

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision of October 27, 2022, in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities (PWD) designation, because he 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 determined that the Appellant had reached 18 years of age. The Ministry further determined that the Appellant had not demonstrated that his 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 he has a severe mental or physical impairment; that his severe mental or physical impairment, in the opinion of a prescribed professional, significantly restricts his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and as a result of direct and significant restrictions, he requires help to perform those activities.

The Ministry determined that the Appellant did not meet the criteria for PWD designation as a member of a prescribed class of persons.

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 July 2022, which consisted of:

- A Self Report (SR) completed by the Appellant;
- A Medical Report completed by the Appellant's general practitioner (GP); and
- An Assessor's Report completed by the same GP.

In the SR, the Appellant states that his disabling conditions relates to pain and numbness in his lower extremities, accompanied by inflammation and swelling, which restricts him from being active for more than short periods. He explains that he also suffers from bipolar disorder and hypothyroidism. He explains that the inability to remain on his feet has affected his ability to care for himself and complete necessary tasks regularly, including driving. He needs to organize rides for several activities, his social functioning is disrupted by his bipolar diagnosis, and hypothyroidism causes fatigue and lethargy.

In the MR, the GP provides the following diagnoses:

- Peripheral Neuropathy with an onset date of more than 10 years
- Bipolar Disorder with an onset date of more than 30 years
- Peripheral Edema Idiopathic with an onset date of 2012
- Hypothyroidism with an onset date of 2010

The GP assessed the Appellant's physical functioning in the MR and AR. The GP reports that he is able to:

- Walk 2-4 blocks;
- Climb 5+ steps unaided;
- Lift 7-16 kg; and
- Sit without limitation.

The GP further reports the Appellant can walk and stand independently, and lift, carry, and hold independently but takes significantly longer with these activities. The GP notes that these activities are limited to a "short amount" before the Appellant needs to elevate his feet. In terms of daily living activities (DLA), the GP reports that the Appellant is independently able to accomplish all activities relating to personal care (for a short duration and needs to avoid prolonged standing), basic housekeeping, some shopping tasks (cannot drive or walk safely, bus is too lengthy), meals, paying rent and bills (needs rides), and medications. The GP reports that the Appellant requires continuous assistance in the form of rides for banking and transportation activities and cannot use public transit. The GP reports that the Appellant does not use assistive devices or an assistance animal and does receive assistance from family and friends.

In terms of cognitive and emotional functioning, the GP has completed the relevant sections of the MR and AR. The GP reports significant deficits with cognitive and emotional function in several areas in the MR and, in the AR, major impacts in the areas of emotion and impulse control, moderate impacts in the area of consciousness, insight and judgment, attention/concentration, executive and motivation, and one minimal impact to functioning related to memory. No impacts are reported in the relation to bodily functions, motor activity and

language. The GP reports no difficulties with communication, and assesses the Appellant's speaking, reading, writing, and hearing abilities as 'good'. The GP reports that the Appellant has marginal functioning within his immediate social networks and very disrupted functioning in his extended social networks. He is reported, by the GP to be independent and require periodic assistance in several areas of social functioning included in the PWD application, with the comment: *When in manic/depressive phase, needs to be institutionalized. Thought processes can be extremely altered. In remission, good level of function.*

The Ministry, in a decision dated August 4, 2022, determined that the Appellant was not eligible for PWD designation because he had not met all of the required criteria set out in the legislation.

The Appellant submitted a Request for Reconsideration dated September 27, 2022. In this request, the Appellant requested an extension of time, stating that he was trying to get an in-person appointment with his doctor to obtain more information. This request was approved, and the Appellant was granted an extension to October 27, 2022. It does not appear that additional information was provided.

