

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated June 6, 2022, which found that the Appellant did not meet two of the five statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). While the Ministry found that the Appellant met the age requirement and had a severe mental impairment which was likely to continue for at least two years, it was not satisfied that the evidence establishes 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.

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. Specifically, the Ministry determined that the Appellant did not complete the Prescribed Class PWD Application and did not otherwise indicate that he was receiving a CPP disability pension. No written information or argument was provided by the Appellant for PWD designation on alternative grounds in the Appeal documents.

Part D – Relevant Legislation

EAPWDA, Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 2

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the Ministry at the time of the RD included the PWD Application comprised of an applicant information and self report form (SR), completed by the Appellant on November 16, 2021, a Medical Report (MR) dated October 28, 2021 and completed by the Appellant's General Practitioner (GP) who, at the time it was signed, had known the Appellant for three and a half years and who has seen the Appellant 2 - 10 times in the past year, and an Assessor Report (AR) also dated October 28, 2021, and also completed by the GP.

The evidence available to the Ministry at the time of the RD also included:

- A Request for Reconsideration form (RFR), signed by the Appellant on May 18, 2022, in which the Appellant gives the reasons why he is asking the Ministry to reconsider its decision. (Those reasons as they relate to the Appellant's ability to perform DLA and his need for help are detailed in the appropriate sections of the discussion below);
- Several GAD and OCD test scores (e.g., a document titled "General Anxiety Disorder (GAD-7) Screening Questions") prepared by the GP and identifying the Appellant as the patient, completed between June 21, 2018 and November 16, 2021. None of the assessments deal with the Appellant's ability to perform DLA or the need for help in performing DLA;
- A four-page psychiatric consultation in the name of the Appellant, completed on July 30, 2018, and prepared by an assessment team at a mental health facility in the Appellant's community (the Assessment Team). The Assessment Team diagnosed the Appellant with Narcissistic Personality Disorder (NPD). None of the Assessment Team's observations or assessments deal with the Appellant's ability to perform DLA or the need for help in performing DLA; and
- Ten one-page documents titled "Encounter" identifying the Appellant as the patient and prepared by the GP, dated between March 1, 2007 and February 10, 2022. None of the observations deal with the Appellant's ability to perform DLA or the need for help in performing DLA.

Diagnoses

In the MR, the GP diagnosed the Appellant with Obsessive Compulsive Disorder (OCD) with a date of onset of March 2007, Generalized Anxiety Disorder (GAD) with a date of onset of January 2008, Narcissistic Personality Disorder (NPD) with a date of onset of July 2018, and Paranoid Personality Disorder (PPD) also with a date of onset of January 2018.

In the SR, the Appellant indicated additional diagnoses including autism, chronic fatigue syndrome, irritable bowel syndrome, and several others.

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 his ability to perform DLA. In the Appellant's health history section of the MR, the GP says that it's extremely difficult for him to get along with others, and in additional comments section of the MR, the GP says that his conditions have "*vastly impaired*" his ability to have meaningful relationships with others.

In the section of the AR where the prescribed professional is asked to identify which DLA the applicant has difficulty performing, the GP indicates that the Appellant is independent with respect to all DLA tasks in all of the listed areas (personal care, basic housekeeping, shopping, meals, paying rent and bills, medication, and transportation). With respect to social functioning DLA, the GP says that the appellant is independent in making appropriate social decisions, developing and maintaining relationships, interacting appropriately, dealing with unexpected demands, and securing assistance from others.

In the SR the Appellant says that he finds it difficult to deal with challenging situations, providing the examples of using his car to buy groceries "*and finding out that the battery is dead*" and "*running out of soap when I didn't notice I was low*". He writes that he has anxiety and stress "*completing general tasks like: buying groceries, car repairs, living in the same house as my parents, ... (and) paying bills/interacting with companies/the government*". He also states that leaving his house can be extremely stressful due to the fear that he might have "*an abrupt urgent bowel movement*" and "*It's difficult to have peace and to relax from many noises. Sleeping is difficult*".

In the RFR, the Appellant writes that his DA are restricted due to his OCD, adding "*It can be very time consuming washing my hands ... My morning routine, using the bathroom, washing my hands, brushing teeth and getting food, etc. takes about 3.5 to 4 hours*". He also says that he uses a computer to play ambient sounds "*to block out sounds when I am sleeping*".

