



PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The reconsideration decision of November 16, 2009 denied the appellant's application for designation as a Person's with Disabilities. In order to qualify, applicants must meet the criteria in Section 2 (2) and (3) of the Employment and Assistance for Persons with Disabilities Act.

The Ministry found that:

- the appellant had met the age requirement
- the appellant's medical practitioner had confirmed the impairment was likely to continue for at least 2 years
- the appellant did not have a severe physical and/or mental impairment
- the appellant's prescribed professional did not confirm that the appellant's impairments directly and significantly restricted her ability to perform daily living activities (DLAs) either continuously or periodically, for extended periods
- the appellant's prescribed professional did not confirm that as a result of those restrictions the appellant required help to perform those activities

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

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

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

The evidence before the Ministry at reconsideration was as follows. The appellant's psychiatrist had completed the physician's report and the assessor's report in the application for Persons with Disabilities designation, dated June 30, 2009. The appellant had also included a self report with the application dated June 22, 2009. Further, the psychiatrist had responded to a request for information from the client's advocate, on October 8, 2009, and submitted a supplemental medical opinion (SMO).

The Ministry stated that the appellant's mental impairment, although she had been diagnosed, was not severe. They indicated that in the assessor's report, the psychiatrist stated that the appellant's mental impairment had minimal impact on cognitive functioning, emotional functioning and impulse control. The Ministry noted that the psychiatrist stated, in the SMO, that the appellant had restrictions on DLAs (managing personal care, activities and finance; relating to, communicating or interacting with others; preparing meals; shopping for personal needs; using public transportation; performing housework and managing personal medication), and that those restrictions were periodic and "varies widely". In the physician's report, the appellant is noted as being able to walk unaided 4+ blocks, climb unaided 5+ steps, no limitations in lifting and no limitations in remaining seated. In the assessors report, 30 aspects of her DLAs are marked as independent. The Ministry pointed out that the psychiatrist did not elaborate or explain what he wrote regarding her level of functioning. The Ministry argued that as a result, they could not find that the appellant's ability to complete DLAs (managing personal care, activities and finance; relating to, communicating or interacting with others; preparing meals; shopping for personal needs; using public transportation; performing housework and managing personal medication) was continuous or for extended periods of time. The Ministry noted that the psychiatrist indicated the appellant required periodic assistance with social functioning, and that she needed help with DLAs 1-2 times weekly (managing personal care, activities and finance; relating to, communicating or interacting with others; preparing meals; shopping for personal needs; using public transportation; performing housework and managing personal medication). The Ministry concluded that the appellant did not require significant help or supervision from someone in order to complete DLAs as the need was periodic, as noted by the psychiatrist in the SMO.

The appellant and her advocate provided oral evidence that elaborated on her mental impairment and ability to complete DLAs. The advocate indicated that the appellant takes psychiatric medications, and had taken the same medications for over 2 ½ years: Valproic Acid (anti-psychotic), Effexor (antidepressant) and an inhaler (asthma). She noted that the appellant self-medicates with marijuana. The appellant indicated that she has been taking psychiatric drugs since she was 12. The appellant told the panel that in 1997 she was hospitalized in the psychiatric unit for 6 weeks for assessment. At the time, she was given an additional diagnosis of Interpretation Disorder. She stated that she has made many suicide attempts since she was 12, and suffers from panic attacks as well as severe mood swings. The appellant indicated that her depression, fear and anxiety vary on a daily basis, and she experiences flashbacks to childhood abuse at times that cannot be anticipated. She states she lashes out at people, and will not remember it, which affects her relationships with family and others. She sees her psychiatrist regularly.

The advocate pointed out that the psychiatrist indicated in the physician's report, that the appellant has "significant deficits" with cognitive and emotional functioning; and "emotional disturbance and impulse control". In the assessor's report, the psychiatrist notes in social functioning that "periodic support/supervision" is required to "develop and maintain relationships" and in order for her to "interact appropriately with others". Also in the assessor's report, the psychiatrist indicated that the appellant's emotional functioning was also impacted minimally with regard to emotion, impulse control, and other emotional or mental problems. In the physician's report, the diagnoses are listed by the psychiatrist as mood disorder – bipolar, personality disorder and substance related disorder. In the SMO provided by the psychiatrist, he notes that the appellant has a "severe" mental impairment given the "combination of her 3 disorders".