The Ministry, in a reconsideration decision dated October 27, 2022, determined that the Appellant was not eligible for PWD designation because he 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 November 3, 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 was unable to provide sufficient information in the allotted time.*

Appeal Submissions

By way of written appeal submissions, the Appellant first provided a 2-page letter requesting an extension of time, which was granted. He then provided a 32-page submission that included:

- a 5-page handwritten submission from the appellant describing his medical conditions; the difficulties and barriers associated with these conditions; and the assistance he relies upon, particularly from his mother;
- a release of medical records form covering the period from 1997 to present;
- a copy of the PWD application that appears to have been annotated by the Appellant;
- 23-pages of medical records, including:
 - A discharge summary reflecting approximately 7 days of psychiatric care in hospital in April 2021, with a list of medications administered;
 - An emergency room assessment notes from January 2021, reflecting an emergency room visit relating to chest pain;
 - A discharge summary reflecting approximately 10 days of in-patient hospital care in March 2000, relating to alcohol dependency and suspected bipolar disorder;
 - One page from a consultation report relating to the same 10-day in-patient stay in March 2000;

- A 3-page psychiatrists' report from August 1999;
- A "Psychiatric Prog Note" from February 24, 2021, indicating that the Appellant missed his appointment;
- A "Psychiatric Prog Note" from February 22, 2021, indicating that the Appellant had recently made a "couple" of trips the emergency room accompanied by notes about his medications and dosages;
- Emergency room visit notes from February 2021 indicating that the Appellant has been brought in by his mother with "concern for well-being";
- A "Psychiatric Prog Note" from June 2020, reflecting the Appellant's lower extremity edema, psychotropic and thyroid medications;
- A "Psychiatric Prog Note" from March 2020 reviewing the Appellant's psychotropic and thyroid medications;
- A "Psychiatric Prog Note" from January 2020 reviewing the Appellant's psychotropic and thyroid medications;
- A "Psychiatric Prog Note" from November 2019 reviewing the Appellant's psychotropic and thyroid medications;
- A psychiatrist consult from April 2019 indicating a return to lithium and adjustment of other medications; and
- A "Chart Summary" reflecting some of the comments contained in the April 2019 psychiatrist consult.

In response to the Appellant's written appeal submissions, the Ministry provided a letter indicating that it would rely on the Reconsideration summary.

Admissibility

The panel finds that the information provided in the Appellant's Notice of Appeal and written appeal submissions is admissible in accordance with section 22(4)(b) of the *Employment and Assistance Act*. The panel finds that the information provided by the Appellant relates to the medical conditions described in his PWD application and is accompanied by his arguments about why this information should have resulted in approval of his application.

The panel finds the Ministry's submission does not require an admissibility determination as there is no new or additional information provided by the Ministry.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision, in which the Ministry determined that the Appellant did not meet three of five statutory requirements of Section 2 of the *EAPWDA* for PWD designation, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the Appellant. Specifically, the Ministry determined 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 his ability to perform daily living activities (DLA) either continuously or periodically for extended periods; and
- as a result of those restrictions, he requires significant help or supervision of another person 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.

Severity of impairment

The legislation requires that for PWD designation, the minister must be "satisfied" that the person has a severe mental or physical impairment. The legislation makes it clear that the determination of severity is at the discretion of the minister, considering all the evidence, including that of the Appellant. Diagnosis of a serious medical condition or the identification of mental or physical deficits does not in itself determine severity of impairment.

Severity of physical impairment

In the reconsideration decision, the Ministry determined the Appellant does not have a severe physical impairment. In making this determination, the Ministry noted that the Medical Practitioner (MP) has indicated that the Appellant suffers from several medical conditions. However, the Ministry went on to note the GP's assessments relating to his functional skills and mobility and physical ability. The Ministry explained that the GP had not described how much longer the Appellant required to complete activities, as was requested in the PWD form, making it difficult to assess whether there was a significant restriction to overall physical function. The Ministry found the information in the PWD application indicative of a moderate rather than severe impairment.

