

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated November 18, 2021 which found that the appellant did not meet all of the 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 an impairment that is likely to continue for at least two years and that she has a severe mental impairment. However, the ministry was not satisfied that the evidence established that:

- the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and
- as a result of these restrictions, the appellant 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.

In addition, the ministry found that it had not been demonstrated that the appellant is one of the prescribed classes of persons who may be eligible for PWD designation on alternative grounds. As no information or argument provided for PWD designation on alternative grounds, the panel considers that matter not to be an 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

Evidence at Reconsideration

1. The appellant's Persons with Disabilities (PWD) Application comprised of:
 - The Applicant Information and Self-report ("SR") dated September 20, 2021. The personal information in the SR was completed but the questions were left blank, and ticked the box next to "I choose not to complete this self-report".
 - The Medical Report (MR) and the Assessor Report (AR) dated September 15, 2021, prepared by the appellant's general practitioner (GP) since 2008, who treated the appellant 11 times or more in the 12 months prior to completing the MR. The approaches and sources used to complete the MR and AR were office interview with the appellant and chart notes dating back to 2008.
2. Psychological Assessment dated May 26, 2021 and last updated July 12, 2021.
3. Psychological Assessment dated July 2, 2014 and last updated August 29, 2014.
4. Psychological Assessment dated March 10, 2014 and last updated April 1, 2014.
5. Request for Reconsideration (RFR), signed and dated November 11, 2021. In the RFR the appellant described her major depression, anxiety, social anxiety and PTSD. She described a life-long history of trauma and abuse. She stated that she was diagnosed with Burning Mouth Syndrome and described the pain associated with the condition. She stated that there is no known cause or cure for this condition. It is noted that the appellant submitted the information in the RFR as her SR.

Diagnoses

In the MR, the GP notes that the appellant has been diagnosed with General Anxiety (onset 2008), PTSD (onset 2008), Burning Mouth Syndrome (onset 2011-2012) and Backache (onset 2020).

Physical Impairment

In the MR the GP indicated the following:

- "She sleep poor and is always fatigued. In 2010, she developed burning mouth syndrome, that remains and is unresponsive to any treatment. She was assaulted by a male neighbour in 2020 leading to chronic backache. She is unable to concentration and feel overwhelmed easily. Her self-confidence is poor, and she tends to isolate herself".
- The appellant can walk 4+ blocks and climb 5+ steps unaided, lift 5-15 lbs and remain seated for 1-2 hours.

In the AR, the GP indicated the following:

- Walking indoor/outdoors, climbing stairs, and standing are performed independently.
- Lifting and carrying/holding are performed independently with less than 15 lbs.

Mental Impairment

In the MR, the GP indicated the following:

- "Patient suffers from severe depression, anxiety and PTSD. She was sexually molested as [a] child. She is always anxious, afraid, worried. She suffers from depressed mood

and have flashbacks of previous traumas. She had difficult relations and had difficult children behaviours.”

- “She is unable to concentrate and feels overwhelmed easily. Her self-confidence is poor, and she tend to isolate herself”.
- There are no difficulties with communication.
- There are significant deficits with cognitive and emotional function in the area of executive, memory, emotional disturbance, motivation and attention or sustained concentration. The GP added the comment: “She suffers from PTSD/anxiety/depression. She is always in a negative mood, over worried, can’t concentrate, flashbacks”.

In the AR, the GP indicated the following:

- Speaking, reading and writing are good, and hearing is poor.
- Under cognitive and emotional functioning, there are major impacts to ‘bodily function’, ‘emotion’, and ‘motivation’. There are moderate impacts to ‘consciousness’, ‘attention/concentration’, and ‘memory’. There are either minimal or no impacts to all other listed areas.
- Under ‘social functioning’ the tasks of ‘able to develop and maintain relationships’, ‘interacts appropriately with others’, and ‘able to secure assistance from others’ are performed independently.
- Under ‘social functioning’, the tasks of ‘appropriate social decisions’ and ‘able to deal appropriately with unexpected demands’ require periodic assistance. No information was provided as to the type, frequency and duration of the assistance required.
- There is marginal functioning with immediate and extended social networks.
- No other comments were provided.