When asked about her ability to complete specific activities of daily living, the appellant indicated that she does the budgeting, cooking, shopping, and housework alone. The appellant indicated that she lives with her father who is also diagnosed with a mental impairment and takes psychiatric medications. She indicated that he has issues with personal hygiene and self care, and cooking/cleaning are left to her. She stated that she takes the city bus and although she has trouble with schedules and is fearful of asking others for help, she manages to get around. She said in social settings, she feels like everyone is looking at her, and judging her, making it a stressful experience; but that she is able to get out for groceries and spoke of shopping at the mall for clothes. She told the panel that she forgets her medications sometimes but that it doesn't happen very often. The appellant indicated that she is usually able to manage her hygiene, but she will have episodes where she doesn't attend to hygiene at all, change her clothes or take care of the house. In the past 3 weeks, there was an episode where she neglected herself and the house for 3 days straight. The psychiatrist indicated in the supplemental medical opinion that the appellant has difficulties completing activities of daily living (managing personal care, activities and finance; relating to, communicating or interacting with others; preparing meals; shopping for personal needs; using public transportation; performing housework and managing personal medication), but that those difficulties are intermittent.

The oral evidence provided by the appellant, is relevant to the application for designation as a Persons with Disabilities. The evidence is admissible under section 22(4) of the Employment and Assistance Act and accepted by the panel, as it was found to be in support of the original issue.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in this case is the reasonableness of the Ministry's decision to deny the appellant's application for designation as a Persons with Disabilities. The Minister determined that the legislative criteria set out in Section 2 of the EAPWDA was not met; specifically the appellant did not have a severe mental impairment, the appellant was not restricted continuously or periodically for extended periods in DLAs, and the appellant did not require significant help or supervision in completing DLAs.

Section 2(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 has a severe mental or physical impairment that

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

(b) in the opinion of a prescribed professional (B.C. Reg. 196/2007)

(i) directly and significantly restricts the person's ability to perform DLAS 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.

Respecting section 2(2), the panel finds that the appellant has a severe mental impairment. The psychiatrist confirmed that the appellant has significant deficits in cognitive/emotional functioning which impact her social functioning, in the physician's report. He confirmed the appellant as having multiple diagnoses of bipolar disorder, personality disorder and substance related disorder, in the physician's report. Further, he provided evidence that she has a "severe" mental impairment in the SMO. The appellant provided oral evidence regarding the severity of her mental impairment including: experiencing panic attacks, and having attempted suicide on many occasions. The appellant described living with depression, fear, anxiety and mood swings which affect her on a daily basis. The Ministry found that although the appellant was diagnosed with an ongoing mental

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impairment, the mental impairment was not severe. Therefore, the panel finds that the Ministry was not reasonable in determining that the appellant does not have a severe mental impairment as required by the EAPWDA.

Respecting section 2(2)(b), the panel finds that the appellant is not significantly restricted in performing DLAs. The panel acknowledges that there are some limitations in performing DLAs, but does not find that this constitutes a significant restriction. Although the psychiatrist provided evidence in the supplemental medical opinion that the appellant has difficulties completing DLAs, he noted that those difficulties are intermittent. In the assessor's report, the psychiatrist confirmed that she is independent in 30 DLAs. The appellant identified that she is regularly able to complete all DLAs identified in the EAPWDR, with the exception of one; she stated that she is unable "relate to, communicate or interact with others effectively" due to her mental impairment. The Ministry argued that the appellant was not continuously or periodically (for extended periods) restricted in performing DLAs. Therefore the panel finds that the Ministry's decision was reasonable.

Respecting section 2(2)(b), the panel finds that the appellant does not require the help, or supervision, of another person to complete DLAs. The psychiatrist confirmed that the appellant required help with DLAs once or twice per week, but did not specify what help was needed, and provided evidence that help was needed on a periodic basis in the SMO. During the hearing, the appellant did not indicate in what way she could use help with any of the DLAs. The Ministry argued that since the appellant was not significantly restricted in performing DLAs, she did not require the significant help or supervision of another person in order to perform DLAs. Therefore the panel finds that the Ministry's decision was reasonable.

The panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.