

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated January 17, 2022 which found that the Appellant did not meet three of the five statutory requirements of Section 2 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had an impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes that:

- The Appellant has a severe physical or mental impairment;
- 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.

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) and the Appellant did not appeal the decision on this basis. 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

EAPWDA, Section 2

EAPWDR, Section 2

Employment and Assistance Act (EAA), Section 22(4)

The relevant legislation is provided in Appendix A.

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of the RD included the PWD Application comprised of the applicant information and self-report (SR) completed by the Appellant on August 16, 2021, including a Medical Report (MR) dated August 13, 2021 and completed by the Appellant's General Practitioner (GP) who has known the Appellant since birth and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) dated August 13, 2021, also completed by the GP.

The evidence also included a Request for Reconsideration form (RFR) signed by the Appellant on December 14, 2021, in which the Appellant does not indicate why he disagrees with the Ministry's RD but asks for an extension of the time period permitted for making a request for reconsideration because he has tried to contact a community services organization to find an advocate to represent him at the hearing, that "*(he is) still waiting for (the social services organization) to help (him) with the appeal process*", and that he finds filling out forms very challenging.

Diagnoses

In the MR, the GP diagnoses the Appellant with Hyperactivity and Infantile Autism which he has had since birth.

Severe Physical Impairment***Physical Functioning***

In the MR, under Health History the GP states that the Appellant is "*physically ok*". The GP also reports in the MR that the Appellant has no functional limitations, and in the AR the GP indicates that the Appellant has no limitations with walking, standing, climbing stairs, lifting, or carrying and holding.

In the SR, the Appellant does not identify any problems with his physical functioning.

Severe Mental Impairment***Mental Functioning***

In the MR, under Health History the GP has indicated that the Appellant's mental impairments (Hyperactivity and Infantile Autism) have been problems since birth. The GP says that the Appellant has attended "*special schools*" and had a "*special social worker*" in high school. The GP also writes that the Appellant is now attending a community college and is taking "*a special college program (designed for persons with) a permanent disability*". The GP also says that the Appellant has never worked due to his disability and provides the names of two counsellors at the Appellant's community college who assist him with his special needs. In the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional function, the GP has ticked "yes" in the areas of attention and sustained concentration and autistic social relationships, adding the comment "*needs support for attention deficit hyperactivity disorder (ADHD) and autism*".

In the section of the AR where the assessor is asked to indicate the level of ability to communicate, the GP indicates that the Appellant's abilities are good in all areas (writing, speaking, reading ability and hearing). In the section of the AR where the assessor is asked to indicate to what degree the applicant's

mental impairment restricts or impacts functioning, the GP has indicated no major impacts, a moderate impact on attention/concentration, a minimal impact on emotion, impulse control, insight and judgment and executive functioning, and no impact in any of the other listed areas (bodily functions, consciousness, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, or other emotional or mental problems). With respect to social functioning, the GP indicates (with comments in *italics*) that the Appellant needs periodic support or supervision in making appropriate social decisions, and needs continuous support in developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others (*from counsellor and parent*). The GP also indicated that the Appellant has marginal functioning with both his immediate and his extended social networks. The GP describes the degree of support or supervision required as “*school ADHD and Autism counsellor*” in the space provided and adds the additional comment “*continue on school support*”.

In the SR, where asked to identify his disability, the Appellant says that he has been diagnosed with Autism.

Restrictions in the Ability to Perform DLA

In the MR, the GP indicates that the Appellant has not been prescribed any medications or treatments that interfere with their ability to perform DLA. Where asked how functioning is impacted in the social functioning-related DLA, the GP has written “*hard to have friends*” and provides the additional comment regarding the degree of restriction “*needs constant guidance from counsellor*”. Where asked what assistance the patient needs with social functioning DLA, the GP has written “*nil*”. Where asked to provide any additional information that might be considered relevant in understanding the impact of the Appellant’s medical condition on daily functioning, the GP has written “*Patient receiving counselling from counsellor from school*”.

In response to the question “What are the applicants mental or physical impairments that impact his ability to perform DLA?”, the GP has written “*slow planning need(s) guidance*”. The GP also indicates that the Appellant is independent with respect to all tasks for the non-social functioning DLA in the AR, adding the comment “*If given time patient can do most of the work*”.