Need for Help

In the MR the GP indicates that the Appellant does not require any prostheses or aids for his impairment. The GP also says that the Appellant has been offered counselling, but with poor compliance.

In the section of the AR that asks who provides the help required for DLA, the GP has ticked "other" but has not provided, in the space provided, any comments by way of explanation or identified what assistance is necessary if none is available. The GP has not indicated that any assistive devices are required in the section of the MR where the prescribed professional is asked what assistance is provided through the use of a specific list of assistive devices. The GP also indicates that the Appellant does not have an assistance animal.

The Appellant does not identify any persons or devices he requires to assist him with his DLA in either the SR or the RFR.

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.

In the section of the Notice of Appeal (NOA) asking why the appellant disagrees with the Ministry's RD, the Appellant has provided the same information he included in his RFR.

Evidence Presented at the Hearing

At the hearing, the Appellant said his OCD affects everything and makes everyday activities stressful. He said that his morning routine, "*brushing (my) teeth, meals – things like that*" take 3.5 to 4 hours, and that he would "*consider that a significant impact*". The Appellant also said that he has to watch his diet and what he eats and drinks. He said that making plans is difficult, providing the example of preparing for the hearing, indicating that he had to get up early to make sure he as ready.

Regarding need for help, the Appellant said that he doesn't need the help of another person for any of his DLA, but that he does use ear plugs as an assistive device to block out noise.

In response to a question from the Panel about difficulties he has with sleeping, the Appellant said that he usually listens to ambient noise on his computer, to assist him with falling asleep. In response to another question from the Panel, the Appellant said he had not applied for a CPP disability pension. He said he had considered it, but he was told that he wouldn't qualify for it. In response to another question from the Panel, the Appellant said that he had not applied for a persons with persistent multiple barriers to employment (PPMB) designation but would consider it.

At the hearing, the Ministry relied on its RD.

In response to a question from the Panel asking for clarification of a statement in the RD ("*When contacted for clarification, the (GP) confirmed (that the Appellant was) independent with (DLA) and did not provide any further detail as to the impacts (his) mental disorders are having on (his) ability to perform (DLA)*", the Ministry said that a Ministry adjudicator had contacted the GP by phone and left a message but the GP did not call back directly. Instead, a member of the GP's office staff called back to say that the GP confirmed that the Appellant was independent with all DLA.

In response to another question from the Panel about the (PPMB) application process, the Ministry said that the Appellant should contact the Ministry and let them know that he would like to apply. The Ministry said that the application process was less complicated that the PWD

application process: there was a one or two page application form that had to be completed by the applicant's doctor.

New Evidence

No new evidence was presented in the Notice of Appeal (NOA) or 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. In other words, was it reasonable for the Ministry to determine 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 of any direct and significant restrictions 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

Diagnosis of Additional Impairments

As mentioned above, the Appellant said that he had additional impairments, and in the RD the Ministry acknowledged that the Appellant had said in the SR that he had additional impairments, specified in the RD as autism and Asperger's syndrome. The Ministry determined that these additional self-diagnosed impairments "*cannot be considered at this time*" as they were not the opinions of a prescribed professional, as required under EAPWDA Section 2(2). The Panel finds that the Ministry reasonably determined that these additional impairments could not be considered, but this aspect of the Ministry's RD has no impact on this Appeal because the Ministry was satisfied that a severe mental impairment had been established based on the GP's diagnoses that the Ministry did accept.

Restrictions in the Ability to Perform DLA

The Ministry's position is that, although the GP reports that the Appellant struggles with things such as obsessive handwashing, perfectionism, severe obsessions and compulsions, the GP does not indicate that as a result of the Appellant's impairments his ability to manage DLA is directly and significantly restricted.

The Appellant's position is that he has significant restrictions in his ability to perform DLA because it takes him 3.5 – 4 times longer with some of his personal hygiene and self care and meal preparation DLA.

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*". EAPWDA Section 2(1)(b) provides two additional DLA that apply in the case of a person who has a severe mental impairment: "*make decisions about personal activities, care or finances*" and "*relate to, communicate or interact with others*"

effectively". These additional DLA are addressed in the Section C of the AR under the heading "Social Functioning" areas and include the applicant's ability to "develop a maintain relationships" and "Interact appropriately with others.", for example.

