

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated August 28, 2009 which held that the appellant is not eligible for persons with disabilities designation because:

- the minister is not satisfied that the appellant has a severe mental or physical impairment,
- a prescribed professional has not confirmed that his impairment directly and significantly restricts his ability to perform daily living activities either continuously or periodically for extended periods, and
- because of those restrictions, he does not require an assistive device, the significant help or supervision of another person or the services of an assistance animal to perform daily living 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 evidence before the ministry at reconsideration was:

1. The appellant's application for persons with disabilities ["PWD"] in which he describes how Schizophrenia affects his ability to function. He says it is controlled by medication and that in low stress environments he manages well. He says he has trouble with cognitive functions including poor memory and problems socializing all of which cause him stress. He describes the effect as being "busy-headed, distractible and socially awkward". He says his PAS (Pain Amplification Syndrome) causes him to be in pain and restricts his mobility most of the time. Depending on where the pain is, the PAS can cause him reduced capacity in the use of his fingers, hands and arms as well as difficulty walking and sitting for long periods. Sometimes, the pain is in his neck and head which can really slow him down because every turn or jolt causes intense pain. The appellant also describes what he does to minimize stress to avoid a psychotic episode.
2. The Physician Report was completed by the appellant's family physician of 24 years. The physician diagnoses the appellant with Schizophrenia and Pain Amplification Syndrome. With regard to the severity of the appellant's medical conditions, the physician reports that the appellant manages pretty well as long as he takes his medications, attends counseling and avoids overdoing physical activities. He adds that the appellant has significant limitations and copes poorly in difficult social situations and with stress and anxiety.

The physician notes that the appellant can walk 4 blocks, climb 5 stairs and can lift 15 to 35 pounds. However, he can only remain seated for 1 to 2 hours and has significant deficits with cognitive and emotional functioning in the areas of executive, psychotic symptoms, emotional disturbance and attention or sustained concentration. The physician comments that the psychosis is intermittent and currently controlled with medication. The physician reports that the appellant's impairment directly restricts his ability to perform daily living activities ["DLA"] in the area of social functioning. He comments that he is awkward in social situations and copes poorly with stress and anxiety. He also notes that the appellant is periodically restricted in the activities of basic housework and mobility inside and outside the home. He explains that the appellant's "musculoskeletal pain is intermittently worse". The frequency and duration of periods when the appellant is restricted in these DLA is not provided.

3. The Assessor Report completed by a prescribed health professional who saw the appellant one time only provides information about the appellant's childhood symptoms leading to the current diagnosis. The assessor reports that the appellant's ability in speaking, reading and writing is good. Hearing is reported as satisfactory; however, it is noted that when faced with competing noises, the appellant focuses on the most intrusive and splitting attention is problematic and confusing. With regard to mobility, it is reported that walking will elevate the appellant's pain levels, especially at greater distances. The assessor says that the appellant is independent walking indoors and out and in climbing stairs but needs periodic assistance lifting, carrying and holding which can cause serious pain. Information as to the frequency and duration of assistance needed is not included.

In the section of the Assessor Report dealing with Cognitive and Emotional Functioning, in addition to checking the boxes ["the list"] indicating the impact of impairments, the assessor adds two pages ["the insert"] explaining in more detail how the cognitive and emotional deficits affect the appellant's functioning. Some areas of social functioning are rated the same in the list and the insert; however, there are also several discrepancies.

In both the list and the insert, the assessor reports:

- no impact in psychotic symptoms and other neurophysiological problems;
- minimal impact in impulse control;
- moderate impact in bodily functions, consciousness and emotion; and
- major impact in attention/concentration and executive functioning.

In the areas of insight and judgement, language, and other emotional or mental problems, on the list the assessor notes no impact but increases that to minimal impact on the insert. Memory and motor activity are increased on the insert from minimal impact to major impact and motivation is increased from no impact to major impact. In addition, the panel noted that in some instances the narrative did not fully explain or was not relevant to the items being explained.