The Appellant does not provide any comment regarding restrictions in his ability to perform DLA in the SR.

Need for Help

In the MR the GP indicates that the Appellant does not require any prostheses or aids for their impairment.

In the section of the AR where the assessor is asked to provide additional comments regarding the type and amount of assistance with DLA that is required by the Appellant, the GP has written “*Help from mother and counsellor for decision making*”. In the section of the AR that asks who provides the help required for DLA the GP has ticked “*Family*” and written “*N/A*” in response to the question “*If help is required but none is available, please describe what assistance would be necessary*”. Where asked

what assistance is provided through the use of assistive devices, the GP has not identified any items. The GP also states that the Appellant does not have an assistance animal.

The Appellant does not provide any comment regarding his need for help in performing DLA in the SR.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based the requirements set out in the legislation and on all admissible evidence.

Where asked why he is appealing the Ministry's RD in the Notice of Appeal (NOA), the Appellant has written "*In order to fill out my PWD (application) form I've needed assistance from the Peer Navigator Program ... I have many challenges, and I find it very difficult to go through life and ... life skills without help. I find it really challenging to organize and fill out forms*".

A submission from the Appellant (the Submission) dated April 6, 2022, was received on April 8, 2022. The Submission comprised a new SR (the second SR), a new MR (the Second MR), and a new AR (the Second AR), details of which are provided below.

Second SR

Regarding GP's the diagnosis of Hyperactivity, which is identified in the Submission as ADHD, the Appellant writes:

"I have extreme difficulty staying focused on tasks, concentrating and paying attention. I have a very short attention span and am easily distracted. I have a very hard time organizing things that I have to do and getting things done. I make a lot of careless mistakes. I am very forgetful – I frequently lose or misplace things. I have memory issues and I have a hard time calling things to mind – ex. Past event, or daily routine things. I am constantly restless. I'm fidgety and have a hard time sitting still. I act without thinking which can result in putting myself in dangerous situations because I don't appreciate the risks that I take. I am impatient and have a hard time waiting for things or my turn. If people try to tell me what to do or how to do things, I can't follow their instructions or follow through on what they tell me."

Regarding the GP's diagnosis of Infantile Autism, which is identified in the SR as "*Autism Spectrum Disorder (Diagnosis: Childhood)*", the Appellant writes:

"I rely heavily on routines and schedules. I have difficulty describing how I'm feeling internally. I have flat and monotonous speech. I struggle with social situations. I don't understand social cues and non-verbal communication. I have been told that my facial expressions and body language don't match what I am saying. I don't naturally make eye contact and I have to force myself. I have to pay a lot of attention to this and I end up missing what is actually being said to me because I'm focused on appearing more neuro-typical. When I am talking about something that interests me I will go on and on without letting the other person talk. When I am not interested in what the person is saying I don't engage with them. I will

give short answers or none at all. I have been told that I come off as rude. But, I don't mean to be I just don't think and, therefore, behave the way others do. I engage in stimming behavior – it's a kind of swaying, dancing movement."

Regarding how the Appellant's disability affects his life and his ability to take care of himself, the Appellant says that he has severe and ongoing impairments that directly restrict his:

- Ability to sit (*"I cannot sit for more than a few minutes without getting agitated and having to move around."*);
- Ability to effectively communicate (*"I prefer to use email rather than talking to someone in person or on the phone. In conversation, I have trouble finding the right words to use. I plan out what I'm going to say and how conversations are supposed to go. If the conversation doesn't go as planned I get overwhelmed and I will disengage. I don't understand non-verbal communication. I need people to tell me explicitly what they want. If I'm talking about something I'm interested in I will dominate the conversation without allowing the other person to talk. I don't understand social cues and etiquette. I can force myself to act more neuro-typically (make eye contact) but I miss what is being said because my focus is on how I am presenting. My facial expression and body language don't match what I am saying."*); and,
- Cognitive and emotional abilities (*"I experience confusion and have a hard time putting my thoughts together to express myself. I have visual spatial impairment and bump into furniture a lot. I experience visual, auditory and tactile hallucinations approximately once per month. I experience depression and anxiety especially in social settings or when routines are thrown off. I have low motivation and have little interest in doing things. I have impulse control issues and do things without considering possible negative consequences. I experience a lot of agitation and it's very hard for me to be still. I have an extremely difficult time with paying attention and maintaining concentration. I'm easily distracted and have a hard time completing tasks."*).