The panel finds that the Ministry's determination was reasonable. The panel notes the Ministry's approach to assessing severity in light of the diagnoses provided, nature of the impairment and extent of the impacts on functioning as evidenced by restrictions/limitations to functioning, ability to perform DLA and help required. Given the focus on restrictions and help required in the legislation, the panel finds the Ministry's approach to assessment at reconsideration and reaching conclusions to be reasonable. The panel notes that the GP's assessments of the Appellant's functional capacity and mobility and physical ability assessments in the MR and AR indicate that the Appellant is primarily independent, a fact confirmed by the Appellant himself,

but that he must take care not to stand for long periods and that he requires assistance, primarily in the form of driving, for completion of some tasks. The panel also considered the information provided after reconsideration as it related to physical impairments and finds that it does not add additional detail in relation to the Appellant's ability to function independently, effectively, appropriately or for a reasonable duration. The panel finds that the Ministry's determination, that a severe physical impairment has not been established, is reasonably supported by the evidence.

Severity of mental impairment

In the reconsideration decision, the Ministry determined that the information provided does not establish a severe mental impairment. The Ministry noted that the GP reports significant deficits in functioning in the areas of emotion, consciousness, executive function, motivation, impulse control, motor activity and attention or sustained concentration. The Ministry went on to consider the GP's report of major impacts related to emotion, impulse control and psychotic symptoms; moderate impacts to consciousness, insight and judgment, attention/concentration, executive and motivation; and minimal impacts related to memory. The Ministry noted that the GP noted no difficulties with communication and assessed the Appellant as having good abilities in speaking, reading, writing, and hearing. The Ministry also noted the GP's report of independence in decision making activities related to making decisions regarding personal activities, care, and finances, as well as communicating and interacting effectively with others. The Ministry went on to note that the GP had assessed the Appellant as independently able to perform activities such as dressing and grooming; feeding himself, meal planning, diet regulation, and food storage; making appropriate choices and paying for purchases; banking budgeting, and paying rent and bills; and filling prescriptions, taking medications, and safely handling and storing medications. The Ministry noted that the GP's assessments indicate that the Appellant is independent with DLA that would typically be difficult for a person with significant restrictions to mental functioning. The Ministry acknowledged that the GP's assessments indicated that the Appellant has been institutionalized in the past during manic/depressive phases but noted an absence of information about how often these phases occur. The Ministry concluded that a severe impairment of mental functioning was not established by the evidence provided.

The panel finds that the Ministry's determination that a severe mental impairment has not been established was also reasonably supported by the evidence and a reasonable application of the legislation. In assessing the Ministry's conclusions, the panel notes GP's assessments in the MR and AR do indicate some deficits with respect to cognitive and emotional functioning. However, according to those same assessments, this deficit does not appear to manifest as an impairment of the Appellant's ability to function effectively or independently. The panel notes the GP's assessments relating to cognitive and decision-making activities indicate that the Appellant is independent in all areas. The panel also notes that the Appellant has been assessed as requiring periodic support in some areas of social functioning, but no information is provided about the frequency, duration or nature of such assistance. Further, the GP does not provide any information regarding safety issues or support required to maintain in the Appellant in his community. Finally, the panel notes the GP indicates the Appellant is without any communication difficulties. The panel also considered the information provided after reconsideration as it related to mental impairments and finds that it does not add sufficient additional detail in relation to the Appellant's ability to function independently, effectively,

appropriately or for a reasonable duration to render the reconsideration decision conclusions on this criterion unreasonable. The panel finds that the Ministry's determination, that a severe mental impairment has not been established, is reasonably supported by the evidence.

Direct and significant restrictions in the ability to perform DLA

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, in this case the GP. This does not mean that other evidence should not be considered, but it is clear that a prescribed professional's evidence is fundamental. At issue in this assessment is the degree of restriction in the Appellant's ability to perform the DLA listed in section 2(1)(a) and (b) of the EAPWDR. The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLA must be due to a severe mental or physical impairment.