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.

Section 2(2)(a) of the EAPWDR defines "*prescribed professional*" to include a "*medical practitioner*". Therefore, the GP is considered prescribed professionals for the purpose of providing opinions regarding the impact of a severe impairment on the performance of DLA. The term "*directly*" means that there must be a causal link between the severe impairment and the restriction. In addition, the direct restriction must also be significant. There is also a component related to time or duration - the direct and significant restriction must be either continuous or periodic. If periodic, it must be for extended periods.

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.

In determining whether there is evidence that an applicant's severe impairment directly and significantly restricts their DLA continuously or periodically for extended periods, the Ministry must consider all the relevant evidence, including that of the Appellant. However, the legislation is clear that the fundamental basis for the analysis is the evidence of prescribed professionals – in this case the GP.

In the AR, the GP indicated that the Appellant was independent with all listed DLA. In the MR, the GP indicated that counselling assistance was offered to address the Appellant's impairments but not that it was required. At the hearing, the Ministry said that it had contacted the GP to confirm independence in all DLA, and the GP's office told the Ministry that the GP's assessment had not changed. The Appellant said that some DLA take him significantly longer than typical (e.g. 3.5 – 4 hours for personal care), but did not argue that he had any periodic or continuous *restrictions* in performing those activities. In addition, the Appellant's prescribed professional (the GP), upon whose opinion the legislation says that Ministry must rely, says that the Appellant is independent with all DLA.

As noted above, the Section 2(1)(b)(ii) of the EAPWDR says that one of the DLA applying to a person with a severe mental impairment the ability to "*relate to, communicate or interact with others effectively*". In the MR, the GP indicates that it's extremely difficult for the Appellant to get along with others and his ability to have meaningful relationships is vastly impaired. However, in the AR, the GP indicates the Appellant has good functioning in his social networks. In addition, as noted above, the GP said that the Appellant was independent in all DLA, including social functioning. Given this apparent inconsistency, it's difficult to establish how or if

this DLA was significantly restricted. Even if it were significantly restricted, this is only one DLA, and the legislation requires that at least two DLA be significantly restricted, as noted above.

The Panel finds that the Ministry's decision was reasonably supported by the evidence when it found that two or more of the Appellant's DLAs are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods.

Help with DLA

The Ministry's position is that it cannot be determined that significant help is required from others as it has not been established that DLA are significantly restricted either continuously or periodically for extended periods.

The Appellant's position is that he doesn't receive any help with his DLA, but he does use ear plugs as an assistive device.

Panel Decision

To qualify for the PWD designation, Section 2(2)(b)(ii) of the EAPWDA requires that, because of direct and significant restrictions in the ability to perform DLA, a person must need help to perform those activities. That is, the establishment of direct and significant restrictions under Section 2(2)(b)(i) is a precondition of meeting the need for help criterion. 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 to perform one or more DLA. In addition, the Panel finds that neither the GP nor the Appellant provided any evidence to suggest that the Appellant requires help to perform DLA.

Regarding the Appellant's opinion that ear plugs are an assistive device, EAPWD Section 2 defines "assistive device" as "***a device designed to enable a person to perform a DLA that, because of a severe mental or physical impairment, the person is unable to perform***" (emphasis added). The Panel finds it to be reasonable that the Ministry did not accept ear plugs as an assistive device. The Panel finds this because ear plugs are not designed to enable a person to perform any of the DLA as defined in the legislation (i.e. prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, manage personal medication, and, in relation to a person who has a severe mental impairment, make decisions about personal activities, care or finances and relate to, communicate or interact with others effectively).

Based on the assessment above the Panel finds that the Ministry reasonably determined that the Appellant does not require help with his DLA.

Conclusion

The Panel reviewed and considered the legislation and available evidence applicable to the Ministry's RD, which determined that the Appellant was not eligible for the PWD designation under Section 2 of the EAPWDA. The Panel finds that the RD was reasonably supported by the relevant and available evidence, and was a reasonable application of the relevant legislation in the circumstances of the Appellant. Therefore the Panel confirms the decision, and the Appellant's appeal is unsuccessful.

Appendix – Relevant 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 ...

APPEAL NUMBER 2022-0124

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)

2022/07/06

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2022/07/06

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2022/07/06