In an attempt to reconcile the discrepancies, the panel reviewed the intended purpose of the list against the comments on the insert. The Assessor Report form states that "for each item, indicate to what degree the appellant's mental impairment or brain injury restricts or impacts his/her functioning." The list provides examples of responses which for motivation are "lack of initiative" or "loss of interest. On the list, the assessor notes "no impact" beside motivation. On the insert, the assessor changes that to "major impact" and comments that the appellant is ambitious and has remarkable energy and drive to achieve his goals. This suggests good motivation and that this aspect of the appellant's mental functioning is not restricted and therefore, "no impact" is the accurate response. With regard to memory, the example responses on the form are "can learn new information ... then recall that information" or "forgets over-learned facts". Minimal impact is noted on the list but on the insert the assessor notes "major impact". The comment that the appellant had to put a lot of effort into memory to make the most of his educational experiences suggests that it was difficult but he was successful in learning and recalling information. His memory is therefore not a restriction in his ability to function cognitively and emotionally.

With regard to daily living activities ["DLA"], the assessor reports that the appellant is independent in most (18 of 28) DLA but needs continuous assistance from another person in the areas of basic housekeeping, budgeting and paying rent and bills (3 DLA). It is also reported that the appellant needs periodic assistance with taking medication as directed and takes significantly longer than typical in dressing, grooming, bathing, transfers in/out of bed and on/off chairs and carrying purchases home (6 activities). The assessor describes the appellant's social functioning as good but notes that he requires periodic assistance interacting appropriately with others because he does not have a good grasp of body language. The assessor notes that the appellant receives assistance from his family and health professionals and remains very positive and upbeat in spite of his mental and physical problems. No details about the extent, frequency and duration of help needed with DLA is provided.

4. A letter from a specialist written in 2001 regarding the appellant's PAS. The physician suggests that the appellant undertake a "gentle activity program" to avoid exacerbation of his pain and not increase his level of stress which in turn can cause his pain to increase.
5. A Ministry of Advanced Education Verification of Permanent Disability form completed by a psychiatrist in 2003 diagnosing the appellant with Schizophrenia and confirming that the appellant's disability is permanent and severe.
6. Notes from the ministry's health assistance branch ["HAB"] commenting that the physician and assessor do not provide information on the frequency and duration of the appellant's impairments and the impairments are not "shown to be severe". The HAB also comments that there is no information on the severity of the appellant's cognitive and emotional functioning deficits or on the severity or duration of psychotic episodes. Therefore, a severe mental impairment cannot be determined. The report also states that there is no information as to the extent, frequency and duration of assistance needed.
7. A letter from the appellant dated August 13, 2009 which states that having the additional financial support that PWD designation would provide will reduce the amount of stress he experiences when worrying about not having enough food or other resources. Stress increases his mental and physical symptoms both of which also affect each other. He notes a previous hospitalization brought on by stress.

The appellant provided oral testimony in an organized, articulate and forthright manner having prepared written notes of his presentation. He indicated he was aware that his application for PWD was denied because the physician and assessor did not provide information as to the frequency and duration of his physical and mental deficits. He says the Schizophrenia and PAS are interdependent. When one gets worse, the other does as well, both of which cause him stress. He says the intensity of his symptoms fluctuates and can become severe very suddenly. He struggles constantly to slow his thinking down, keep himself mentally and emotionally focused and avoid strenuous activities if at all possible. The pain from his PAS is also constant and causes stress and lately his stress level is increasing. He says he is fairly high functioning at the moment and is thankful that he is free of delusions, hallucinations and other incorrect thinking. As his stress level rises, he fears that he may have another psychotic episode and end up in hospital. He explained that each acute episode is harder to recover from than the previous one and each causes further changes to his brain and makes full recovery less likely.

While he can carry 35 pounds and walk the long distance from the store with groceries, the appellant said that when he does, he is incapacitated physically and must rest for 3 to 4 days. He explained that his mental stress is building lately but his physical stress is steady with constant pain from the PAS. From experience, his research and what he has been told by his physician, he knows that he can greatly reduce the risk of a psychotic relapse by eating well, getting regular massage and attending Yoga. However, he cannot afford a nutritious diet, massage or Yoga. In fact, he has to visit the food bank weekly and the type of food supplied is not the healthy food he knows he needs. In the past, the appellant has had a great deal of support from his parents. He now lives with friends of the family and he said they remind him to take his medications even though he does not need the reminders.

