiple disabilities" impact his life. In his self-report, the appellant said that he has difficulty remaining focused on tasks and experiences a high degree of anxiety when he has to complete simple tasks such as following up with his doctors, filling out forms, and shopping. The appellant notes that it took him 5 months to complete his registration for *employment assistance*.

The appellant argues that due to anxiety, he cannot be in an environment where he needs to interact with people. The appellant argues that he has "limited ability" to vacuum or do dishes and laundry and needs physical assistance from a family member.

In the RFR submission, the appellant "vehemently disagrees" with the ministry's statement in the reconsideration decision that says "it has not been established that DLA are significantly restricted." The appellant writes that he feels "belittled" by that statement.

At the hearing, the advocate described the appellant's difficulty with filling out the ministry application for assistance. The appellant had so much trouble functioning that he tried to submit the form 5 times without success because the system would time out, or the appellant had missed some information or directed the application to the wrong people. The appellant's family member had to take time off work to assist the appellant.

The advocate stated that the appellant “knows how to use a bank card” but he is “less than independent with finances” because he makes late payments and his family has to help him. The advocate stated that the appellant does not do meal planning or cooking, and if the appellant’s family member did not do these things, they would not get done. The advocate argued that the doctor did not understand the extent to which the appellant is getting support from his family.

The advocate noted that the appellant does not regulate his diet and is underweight because he does eat regularly. The advocate stated that the appellant can do transfers to/from bed but it is painful for him, and his family member helps with laundry on a regular basis as well. The advocate explained that the appellant has to take a “modular approach to housework” because the appellant cannot sustain activity. The advocate stated that the family member does the chores.

Regarding the appellant’s social functioning, the advocate submits that the appellant has “no outside contacts, no friends, no support network other than family.” The advocate argues that this is not captured by the doctor’s reports.

Ministry

The ministry argues that the appellant’s DLA are not restricted either continuously or periodically for extended periods based on the doctor’s opinion in the PWD application. The ministry notes that the DLA assessments in the AR indicate the appellant is independent with the majority of daily activities. The ministry argues that the doctor’s assessments do not contain enough information to confirm that DLA are significantly restricted either continuously or for extended periods as required by the legislation because the doctor does not describe how much longer the appellant takes with shopping, or the frequency of periodic assistance required with social interaction.

Panel’s decision - restrictions to Daily Living Activities

The panel has considered the evidence from the doctor in its entirety and finds that the ministry’s decision that DLA are not significantly restricted is reasonably supported by the evidence. In the MR, the doctor reports that the appellant is not prescribed any medications that interfere with DLA. The appellant indicates that he takes medication for anxiety but does not report any side effects that would limit his activities.

In the AR, the appellant is assessed as independent with all areas of *Basic housekeeping* and *Meals* even though the appellant’s evidence is that he cannot complete cleaning, laundry, or cooking tasks without help from family due to his pain and mobility symptoms. In the MR, the doctor states that the appellant experiences muscle and joint pain on a “daily basis” but in the AR, the doctor indicates the appellant is independent with housekeeping, laundry, cooking, and using transportation, all of which require physical movement.

The appellant states that he has difficulty with shopping due to anxiety but the doctor indicates the appellant takes significantly longer than typical to go to stores and carry purchases home due to a physical impairment (“extreme fatigue” and “muscles aches”). The doctor does not provide any more detail about these restrictions.

Despite diagnosing a mental impairment characterized by low motivation, and significant anxiety “almost on a daily basis” the doctor assessed the appellant as independent with *Personal Care*, *Pay rent and bills*, and *Medications*. The advocate described the appellant’s difficulties with *Regulating diet* (does not eat regularly) and managing personal finances (late bill payments) but this is not reflected in the information from the doctor.

The advocate describes the appellant’s social functioning in terms of “no outside contacts, no friends, no support network other than family” and the appellant indicates in the SR that he has a lot of difficulty interacting with people due to anxiety. However, the doctor indicates the appellant is independent with most areas of *Social functioning*.