With respect to the Appellant's ability to perform DLA, he says that he has difficulties with:

- Personal self-care (*"I shower and change my clothes every couple of days. I'm not motivated to do these things and don't see the point. I rely on encouragement and motivation from my mother."*);
- Meal preparation (*"I rely on my mom to prepare meals for me. If my mom isn't around, I will have leftovers or noodles because that's about all I know how to make."*);
- Housework (*"I rely on my mom for housework. I don't clean the bathroom, for example. When I do laundry I have to do it with my mom."*);
- Shopping (*"I rely on my mom for grocery and personal shopping."*);
- Transportation (*"I rely on my mom to drive me most places. I struggle with taking public transit. I don't understand the schedule; I don't get to stops on time. I don't like being around all the people on the bus. If I do have to take the bus, I will wear headphones to avoid people."*);
- Financial management (*"I have a difficult time paying bills on time. I forget that they are due. I rely on my mom to remind me."*);

- Decision making (*"I make rash and impulsive decisions. I don't think about pros and cons or consider consequences of my actions. I have risked my personal safety without realizing it."*); and,
- Social functioning (*"I am extremely socially isolated. I have a hard time interacting with people. I don't understand social cues or etiquette. I have been told that I come off as rude, but I don't mean to be I just think and behave differently. I don't understand non-verbal communication. Unless someone is aware and expresses themselves explicitly I struggle. I mostly stay at home with my mom."*).

The Appellant also states that he requires assistance from another person with self-care, meal preparation, housework, shopping, transportation, financial management, decision making, and social functioning, and needs constant guidance on what he needs to do.

Second MR

The Second MR was prepared by a nurse practitioner (NP) who has known the Appellant for 17 months and who has seen him 2 – 10 times in the past 12 months. The NP diagnoses the Appellant with ADHD, Autism Spectrum Disorder (ASD), General Anxiety Disorder, and Major Depressive Disorder, all with dates of onset unknown.

Severe Mental Impairment

Mental Functioning

In the Second MR, under Health History the NP says that the Appellant has always had problems with friendships and social interactions, having been severely bullied in schools. The NP also says that the Appellant was abused as a young child, which has resulted in trauma, depression, anxiety, fear, and other emotions. The NP indicates that the Appellant struggles with impulse control and has minimal awareness of political cues and social norms.

The NP also writes in the second MR that the Appellant will need ongoing supervision and assistance *"likely of the rest of his life"*, and that he cannot interact socially in a way that would allow him to live safely and independently. The NP indicates that the Appellant has no limitations with the functional skills of walking, climbing stairs, or lifting, but that he can only remain seated for less than an hour. In addition, the NP indicates that the Appellant has difficulties with cognitive communication, adding the comment *"hard (for the Appellant) to explain him(self) and articulate (his) needs. Lacks confidence and ability to read the situations and environment; unable to regulate emotions and express feelings, especially when heightened or scared"*. In the section of the MR where the prescribed professional is asked if there are any significant deficits with cognitive and emotional functioning, the NP has ticked "yes" in the areas of consciousness, executive functioning, memory, emotional disturbance, motivation, impulse control, and attention and sustained concentration, adding the comment *"High anxiety and low mood and depression for many, many years. Motivation for any self care, like showering/eating. Difficulty in all executive functioning at school, cannot plan or execute school work appointments."*

In the section of the Second AR where the assessor is asked to indicate the level of ability to communicate, the NP indicates (*with comments in italics*) that the Appellant's abilities are poor in the

areas of speaking (*unable to communicate needs in any way, confused*), writing (*unable to explain self or give details*), and reading ability (*did poorly in school, learning disability*). The NP indicate that the Appellant's hearing ability is satisfactory. Regarding mobility and physical ability, the NP indicates that the Appellant is independent in all areas except walking outdoors, where he "*needs someone there at all times*", adding that he needs to have detailed directions and instructions for anything involving the physical tasks of lifting and carrying and holding.