The Ministry was not satisfied that the Appellant has a severe impairment that, in the opinion of a prescribed professional, directly, and significantly restricts his ability to perform DLA. In reaching this conclusion, the Ministry noted that the GP's reports indicate that the Appellant has not been prescribed medications that interfere with DLA. The Ministry went on to note that the GP indicated the Appellant is independent with all DLA except requires continuous assistance for going to and from stores, carrying purchases home, banking and use of public transit. The Ministry considered the GP's additional comments as well as the Appellant's comment in the SR and concluded that the assessments reflected a moderate restriction. The Ministry was not satisfied that information provided by the GP demonstrated that a "severe impairment *significantly* restricts daily living activities continuously or periodically for extended periods."

The panel finds that the Ministry's determination that the assessments provided do not establish that a severe impairment significantly restricts the Appellant's ability to perform DLA continuously or periodically for extended periods was reasonable. The panel notes that the legislation specifies that direct and significant restrictions to DLA must be in the opinion of a prescribed professional. Although the Ministry's decision makers can make logical inferences from the information provided, their decisions must be based on the information provided by the prescribed professional. The decision makers do not have discretion to independently make assumptions or draw conclusions about how often DLA are completed, nor how often assistance is provided or required. The panel finds that the Ministry's decision was reasonable based on the evidence as the GP does not outline how restricted the activities are, or when and for how long they may be periodically restricted.

The panel notes here that the GP's reports are incomplete in several areas where the PWD application form specifies that additional information is to be provided by way of comments. For instance, in relation to mobility and physical ability activities that take 'significantly longer than typical' the form prompts the writer to 'describe how much longer' and the GP has failed to provide this information. Similarly, for the DLA assessment where assistance is required for a task, the form prompts the writer to 'include a description of the type and amount of assistance required' for each task. The GP has failed to provide sufficient information in relation to each of the tasks where 'periodic assistance' is indicated. In response to a general prompt for "Additional Comments (including type and amount of assistance required and identification of any safety issues)", the GP has provided no comments. The panel finds that the GP has

assessed the Appellant as being largely independent with performing DLA, with the exception of requiring rides for some activities, and has provided insufficient information regarding the degree and frequency of both restrictions and assistance for those DLA that are not assessed as being independently accomplished.

The panel finds that a holistic view of the information provided by the GP demonstrates that the Appellant has some periodic assistance from family and friends, but there is no indication as to how frequently assistance is required (or provided). The panel finds that these assessments do not demonstrate direct and significant restrictions to DLA continuously or periodically for extended periods. In particular, the panel notes an insufficiency of information from the GP relating to these assessments. The panel finds the evidence is insufficient to show that the Appellant's overall ability to perform DLA is significantly restricted either continuously or periodically for extended periods and concludes that the Ministry's determination is reasonably supported by the evidence and a reasonable application of the legislation.

Help required

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. Having 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, significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA. According to the legislation, at section 2(1), 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.*

In the reconsideration decision, the Ministry determined that as it had not been established that the Appellant's ability to perform DLA were significantly restricted, it cannot be determined that significant help is required.

While the information provided indicates that the Appellant does receive assistance from family and friends, primarily his mother, the panel has concluded that the Ministry reasonably determined that direct and significant restrictions in the Appellant's ability to perform DLA have not been established. As such, the panel also finds that the Ministry reasonably concluded that under section 2(2)(b)(ii) of the EAPWDA it cannot be determined that the Appellant requires help to perform DLA. Therefore, the panel finds that the Ministry's conclusion that this criterion has not been met is reasonable.

Conclusion

The panel finds that the Ministry's reconsideration decision, determining that the Appellant had not met all of the legislated criteria for PWD designation, was a reasonable application of the legislation in the circumstances of the Appellant and was reasonably supported by the evidence. The panel confirms the Ministry's reconsideration decision. The Appellant is not 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.

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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
Jennifer Smith

Signature of Chair

Date (Year/Month/Day)
2023/01/31

Print Name
Kulwant Bal

Signature of Member

Date (Year/Month/Day)
2023/01/31

Print Name
Warren Fox

Signature of Member

Date (Year)
2023/01/31