

Part C – Decision Under Appeal

The decision that is the subject of this appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision of September 16, 2022, in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities (PWD) designation, because she had not met all of the legislated criteria set out in section 2 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA).

The Ministry first determined that the Appellant did not meet the criteria for PWD designation as a member of a prescribed class of persons. With respect to the legislated criteria, the Ministry determined that the Appellant had demonstrated that she has reached 18 years of age and that her impairment, in the opinion of a medical practitioner or nurse practitioner, is likely to continue for at least two years. The Ministry also determined that the Appellant had not demonstrated that she has a severe mental or physical impairment; that her severe mental or physical impairment, in the opinion of a prescribed professional, significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and as a result of direct and significant restrictions, she requires help to perform those activities.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 2

Part E – Summary of Facts

The Appellant submitted a PWD application in June 2022, which consisted of:

- A Self Report (SR) completed by the Appellant, dated June 6, 2022;
- A Medical Report (MR) completed by the Appellant's general practitioner (GP), dated April 4, 2019; and
- An Assessor's Report (AR) completed by the same GP, dated April 4, 2019.

The Ministry, in a decision dated July 19, 2022, determined that the Appellant was not eligible for PWD designation because she had not met all of the required criteria set out in the legislation.

The Appellant submitted a Request for Reconsideration dated August 18, 2022, and requested additional time. On September 15, 2022, the Appellant submitted additional materials prepared by an advocate appended to which were medical records from 2012-2022 detailing the Appellant's medical history and interactions with healthcare professionals and a personal statement from the Appellant explaining her circumstances and history.

The Ministry, in a reconsideration decision dated September 16, 2022, determined that the Appellant was not eligible for PWD designation because she had not met all of the required criteria set out in the legislation. This is the decision at issue in the current appeal.

Additional information before this panel on appeal consisted of the following:

Notice of Appeal

The Appellant submitted a Notice of Appeal, dated September 27, 2022, to the Employment and Assistance Appeal Tribunal. In the Notice of Appeal, the Appellant selected a written hearing and provided the following reasons for appeal: *I believe I do have a severe mental impairment that significantly restricts my ability to care for myself and do various activities of daily living.*

Appeal Submissions

By way of written appeal submissions, the Appellant provided 16 pages of argument from her advocate (the "Advocate's Submission") and a 3-page letter from a physician, dated September 26, 2022, providing updated information about the appellant's diagnoses, circumstances and restrictions (the "New Medical Report").

In response to the Appellant's written appeal submissions, the Ministry provided a 1-page letter dated October 14, 2022, in which the Ministry stated: *The ministry has reviewed the written submission for tribunal provided by [the Appellant] and her legal advocate [name omitted]. This includes a current medical assessment completed by Dr. [omitted], which provides clarity regarding [the Appellant's] current degree of impairment and the frequency and duration of restrictions in her daily living activities. Based on the new information, the ministry submits the eligibility criteria for the persons with disabilities designation have now been met.*

Admissibility

The panel finds that the information provided in the Appellant's Notice of Appeal and the New Medical Report are admissible in accordance with section 22(4)(b) of the *Employment and Assistance Act*. The panel finds the information contained in the Advocate's Submission to be in the nature of argument, which does not require an admissibility determination in accordance with section 22(4)(b) of the *Employment and Assistance Act*. The panel finds the New Medical Report contains updated and detailed information about the Appellant's medical diagnoses, circumstances and restrictions and was prepared by a medical professional who is writing about matters within their professional expertise. The panel finds this information relevant and probative and considers it to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as contemplated by section 22(4)(b) of the *Employment and Assistance Act*

The panel also finds the Ministry's updated position in relation to whether the Appellant meets the legislated criteria for PWD designation relevant and reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds the Ministry's appeal submission is admissible in accordance with section 22(4)(b) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The panel finds that the Ministry's reconsideration decision, in which the Ministry determined that the Appellant did not meet three of five statutory requirements set out at Section 2 of the *EAPWDA* for PWD designation, is not reasonably supported by the evidence nor is a reasonable application of the legislation in the circumstances of the Appellant. Specifically, the Ministry determined, at reconsideration, that the information provided by the Appellant did not establish that:

- the Appellant has a severe mental or physical impairment;
- the Appellant's severe mental or physical impairment, in the opinion of a prescribed professional, directly and significantly restricts her ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, she requires significant help or supervision of another person to perform those activities.