In the section of the Second AR where the assessor is asked to indicate to what degree the applicant's mental impairment restricts or impacts functioning, the NP has indicated major impacts in most listed areas (attention/concentration, emotion, impulse control, insight and judgment, executive functioning, consciousness, memory, motivation, language, other neuropsychological problems, and other emotional or mental problems) and a moderate impact in all of the other areas (bodily functions, motor activity and psychotic symptoms). With respect to social functioning, the NP indicates that the Appellant needs continuous support in all listed areas (making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others). The GP also indicated (with comments in *italics*) that the Appellant has marginal functioning with his immediate social network (*withdrawn, has anger and (is) impulsive, really struggles to communicate*) and has both marginal and very disrupted functioning with his extended social networks (*does not interact with anyone except one friend that he met in school years ago*). The NP says that the Appellant needs the full assistance of a parent to stay in the community and adds the comment "*also peer navigator helps ... with life skills*".

Restrictions in the Ability to Perform DLA

In the Second MR, where asked whether applicant's impairments directly restrict their ability to perform DLA, the NP has indicated that all DLA are continuously restricted. In response to the question "*What are the applicants mental or physical impairments that impact his ability to perform DLA?*", the NP has said that the Appellant has been supported by community social services agency counselling for over 18 months. The NP also says that the Appellant has faced social isolation and trauma for his whole life, and that this has compounded over time to create more anxiety and depression.

In the Second AR, the NP indicates that the Appellant is independent with the personal care DLA of dressing, toileting and transferring in and out of bed or chairs, and with the transportation DLA of getting in and out of a vehicle, but needs periodic assistance from another person with grooming, bathing, feeding himself, reading prices and labels while shopping and carrying purchases home. The NP indicates that the Appellant needs continuous assistance with regulating his diet, basic housekeeping, going to and from stores, making appropriate shopping choices, paying for purchases, all aspects of meal preparation and cooking, paying rent and bills, taking medications, and planning and using public transit.

Need for Help

In the Second MR, the NP indicates that the Appellant will need ongoing support from his family and community resources to help him with daily functioning and life skills, and that he needs the PWD designation "*to validate his severe impairment ... and give him access to more support and resources that will be vital to his well being*". Additional comments by the NP on the Second MR relating to the

Appellants ability to perform DLA include the statement “*(The Appellant) is severely restricted in all facets of (DLA)*”, and that he “*needs help with everything, always needs a responsible adult. He is unable to read situations and gets very easily confused. He often will abort tasks halfway through as he has no idea how to do things.*”

In the Second AR, the NP has indicated that the Appellant has assistance from his family, health authority professionals and community services agencies, adding “*(The Appellant would) benefit from community resources that specialize in ASD and neurotypical presentations*”. In the section of the Second AR where the assessor is asked to provide additional comments regarding the type and amount of assistance with DLA that is required by the applicant, the NP has written “*I do not feel (the Appellant) would be able to handle any type of emergency in or out of the house. He would not know how to handle a fire, an overflowing washing machine, or anything that caused him to problem solve. If (his) mom was out of town for even one day I feel (he) would be at risk being alone. He does not do any banking or (make) any financial decisions. He has very minimal ability to be independent in a shopping situation (and) he struggles with even the basics of communication.*”

Where asked in the Second AR to provide additional comments, the NP has written “*(The Appellant) doesn’t plan or cook any meals and would struggle with making anything more significant than a bowl of cereal or instant noodles. He would need help with all banking, medication, appointments, navigating travel, resources.*” The NP has also stated that the Appellant struggles with cognition and understanding and would be a target for online bullying and at risk of harm from others, based on his lack of knowledge about social norms and cues.

Evidence Presented at the Hearing

The Appellant was joined at the hearing by the NP, acting as one of the Appellant’s two advocates, and a mental health and substance use counsellor from a community services agency in the Appellant’s home community (the Second Advocate).