Daily Living Activities

In the MR, the GP indicated the following:

- The appellant has not been prescribed any medications and/or treatments that interfere with her ability to perform DLA.

In the AR, the GP indicated the following:

- The appellant independently performs all listed items under ‘personal care’, ‘pay rent and bills’, ‘medications’, and ‘transportation’
- Under ‘shopping’ the task of ‘reading prices and labels’, ‘making appropriate choices’ and ‘paying for purchases’ are performed independently.
- Under ‘shopping’, the tasks of ‘going to and from stores’ and ‘carrying purchases home’ require periodic assistance. No information was provided as to the type, frequency and duration of the assistance required.
- All tasks under ‘basic housekeeping’ require periodic assistance. No information was provided as to the type, frequency and duration of the assistance required.
- All tasks under ‘meals’ require continuous assistance. No information was provided as to the type of the assistance required.

Need for Help

In the MR, the GP indicated the following:

- That the appellant does not require any prostheses or aids for her impairment.

In the AR, the GP indicated the following:

- The appellant lives with family, friends or caregiver
- The appellant receives help from friends (boyfriend).
- The section 'Assistance provided through the uses of Assistive Devices' was left blank.
- No assistance is provided by Assistance Animals.

Evidence Prior to the Hearing

Prior to the hearing, the appellant submitted the following information:

- 4-page letter from the appellant's advocate which addresses the issue of DLA. In the RFR the appellant described how her impairment directly and significantly restricts her ability perform her DLA continuously or periodically for extended periods. The appellant argued that the ministry failed to consider this information when making its determination to deny PWD.
- 1-page letter from the appellant's GP who completed the PWD application. In this letter, dated Dec 2, 2021, the physician indicated changes to tasks under:
 1. Personal care. These activities take significantly longer than typical and she often needs assistance and motivation from her partner.
 2. Laundry/basic housekeeping. This is not done "unless there is assistance and motivation from her partner."
 3. Shopping. "She doesn't go shopping because she feels overwhelming social phobia. She will not read prices, make appropriate choices, paying for purchases or carry them home."
 4. "Pay rent and bills". "She can't do it at all. If she does it at all it will take significantly longer than typical and she needs a lot of motivation."
 5. Filling prescriptions. "She needs continuous assistance from the mental health worker and reminders and motivation" with this task.
 6. Social. She is not "able to develop and maintain relationships [and needs] continue support and supervision. Her mental health has led to a very disruptive functioning with her family."
- 1-page letter from the appellant's former group home worker. The worker stated, in part, that she observed the following in the appellant: "behaviours typical of an abused child, sleep walking, dreams, triggers that would send her into emotional upheaval"; "Her mental health has been slowly deteriorating over the years"; and [she displays] behaviours of "self isolation, rapid change in emotions, extreme nightmares, [and] dark thoughts around Suicide".

Evidence on Appeal

Notice of Appeal, which was submitted on November 22, 2021, but was left blank.

Evidence at the Hearing

At the hearing, the appellant's witness, who is her live-in boyfriend, stated, in part, the following about the appellant:

- She is depressed, anti-social, has a hard time sleeping and eats very little.
- She lacks focus and needs reminders to take her medications.
- She is violent in her sleep and acts out her dreams in her sleep.
- As the partner, he has to do the shopping, which he does every second day, and housekeeping (such as dishes, laundry, and cleaning the floors), which he does a little everyday. When asked the witness stated that he completes three-quarters of these tasks and the appellant completes one quarter.
- As the boyfriend he cares for the children on a daily basis. When asked what tasks he completes with/for the children, the witness stated that he deals with all tasks/activities outside of the home.
- The partner has been helping the appellant with the above for 4-5 years.

