

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The Reconsideration Decision dated January 4, 2010 denied the Appellant's application as Persons with Disabilities (PWD). The stated reason was that the Appellant's application did not meet all of the five criteria set out in Section 2(2) of the Employment and Assistance for Person's with Disabilities Act, (EAPWDA) namely the following criteria:

He does not have a severe mental or physical impairment.

His impairment does not directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods.

He does not require the significant help or supervision of another person to perform daily living activities restricted by his impairment.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, Section 2

Employment and Assistance for Persons with Disabilities Regulation, 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 Panel reviewed the Appeal Record which included administrative information and the following:

Reconsideration Decision dated January 10, 2010
Request for Reconsideration signed on December 4, 2009
Physicians Report dated August 20, 2009
Assessor Report dated August 20, 2009
Supplemental Medical Opinion

In the Physician's report (PR), the appellant is diagnosed with Hepatitis C, anxiety and depression, alcoholism and poor memory. Regarding functional skills, the physician states the appellant is able to walk 4 blocks, climb 5 steps, with no limitations to lifting or to remaining seated.

In the Assessor's Report (AR) completed by the same physician, he states the appellant lives in a shelter where meals and laundry are provided by staff. Regarding ability to communicate, the physician states all of the areas are good or satisfactory and the appellant is independent in walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding. The physician states that the appellant is independent in all of the categories of personal care, shopping and banking with periodic help required with laundry, housekeeping, and meal planning, budgeting, refilling and taking medications as directed. Regarding cognitive and emotional function the physician states that the appellant's mental impairment has a major impact on emotions, a moderate impact on attention/concentration, memory and other emotional or mental problems, and a minimal impact on impulse control, insight and judgment, executive, and motivation. He comments that the appellant is on flexor for anxiety and depression. In regards to social functioning the physician states that the appellant require continuous support/ supervision in making appropriate social decision, to deal appropriately with unexpected demands and needs periodic support/supervision to develop and maintain relationships, interact appropriately with others and be able to secure assistance from others. The appellant has marginal functioning with his immediate social network (partner, family, friends) and marginal functioning with his extended social network (neighborhood contacts, acquaintances, storekeepers, public officials etc.) .

In the Supplemental Medical Opinion (SMO), the physician states that in his professional opinion the appellant has a severe physical/mental impairment that restricts his ability to perform his daily living activities (DLA). The physician states that the appellant is restricted in making decisions about personal care, activities and finances, relate to, communicate or interact with others effectively, prepare own meals (can do simple meals only), shop for personal needs (doesn't always make best choices), manage personal medications (requires reminders).The appellant is able to use public transportation and move indoors and outdoors. The physician states that the appellant's ability to perform his DLA are restricted continuously and comments that he need guidance on a regular basis and once told can complete a simple task at a normal rate. The physician further states that in his professional opinion the appellant has a severe physical/mental impairment, that he requires help with DLA on a daily basis and requires a structured environment.

The Advocate stated that the appellant is 39 years old, has been diagnosed with Hepatitis C, anxiety and depression, alcoholism and poor memory. He is currently taking Gabapentin and Venlafaxine for anxiety and depression. She referred the panel to the PR in which the appellant's physician indicates that he has significant deficits with cognitive and emotional function in 7 of the 11 categories listed. and that the impairment directly restricts his ability to perform DLA. She notes that the PR and the AR were completed by the same physician who has been treating the appellant for 16 years. She notes that in the cognitive and emotional function section of the AR, the physician indicates there were impacts on his DLA, a major impact on emotion, a moderate impact on attention/concentration, memory and a minimum impact on impulse control, insight and judgment, executive and motivation and the comment that the appellant is on Effexor for anxiety and depression. In the DLA section of the AR, the physician indicates the appellant requires periodic help with laundry and basic housekeeping, meal planning, budgeting, filling prescriptions, taking prescriptions as directed, develop and maintain relationships, interact appropriately with others, the ability to secure assistance from others and needs continuous help with food preparation, cooking, storage of food, pay rent and bills. make appropriate social decisions and the ability to deal appropriately with unexpected demands. The physician indicates the appellant has marginal functioning in his relationships with his immediate social network and marginal functioning with extended social networks, that he lives in a community shelter and relies on staff.