At the hearing, the NP asked the Appellant if he was present when the GP completed the MR and the AR, and how long the GP took to complete the forms. The Appellant said that he was present and agreed that it took the GP about 10 minutes to complete the MR and the AR. Referring to the information provided by the GP in the MR designed to provide information about significant deficits with cognitive and emotional functioning, the NP said that in her professional opinion that section had “*not been filled out appropriately*”. In addition, referring to the sections of the AR in which the assessor is asked to provide explanations or descriptions of the Appellants ability to communicate and mobility and physical abilities, the NP pointed out that no descriptions or explanations of limitations had been provided. The NP said that she has completed these forms for many PWD applicants, and said that she “*would never have sent in an application like that*”. The NP said that it takes a lot of time for a prescribed professional to complete a PWD designation application, adding that she had spent over 2 hours with the Appellant when she completed the Second MR and the Second AR.

In response to a question from the Panel, the NP said that she had only had direct contact with the Appellant during the time she spent completing the Second MR and the Second AR, but that she was in regular contact regarding the Appellant’s circumstances with counsellors at the community services organization that supports the Appellant, and that as a result she is aware of the numerous issues that

have had an impact on his life. The Second Advocate said that he has seen the Appellant extensively over the past 18 months, indicating that while his organization has a general rule that they are expected to assist individual clients no more than six or seven times, he has seen the Appellant over 30 times in the past 18 months. The Second Advocate stressed the difficulties the Appellant has with daily functioning, saying that without his continuing support and the continuing support of his mother and his peer navigator, the Appellant “*would not be able to cope*”. The Second Advocate said that the Appellant has had a series of father figures over the years, none of whom have been permanent. He also said that the Appellant recently told his peer counsellor that he had lost his rent money and “*had no reason to live*”.

In response to a question from the Panel regarding the role of the peer navigator, the Second Advocate said that the peer navigator meets with the Appellant every two weeks and is there to help with activities outside the normal supports provided by the community services agency, such as helping the Appellant with his PWD designation application for example. The Second Advocate added that he “*realized he needed to create a network*” for the Appellant.

When asked by the Panel why the Second Advocate had not originally suggested that the NP complete the MR and the AR, the Second Advocate said that he had had no experience with the PWD designation application process, and thought it made sense for the Appellant’s GP, who had been the Appellant’s family physician since birth, to fill out the application.

At the hearing, the Ministry indicated that, based on the new detailed information contained in the Submission, it would make more sense for the Ministry to speak to the new information in the Submission, rather than to explain the Ministry’s reasons as set out in the RD. The Ministry summarized the five legislated criteria that must be met in order for a PWD designation to be made. The Ministry then read through the new information in the Submission represented by the Second SR, the Second MR, and the Second AR (as set out above), and provided an indication of the impact the information in the Submission would have had if the Ministry had had that information when the RD was made.

The Ministry said that the new evidence would not be sufficient to confirm a severe physical impairment. The Ministry explained that even though the section of the AR dealing with mobility and physical ability indicates that the Appellant needs continuous assistance with walking outdoors, the reason that assistance is required is due to the Appellant’s mental impairments rather than any physical ones. Regarding the other criteria (severe mental impairment, direct and significant restrictions in the ability to perform DLA continuously or periodically for extended periods and need for help), the Ministry said that it would have determined that the Appellant had satisfied the requirements for a PWD designation if it had had the information contained in the Submission when it made its RD.

Admissibility of the New Evidence

The Panel considered the evidence in the Submission (which comprised the second SR, Second MR and Second AR) and the new information provided at the hearing about the Appellant’s impairments, need for help, and the role and level of support provided by the community services agency and the peer navigator to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted all of the additional information in accordance with Section 22(4) of the EAA.

Section 2(2)(a) of the EAPWDR defines “*prescribed professional*” to include a “*medical practitioner*” and a “*nurse practitioner*”. Therefore, the GP and the NP are both considered prescribed professionals for the purpose of providing opinions regarding the nature of the Appellant’s impairment and its impact on the performance of DLA. In addition, the Panel notes that EAPWDA Section 2(2) does not suggest that the opinions of any of the various professionally qualified practitioners listed in the definition of “*prescribed professional*” are to be given greater weight than any other type, nor does it specify the minimum amount of contact a prescribed professional must have with an Appellant to render an opinion. As there are significant differences between the assessments provided by the two prescribed professionals in this case, the Panel must determine which information is more reliable.