At the hearing, the appellant and her advocate stated, in part, the following:

- The PWD application was not completed as accurately as it could have been.
- The appellant did not describe her conditions to the doctor clearly and accurately because she finds it difficult to talk about herself and her past.
- The December 2, 2021 letter from GP supports the fact that the GP was not aware of the true nature of the appellant's conditions and how her DLA are impacted.
- She has a poor quality of life.
- It is difficult for the appellant to be motivated to do anything.
- She does not sleep well and therefore is tired all the time.
- She cannot manage meal planning or preparation, or take/refill her medications, or manage her transportation needs. All these things are done by her partner.
- She is not able to reach out to others for help or support because she cannot explain why she is not able to do things herself.
- When she saw the GP about the PWD application, the appellant did so alone and without support. As a result, the GP did not know the full scope of the appellant's needs. The December 2, 2021 letter was the result of a second conversation with the GP with the support of the advocate.
- When asked, the advocate stated that the GP changed his opinion based on the information the appellant provided and not an independent assessment from a prescribed professional.
- The appellant's description and opinion regarding DLA are important because she is the one living it out.
- The appellant has been in psychological therapy since March 2021, but no significant changes/gains have been made thus far as it is difficult for the appellant to speak about herself. She will soon start Eye Movement Rapid Desensitisation therapy, which is an attempt to deal with the appellant's traumatic past.

At the hearing, the ministry relied on its reconsideration decision. The ministry representative also stated that the December 2, 2021 letter from the GP does not speak to duration and frequency of the help needed by the appellant.

Admissibility of Additional Information

The ministry did not object to the admission of the information submitted prior to the hearing.

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.

In this case, the panel determined that the December 2, 2021 letter from the GP, the 4-page letter from the advocate and the letter from the group home worker are admissible, in accordance with s. 22(4) of the *Employment and Assistance Act*, because the information in these documents allow for full and fair disclosure of all matters related to the issue on appeal. However, the panel places little weight on the 4-page submission from the advocate because it does not provide additional or different evidence. Rather it presents argument which will be addressed in the panel's decision. Similarly, the panel places little weight on the 1-page letter from the group home worker because it addresses the issue of the mental condition and the ministry has conceded that the appellant has a severe mental impairment. Finally, the panel places little weight on the December 2, 2021 letter from the GP. Though the letter gives a broad picture of how the appellant's impairment impacts various DLA and that she takes significantly longer to complete certain tasks or is continuously restricted in specific tasks, the letter did not address the type, frequency, or duration of the help that the appellant requires from others. Therefore, the panel place little weight on all the documents submitted on December 7, 2021 by the appellant's advocate prior to the hearing. Although this evidence supports the appellant's position, it does not indicate the quantifiable degree of significant impairment in DLA required by the legislation.

Part F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's Reconsideration Decision, which found that the appellant is not eligible for designation as a PWD under section 2 of the *EAPWDA*, 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 appellant met the age requirement, that she has an impairment that is likely to continue for at least two years and that she has a severe mental impairment. However, the ministry was not satisfied that the evidence establishes that:

- the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods; and,
- as a result of these restrictions, the appellant 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.

Panel Decision

The panel finds that employability is not a consideration for eligibility for PWD designation because employability is not a criterion in section 2(2) of the *EAPWDA* nor is it listed among the prescribed daily living activities in section 2 of the *EAPWDR*.

Restrictions in the ability to perform DLA

Section 2(2)(b)(i) of the *EAPWDA* requires that the minister be satisfied that in the opinion of a prescribed professional, a severe mental or physical impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. While other evidence may be considered for clarification or support, the ministry's determination as to whether it is satisfied that the legislative criteria are met, is dependent upon the evidence from prescribed professionals. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant. Finally, there is a component related to time or duration – the direct and significant restriction may be either continuous or periodic. If periodic, it must be for extended periods. Any analysis of periodicity must also include consideration of how frequently the activity is restricted. All other things being equal, a restriction that only arises once a year is less likely to be significant than one that occurs several times a week. Accordingly, in circumstances where the evidence indicates that a restriction arises periodically, it is appropriate for the ministry to require evidence of the duration and frequency of the restriction in order to be "satisfied" that this legislative criterion is met.

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

The appellant argued that she struggles to live and cope with her current situation due to her depression, anxiety, PTSD, and lack of motivation. She also argued that the ministry did not consider her SR (in the RFR)

when making its determination. She argued that her SR clearly demonstrates that her DLA are directly and significantly restricted due to her mental impairment.

The ministry argued that there is not enough evidence to confirm that a severe mental or physical impairment significantly restricts the appellant's ability to perform her DLA continuously or periodically for extended periods.