For example, the doctor checked that the appellant is independent with *able to secure assistance from others* and indicates the appellant has support from his family and mental health counsellor. This is despite the doctor's information indicating the appellant experiences "significant social anxiety...almost on a daily basis"; marginal functioning with his social networks; and a need for continuous assistance with *develop and maintain relationships*.

As noted by the ministry, no safety concerns are reported by the doctor and the frequency and duration of periodic assistance (required for *interacts appropriately with others*) is not described. Without detailed information about the nature of help required and the reason for needing help, the ministry was not able to confirm that the restriction with social interaction is *continuous, or periodic for extended periods* as required by the legislation.

The panel has considered the evidence in both the MR and AR, and finds that the doctor's assessments of DLA indicate the appellant is largely independent with DLA. Where restrictions are reported for *Shopping and Social Functioning*, the doctor's information lacks sufficient detail to confirm that the appellant is significantly restricted in his ability to perform these DLA, either continuously or periodically for extended periods as required by the legislation. The panel therefore finds that the ministry's determination that the criteria in subsection 2(2)(b)(i) of the EAPWDA were not met, is reasonable based on the evidence from a prescribed professional.

Help to perform daily living activities

Subsection 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.

Arguments

The appellant argues that DLA such as housework, shopping, cooking; and managing finances, appointments, and filling out forms would not be completed without help from a family member. The advocate argued that the doctor did not understand the extent of support the appellant receives from his family.

The ministry acknowledges that the appellant receives help from family and a counsellor but notes that the doctor does not indicate a need for any assistive devices. At the hearing, the ministry explained that not all help will meet the legislative criteria of *significant* help and the ministry looks at whether the person needs an assistance device or a great deal of help from another person to manage their DLA. The ministry's position in the reconsideration decision is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel's decision - help with Daily Living Activities

Under the legislation, confirmation of direct and significant restrictions to DLA is a precondition for needing help to perform DLA. The panel found that the ministry's determination that significant restrictions to DLA were not established by the information provided is reasonable.

The panel has considered all of the information in the MR and AR and finds that the ministry reasonably determined there is not enough evidence from the doctor to confirm that the appellant needs significant help with DLA. The doctor assesses the appellant as independent with the majority of DLA listed in the AR, including most areas of *Social Functioning* even though the appellant needs psychotherapy and cognitive behaviour therapy to be maintained in the community.

The advocate argued that the appellant requires assistive devices for his impairment but the doctor overlooked that in the reports. In both the MR and AR, the doctor does not indicate any need for assistive devices and the ministry explained at the hearing that the ministry has to rely on the information before them at the reconsideration. On review of the evidence from the doctor, the panel finds that the ministry's conclusion that the criteria for help under subsection 2(2)(b)(ii) of the EAPWDA were not met is reasonable based on the evidence.

Conclusion

The panel considered the information in its entirety and finds that the ministry's reconsideration decision that found the appellant ineligible for PWD designation is reasonably supported by the evidence. The legislation requires all of the criteria to be met. The ministry found that two of the criteria (age, and duration of impairment) were met. The ministry was not satisfied that the appellant has a severe impairment that significantly restricts DLA to the extent that he requires significant help to perform DLA.

The functional skills and DLA assessments by the appellant's doctor do not support the appellant's information on restrictions. The panel finds that the ministry reasonably concluded that the information provided does not demonstrate that the appellant has a severe impairment that significantly restricts DLA, and that the appellant needs significant help or support to manage DLA. The panel confirms the reconsideration decision. 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

Margaret Koren

DATE (YEAR/MONTH/DAY)

2020-05-13

PRINT NAME

Vivienne Chin

DATE (YEAR/MONTH/DAY)

2020-05-13

PRINT NAME

Adam Rollins

DATE (YEAR/MONTH/DAY)

2020-05-13