Evidence presented at the hearing indicates that the GP spent only 10 minutes completing the MR and the AR, and a great deal of information (descriptions, explanations, and comments necessary to assess the degree of restrictions, for example) is clearly missing. The Second MR and the Second AR, on the other hand, provides much more detailed information and was prepared by the NP in detailed consultation with the Appellant over a consultation lasting more than two hours. The Panel finds that the evidence contained in the Second MR and the Second AR is the information that should more appropriately be used in determining whether the Appellant meets the criteria for the PWD designation, and accordingly assigns it full weight. The Ministry did not object to the admittance of the new evidence; in fact, the Ministry implicitly agreed that the new evidence should be admissible and given full weight as it relied on this new evidence in reaching a new decision, as expressed at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's RD, which found that the Appellant is not eligible for designation as a PWD, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the evidence does not establish that the Appellant has a severe mental or physical impairment, and that the Appellant's DLA are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods? Was it reasonable for the Ministry to determine that because it had not been established that the Appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, it could not be determined that the Appellant requires the help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA?

ANALYSIS**Severity of Impairment**

Neither the terms "impairment" nor "severe" are defined in the EAPWDA. The Cambridge Dictionary defines "impairment" in the medical context to be "*a medical condition which results in restrictions to a person's ability to function independently or effectively*" and defines "severe" as "*causing very great pain, difficulty, worry, damage, etc.; very serious*". "Impairment" is defined in the MR and the AR sections of the PWD application form to be "*a loss or abnormality of psychological, anatomical, or physiological structure or function causing a restriction in the ability to function independently, appropriately or for a reasonable duration*". While the term is not defined in the legislation, the Panel finds that the Ministry's definition of "impairment" as set out in the MR and the AR is a reasonable definition of the term for the purpose of partially assessing an applicant's eligibility for the PWD designation.

Physical Functioning

The Appellant did not contend that he had a physical impairment.

Mental Functioning

Although the legislation contains no formalized criteria to define what constitutes mild, moderate or severe cognitive deficits, prescribed professionals are required to indicate in the MR and the AR the severity of a mental impairment by assessing the number of skill areas affected by the deficit, the severity of the deficits in psychological processes, and the degree of impairment in skill areas.

Position of the Parties

The Appellant's position is that he has a severe mental impairment. The Ministry's position as expressed in the RD is that the information provided by the GP does not establish a severe impairment of the Appellant's mental functioning. In light of all the admissible evidence, which includes the information in the Submission, the Ministry acknowledged at the hearing that the Appellant has a severe mental impairment.

Panel Decision

As the Submission was not provided by the Appellant until after the RD had been made, the Ministry's RD was based solely on the information contained in the Appellant's original application. In that application, the GP assessed no difficulties with communication and only one moderate impact on cognitive and emotional functioning.

In the "Admissibility of New Evidence" Section above, the Panel determined that the evidence contained in the Submission is the information that should more appropriately be used to determine whether the Appellant meets the criteria for the PWD designation. In the Submission, the NP has indicated that the Appellant has significant deficits with cognitive and emotional functioning in seven of the listed categories, adding the comment "*High anxiety and low mood and depression for many, many years*". And in the health history section of the MR, the NP writes that the Appellant "*has significant ASD and ADHD which has impacted his life in all ways.*"

The Panel finds that when the information included in the Submission is considered, the evidence reasonably demonstrates that the Appellant has a severe mental impairment.

The Panel also notes that the Ministry said at the hearing that it would have determined that the Appellant has a severe mental impairment if it had had the information contained in the Submission when it made its decision.

Restrictions in the Ability to Perform DLA*Position of the Parties*

The Appellant's position is that he has direct and significant restrictions in his ability to perform DLA. The Ministry's position as expressed in the RD is that not enough evidence is provided to establish that the Appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods. In light of all the available evidence, the Ministry acknowledged at the hearing that the Appellant has such direct and significant restrictions.

Panel Decision

DLA are defined in Section 2(1) of the EAPWDR and are also listed, in an expanded form and using different language, in the MR and in the AR. For example, the DLA of "*prepare own meals*" in EAPWDR Section 2(1) appears in the AR as "*meal planning*", "*food preparation*", "*cooking*" and "*safe storage of food*".