In making its decision, the ministry noted that in the MR the GP indicated that continuous assistance is required with managing all tasks under 'meals', and periodic assistance is required with 'basic housekeeping', 'going to and from stores', 'carrying purchases home' and some areas of social functioning. The ministry stated that the GP failed to provide information that explained the type, the frequency or the duration of the assistance that is required to help manage these areas of DLA. Therefore, the ministry was unable to determine that a significant degree of assistance is required for extended periods of time.

The ministry also noted that in the MR, the GP indicated that the appellant independently performs all tasks of personal self-care, paying rent and bills, management of medications, use of transportation.

In regard to social functioning, the ministry noted that in the AR, the GP indicated that periodic supervision is required with some of the tasks in this category, but no additional information was provided to explain the type or the degree of the assistance that is required by the appellant.

The panel finds that the ministry's analysis of the evidence at the time of the reconsideration decision was reasonable because the GP failed to provide information regarding the type, frequency and duration of the assistance required which is necessary to make a determination of a direct and significant restriction to DLA. The panel notes that the GP indicated that the appellant is not prescribed medication that interferes with the ability to perform DLA and no assistive devices, aids or animals are used by the appellant.

The appellant has argued that her description of how her impairment impacts her ability to perform DLA was not considered when the ministry made its decision. The panel notes that in the reconsideration decision, the ministry found that the appellant met the requirement of severe mental impairment, which she originally did not, and that the ministry indicated that the appellant's information was considered in conjunction with the evidence provided by the GP. The panel also notes that the legislation requires that the confirmation of a direct and significant restriction to DLA must be informed by the opinion of a prescribed professional. In the case, the appellant or her advocate are not prescribed professionals and the ministry must rely on the information provided by the GP.

The panel notes that the December 2, 2021 letter from the GP provided additional information regarding personal care, basic housekeeping, shopping, filling prescriptions and social functioning. However, the panel finds that this letter failed to provide any information regarding the type, frequency and duration of the assistance required so the appellant can perform her DLA. The panel also notes that in this letter, the GP indicated that since the completion of the PWD application "things have gone dramatically worse" with that appellant. However, the GP did not indicate what has gone wrong or what has caused the change in his perception of the

appellant's condition and the impact to her ability to perform her DLA. At the hearing, the appellant repeatedly stated that she has difficulty speaking about herself. However, the panel notes that the GP who completed the PWD application and wrote the December 2, 2021 letter, has had the appellant as a patient since 2008 and saw her 11 or more times in the last 12 months. Additionally, the GP had access to the appellant's psychological assessments. Though it empathizes with the appellant's circumstances and understands the difficulty she faces when speaking about herself, the panel struggles to understand why in 13 years or so the GP did not fully understand the depth of the appellant's condition and convey that in the PWD application. Yet, from September 15, 2021, when the PWD application was completed, to December 2, 2021, the GP gained a clear understanding of the appellant's circumstance seemingly without a cause for the change in his perspective. The panel notes that the GP did not provide any information which indicated that his change of opinion from September 15, 2021 to December 2, 2021 was due to further assessment. As indicated previously, the panel placed little weight on the December 2, 2021 letter.

The panel considered the assessment by the GP in the PWD application dated September 15, 2021 and the December 2, 2021 letter. Given the evidence as a whole and as described above, the panel finds that the ministry reasonably concluded that the evidence does not establish that an impairment significantly restricts DLA continuously or periodically for extended periods, pursuant to Section 2(2)(b)(i) of the EAPWDA because there is not enough information.

Help to perform DLA

Section 2(2)(b)(ii) of the EAPWDA requires that, *as a result of direct and significant restrictions in the ability to perform DLA*, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The appellant's position is that she requires the help from her partner with meal preparation, shopping, medications and basic housekeeping.

The ministry argues that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

Given that confirmation of direct and significant restrictions with DLA is a precondition of the need for help criterion and because the panel found that the ministry reasonably determined that 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

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 is a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

Legislation

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 has a severe mental or physical impairment that

(a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and

(b) in the opinion of a prescribed professional

either

(i) directly and significantly restricts the person's ability to perform daily living activities

(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).

Section 2(1)(a) of the *EAPWDR* defines DLA for a person who has a severe physical or mental impairment 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.

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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)

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

Part H – Signatures

Print Name

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2021/12/13

Print Name

John Pickford

Signature of Member

Date (Year/Month/Day)

2021/12/16

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2021/12/13