The Appellant stated that if he could find affordable housing he would like to share it with his father who helps him by reminding him every time he needs to take his medications. He states that in a previous living arrangement, he was "kicked out" because the other person could not stand constantly having to remind him of things because of his poor memory.

The Ministry stated that the Appellant needed to satisfy 5 criteria as set out in section 2 of the EAPWD. The appellant satisfied the criteria of age and duration but the Ministry is not satisfied that remaining 3 criteria were satisfied, namely severity, restriction on performance of DLA and help required,

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

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The issue before the panel is whether the Ministry's Reconsideration decision dated January 4, 2010 to deny PWD status to the Appellant was reasonably supported by the evidence. The Ministry determined that the Appellant met 2 of the 5 criteria however, the Ministry was not satisfied that the Appellant has a severe mental/physical impairment, that a prescribed professional has not determined that the impairment directly or significant restricts the Appellant's ability to perform DAL, or that the Appellant requires the significant help or supervision of another person, an assistive device or the services of an assistive animal. The legislation states as follows:

Section 2, Employment and Assistance for Persons with Disabilities Act.**(A) 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;

(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

(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,

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- (ii) the significant help or supervision of another person, or
- (iii) the services of an assistance animal.

Section 2, Employment and Assistance for Persons with Disabilities Regulation

(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 authorized under an enactment to practice the f

(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 authorized under an enactment to practice the profession of

- (a) medical practitioner,
- (b) registered psychologist,
- (c) registered nurse or registered psychiatric nurse,
- (d) occupational therapist,
- (e) physical therapist,
- (f) social worker,
- (g) chiropractor, or
- (h) nurse practitioner.

The Panel finds that the appellant does not have a severe physical impairment. In the PR regarding functional skills, the physician states the appellant is able to walk 4 blocks, climb 5 steps, with no limitations to lifting or to remaining seated and is independent in mobility and physical ability.

The Panel finds that the appellant does have a severe mental impairment. In the SMO the physician confirms that in his professional opinion the appellant has a severe and or mental impairment. In the AR, regarding cognitive and emotional function the physician states that the appellant's mental impairment has a major impact on emotions, a moderate impact on attention/concentration, memory and other emotional or mental problems, and a minimal impact on impulse control, insight and judgment, executive, and motivation. He comments that the appellant is on Effexor for anxiety and depression. In regards to the social functioning, the physician states that the appellant requires continuous support/ supervision in making appropriate social decisions, to deal appropriately with unexpected demands and needs periodic support/supervision to develop and maintain relationships, interact appropriately with others and able to secure assistance from others. The appellant has marginal functioning with his immediate social network (partner, family, friends) and marginal functioning with his extended social network (neighborhood contacts, acquaintances, storekeepers, public officials).

The Panel finds that the appellant's impairment does directly and significantly restrict his ability to perform DLA. In the SMO the physician states that in his professional opinion the appellant has a severe physical/mental impairment that significantly and directly restricts his ability to perform his DLA. The physician states that the appellant is restricted in making decisions about personal care, activities and finances, relate to, communicate or interact with others effectively, prepare own meals (can do simple meals only), shop for personal needs (doesn't always make best choices), manage personal medications (requires reminders). The appellant is able to use public transportation and move indoors and outdoors. The physician states that the appellant's ability to perform his DLA are restricted continuously and comments that he needs guidance on a regular basis and once told can complete a simple task at a normal rate.

The Panel finds that the appellant requires significant help and supervision of another person to perform DLA. In the SMO, the physician states that in his professional opinion the appellant requires continuous help with his DLA on a daily basis from the shelter staff and requires a structured environment.

The Panel finds that the Appellant has met all of the 5 criteria set out in Section 2(2) of the (EAPWDA) that the Reconsideration Decision was not reasonably supported by the evidence and rescinds the decision.