In oral testimony, the ministry relied on the reconsideration decision stressing that there was no information on the frequency and duration of the appellant's mental and physical impairments; therefore, the ministry was unable to determine that the appellant has a severe mental or physical impairment.

In accordance with the Employment and Assistance Act, section 22 (4) (b), the panel admitted the appellant's oral testimony and that of the ministry as being in support of the information and records that were before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the ministry's decision to deny the appellant persons with disability designation because he did not meet all 5 criteria as required by the legislation. The relevant legislation is found in the EAPWDA, section 2 which provides that:

1. The applicant must have reached the age of 18,
2. The minister must be satisfied that the person has a severe mental or physical impairment,
3. In the opinion of a medical practitioner the impairment will continue for at least two years,
4. In the opinion of a prescribed professional the impairment must directly and significantly restrict the person's ability to perform DLA either continuously or periodically for extended periods, and
5. As a result of those restrictions, the person requires an assistive device, significant help or supervision from another person or the services of an assistance animal to perform DLA.

The appellant meets criteria 1 and 3 because he is over the age of 18 and a medical practitioner has confirmed that his impairment is permanent. At issue is whether or not the appellant meets the criteria in items 2, 4 and 5 above.

The ministry argues that the evidence does not support a conclusion that the appellant has a severe physical or mental impairment because the appellant's physician and assessor did not provide information about the extent, frequency and duration of the appellant's impairment and the help he needs. The ministry further argues that a prescribed professional has not confirmed that the impairment directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods or that he needs the significant help or supervision from another person.

The appellant argues that his symptoms fluctuate and can become severe without notice. He says that his pain from the PAS and his Schizophrenic symptoms are continuous and increase with increasing exertion and stress in his life. He struggles constantly to slow his thinking down, keep himself mentally and emotionally focused and avoid strenuous exercise.

The 2003 psychiatrist's report states that the appellant's disability of Schizophrenia is permanent and severe. With regard to severity, the family physician reports that the appellant has significant limitations but if the appellant keeps up with his medication and counselling and does not overdo physical activity, he manages pretty well. In the current reports, the family physician and the assessor, a prescribed professional, state that the severity of the appellant's symptoms fluctuates without clearly delineating the severity; however, there is no evidence to suggest that the appellant's mental condition is anything less than severe, albeit controlled at present by medication. Therefore, based on the psychiatrist's report, that the appellant's Schizophrenia is permanent and severe, the panel finds that the appellant has a severe mental impairment.

Based on the Assessor Report, the panel further finds that the appellant's impairments have a major impact in the areas of attention/concentration, executive and motor activity; and, moderate impact on bodily functions, consciousness and emotion. And the panel finds that the remaining 8 items listed under cognitive and emotional functioning have minimal or no impact on the appellant's ability to function on a daily basis.

In addition, the assessor reports that the appellant is independent in 18 of 28 aspects of DLA. The evidence in both the Physician and Assessor Reports indicates that the appellant's mental and physical impairments have an impact on his ability to perform some DLA's. However, the evidence is not sufficient to establish that the restrictions on his ability to perform those activities, overall, are significant. The panel therefore finds that the evidence has not established that the appellant's mental impairment significantly restricts his ability to perform DLA either continuously or periodically for extended periods.

While the assessor notes that the appellant receives help from his family and mental health workers, there is no information as to the extent, frequency or duration of help required. The panel therefore finds that a prescribed professional has not confirmed that the appellant's mental or physical impairment restricts his ability to perform his DLA to the extent that significant help or supervision is required in order to perform those activities, as is required by the legislation.

In conclusion, the panel finds that the ministry's decision is a reasonable application of the applicable enactment in the current circumstances of the appellant and confirms the decision.