In light of the New Medical Report that the panel has admitted on appeal and the Ministry's position that the Appellant meets all legislated criteria for PWD, the panel finds each of the three determinations made at reconsideration to be not reasonably supported by the evidence. The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The Ministry has indicated in its appeal submission that the Minister is now satisfied that this criterion has been met. In light of the evidence in the New Medical Report, the panel also finds that this criterion has been met. Specifically, the panel notes that the New Medical Report details multiple serious and long-standing diagnoses, including depression, anxiety, substance misuse, post-traumatic stress disorder manifesting through hyper-vigilance, panic attacks and increased anxiety, a previous episode of acute psychosis and multiple emergency psychiatric hospitalizations in the previous three years. These conditions, as described by the medical professional, have major impacts on the Appellant's cognitive and emotional functioning in multiple areas of function at least 50% of the time. The panel finds that this amounts to a serious mental impairment that interferes with the Appellant's ability to function independently, appropriately, and effectively, as contemplated by the *EAPWDA* and defined in the PWD forms.

The legislation specifies that the Minister assess direct and significant restrictions in the ability to perform DLA in consideration of the opinion of a prescribed professional. The Ministry has indicated that the Minister is also now satisfied that this criterion has been met. In light of the evidence in the New Medical Report, the panel also finds that this criterion has been met. Specifically, the panel notes that the New Medical Report details restrictions to the Appellant's ability to independently perform many DLA, including those relating to personal care, shopping, house cleaning, meals, and social functioning, such that she requires assistance or supervision to perform these activities 50% of the time on a periodic basis and other DLA on a continuous basis. The panel finds that the Appellant's severe mental impairment directly and significantly restricts her ability to perform some of her daily living activities periodically for extended periods and others on a continuous basis as set out in section 2(b)(i)(A) and (B) of the *EAPWDA*.

The legislation requires that, as a result of being directly and significantly restricted in the ability to perform DLA either continuously or periodically for extended periods, a person must also require help to perform those activities. The Ministry's appeal submission states that the Minister is now satisfied that this criterion has been met. In light of the evidence in the New Medical Report, the panel also finds that the help criterion has been met. Specifically, the panel notes that the writer of the New Medical Report states that the Appellant requires assistance or supervision from another person to perform most activities of daily living. The report details multiple DLA for which periodic assistance is required and several others for which continuous assistance is required. As such, the panel finds that the Appellant does require assistance to perform her DLAs due to a severe mental impairment directly and significantly restricts her ability to perform those activities.

The Ministry also found that it has not been demonstrated that the Appellant is in 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. As there was no information or argument provided by the Appellant regarding alternative grounds for designation, the panel considers this matter not to be at issue in this appeal.

Conclusion

In light of the evidence available on appeal, the panel finds that the Ministry's reconsideration decision, determining that the Appellant had not met all of the legislated criteria for PWD designation, is not reasonably supported by the evidence. The panel rescinds the Ministry's reconsideration decision. The Appellant is successful on appeal.

APPENDIX A

The following section of the EAPWDA applies to this appeal:

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 following section of the EAPWDR applies to this appeal:

- 2 (1) For the purposes of the Act and this regulation, "daily living activities",**
- (a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:
 - (i) prepare own meals;
 - (ii) manage personal finances;
 - (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and
 - (b) in relation to a person who has a severe mental impairment, includes the following activities:
 - (i) make decisions about personal activities, care or finances;
 - (ii) relate to, communicate or interact with others effectively.
- (2) For the purposes of the Act, "**prescribed professional**" means a person who is
- (a) authorized under an enactment to practise the profession of
 - (i) medical practitioner,
 - (ii) registered psychologist,
 - (iii) registered nurse or registered psychiatric nurse,
 - (iv) occupational therapist,
 - (v) physical therapist,
 - (vi) social worker,
 - (vii) chiropractor, or
 - (viii) nurse practitioner, or
 - (b) acting in the course of the person's employment as a school psychologist by
 - (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
 - (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*, if qualifications in psychology are a condition of such employment.

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

Jennifer Smith

Signature of Chair

Date (Year/Month/Day)

2022/10/21

Print Name

Daniel Chow

Signature of Member

Date (Year/Month/Day)

2022/10/25

Print Name

Kim Louis

Signature of Member

Date (Year/Month/Day)

2022/10/25