Section 2(2)(b) of the EAPWDA requires that the Ministry be satisfied that a prescribed professional has provided an opinion that an applicant's severe impairment directly and significantly restricts their DLA, continuously or periodically for extended periods. The term DLA appears in EAPWDA Section 2(2)(b) in the plural ("daily living activities"), which means that at least two of the activities listed in Section 2(1) must be significantly restricted for this legislative criterion to be met.

In the MR and the AR, prescribed professionals are instructed to check marked boxes and to provide additional explanations; for example, a description of the type and amount of assistance required and the frequency and duration of periodic restrictions.

As mentioned above, the Ministry's RD was based solely on the information contained in the Appellant's original application. In that application, the GP assessed the Appellant as being independent with all but some of the social functioning DLA.

The Panel has determined that the evidence contained in Submission is the information that should more appropriately be used to determine whether the Appellant meets the criteria for a PWD designation. In the Submission, the NP has indicated that the Appellant is continuously restricted in his ability to perform most of the listed DLA, adding in the comments "*I do not feel that the (Appellant) would be able to handle any type of emergency in or out of the house ... he does not do any banking or (make) any financial decisions He has very minimal ability to be independent in a shopping situation ... he struggles with even the basics of communication.*"

The Panel finds that when the information included in the Submission is considered, the evidence reasonably demonstrates that Appellant's ability to manage DLA is significantly restricted either continuously or periodically for extended periods.

The Panel also notes that the Ministry said at the hearing that it would have determined that the Appellant's significant mental impairments directly and significantly restrict his ability to perform DLA either continuously or periodically for extended periods if it had had the information contained in the Submission when it made its decision.

Help with DLA

Position of the Parties

The Appellant's position is that he requires significant help or supervision of another person to perform DLA. The Ministry's position as expressed in the RD is that it cannot be determined that significant help is required from other persons because it has not been established that DLA are significantly restricted either continuously or periodically for extended periods. In light of all the available evidence, the Ministry acknowledged at the hearing that the Appellant needs such significant help or supervision.

Panel Decision

The Ministry's RD was based solely on the information contained in the Appellant's original application. In that application, the GP said that the Appellant needed help from his mother and counsellor for decision making but did not elaborate further.

The Panel has determined that the evidence contained in Submission is the information that should more appropriately be used to determine whether the Appellant meets the criteria for a PWD designation. In the Submission, the NP indicates that the Appellant needs "*a responsible adult to guide him through ALL areas of his life*" and that she does not feel he will ever be able to live alone or have a life without full-time assistance. The NP also indicates that the Appellant lives with his mother, on whom he relies for

assistance with many of his DLA, and requires additional help from others, including health authority professionals, community service agencies, and a peer mentor.

The Panel notes that EAMPWDA Section 2(3) applies in this case because the Appellant has a severe mental disorder. As the NP has indicated that the Appellant requires the help of a responsible adult to guide him through all DLA and that he is likely never to be able to live alone or have a life without full-time assistance, the Panel finds that the evidence reasonably demonstrates that as a result of the Appellant's DLA restrictions he requires the significant help or supervision of another person to perform DLA. In other words, the Panel finds that the need for help criterion as set out in EAPWDA 2(3)(b)(ii) is met.

The Panel also notes that the Ministry said at the hearing that it would have determined that the Appellant requires significant help or supervision to perform DLA if it had had the information contained in the Submission when it made its decision.

Conclusion

Having reviewed and considered all the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA, was not reasonably supported by the evidence was not a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore rescinds the decision. The Appellant's appeal, therefore, is successful.

APPENDIX A - 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 is in a prescribed class of persons or that the person has a severe mental or physical impairment that

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

(b) in the opinion of a prescribed professional

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

(A) continuously, or

(B) periodically for extended periods, and

(ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

(b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires

(i) an assistive device,

(ii) the significant help or supervision of another person, or

(iii) the services of an assistance animal.

(4) The minister may rescind a designation under subsection (2).

The EAPWDR provides as follows:

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**" ,

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

- (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
- (b) in relation to a person who has a severe mental impairment, includes the following activities:
- (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner ...

The EAA provides as follows:

Panels of the tribunal to conduct appeals

22(4) 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.

APPEAL NUMBER 2022-0020

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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2022/04/13

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2022/04/14

Print Name

Nancy Eidsvik

Signature of Member

Date (Year/Month/Day)

2022/04/14