

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

Under appeal is the ministry's reconsideration decision of March 10, 2010 denying the appellant Persons with Disabilities (PWD) designation on the basis that she failed to meet the entire legislative criteria. The ministry found that the appellant met the age requirement, but was not satisfied that:

- her medical practitioner had confirmed her impairment is likely to continue for at least two years;
- she has a severe physical or mental impairment ;
- her daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and that;
- as a result of those restrictions, the appellant requires help to perform daily living activities.

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act, Section 2 (EAPWDA)
Employment and Assistance for Persons with Disabilities Regulation, Section 2 (EAPWDR)

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 the time of reconsideration was comprised of:

- September 28, 2009 a PWD Application (included a Self-report) and Physician and Assessor Reports both dated October 21, 2009;
- January 28, 2010 the ministry denies the appellant's application.
- February 23, 2010 the appellant's Request for Reconsideration
- March 11, 2010 letter from medical practitioner

In her PWD application, the appellant describes her severe depression, her fear of working because she cannot read and that, as a result, she gets upset and depressed. She reports that she lies in bed because she does not want to go out because she does not want to have to read or work. She reports that she feels like a failure and does not know what to do. She states she has been doing "hucton fonex" (*hooked on phonics*) and it is not working and that her memory is not good.

In the Physician Report (PR), the appellant is diagnosed with major depression disorder and dyslexia. The physician reports the appellant has a lack of interest, poor concentration and self-esteem and that she cannot keep a job due to depression and poor cognitive functioning. The physician states the appellant "may well have a global pervasive developmental disorder and that her reading and writing are clearly inadequate". He describes the appellant's medication for depression and indicates the anticipated duration of the medication as indefinite. The physician with regard to the question "is the impairment likely to continue for two years or more from today" ticks the "No" box on the form but comments with respect to the estimated duration, "P W developmental disorders are always permanent". He reports that the appellant can walk 4+ blocks unaided, can climb 5+ stairs unaided and has no limitations in lifting and sitting. He indicates difficulties with communication caused by cognitive issues. With respect to cognitive and emotional function, the physician indicates a significant deficit in five of the eight functions listed; he ticks emotional disturbance, executive, memory, motivation and attention or sustained concentration. The physician refers to several educational/psychological assessments of the appellant and included in the record and undertaken in 1998 when she was in Grade 4. These conclude that the appellant has a "severe learning disability in basic reading skills and comprehension".

In the Assessor Report (AR), also completed by the appellant's physician, it is noted that depression and pervasive developmental disorder are the impairments that impact her ability to manage daily living activities (DLA) . The appellant's ability to communicate is reported as good regarding hearing, satisfactory regarding speaking, and poor with respect to reading and writing. Regarding mobility and physical ability, the appellant is independent in all categories. The physician indicates that her impairment has a major impact on her cognitive and emotional functioning with respect to 7 categories: emotion, insight and judgement, attention /concentration executive memory, motivation and language. A moderate impact is indicated for impulse control. No impact is noted for bodily functions, consciousness, motor activity, psychotic symptoms, other neuropsychological problems and emotional or mental problems.

Regarding DLA, the appellant is independent with 13 DLA involving personal care, basic housekeeping, going to and from stores and carrying purchases home. However, the appellant require periodic requires periodic assistance paying for purchases, all activities related to meals, paying rent and bills, medications, using public transit and using transit schedules and arranging transportation. Continuous assistance is indicated for reading prices and labels and making appropriate choices. The physician also indicates that the appellant requires continuous assistance dealing with unexpected demands and that periodic assistance is required for all aspects of social functioning concerning the areas of making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, and securing assistance from others. The physician also indicates very disrupted functioning for both immediate and extended social networks.

On March 11, 2010 a letter was faxed to the ministry and signed by a medical practitioner (one serving in a locum or substitution status for the appellant's regular physician) that provides further information concerning the appellant. With regard to severity of impairment the letter outlines the appellant's poor concentration, decreased self-esteem and no energy. It further notes the appellant spends most days at home by herself in bed, does not prepare her own food, is unable to clean house on a regular basis due to low mood and lack of energy. It also adds that the appellant finds it difficult to concentrate and maintain focus on most tasks and that ... "These impairments are consistent through nearly each day of each month." The letter also reports that the appellant feels she is unable to do things such as read labels and prices and make appropriate food choices and that her sister does the day to day grocery shopping and makes the decisions on what food and household items come in to the house. It notes the appellant does not regularly complete household tasks such as cleaning and housework, but occasionally when prompted and encouraged by family members.

In her Notice of Appeal dated March 18, 2010 the appellant writes the following: "I can not go to school on welfare and my reading is a grad 3 reading disability and wen I get a job my angsiat is so bad I freek out that I can't do it. I need help".

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86 (b) of the Employment and Assistance Regulations (EAR).

At the hearing, the appellant spoke about the how she has lived with her condition all her life and described how she was pushed through school with much help. Her attempts at working have consistently failed and for awhile she travelled on the road working with a fair/amusement enterprise. She also described her attempt at living with her sister and various friends that have not worked out and stated that she currently lives by herself. The appellant informed the panel that her sister does all her shopping and friends help her with cleaning, laundry and that she cannot cook and does not use public transportation. She reports that her depression is acute and that she is unable to do anything. She advised the panel that she has seen on several occasions the medical practitioner substituting for her own physician, who has referred her to a specialist for therapy as her medications do not work.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

At issue is the reasonableness of the ministry's decision to deny the appellant Persons with Disabilities designation on the basis that she failed to meet the following legislative criteria:

- a medical practitioner does not confirm her impairments are likely to continue for at least 2 years.
- she has a severe physical or mental impairment,.
- the appellant's daily living activities are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and,
- a prescribed professional has confirmed that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities.

The criteria for being designated a Person with Disabilities (PWD) are set out in Section 2 of the EAPWDA. It states:

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

(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.

Section 2(3)(b) of the EAPWDA states that 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.

Section 2(1)(a) of the EAPWDR defines daily living activities:

(a) in relation to a person who has a severe physical impairment or a severe mental impairment as preparing own meals, managing personal finances, shopping for personal needs, using public or personal transportation, performing housework to keep one's residence in acceptable sanitary condition, moving about indoors and outdoors, performing personal hygiene and self care and managing personal medication.

Section 2(1)(b) adds two additional activities for a person with a severe mental impairment: making decisions about personal activities, care or finances; and, relating to, communicating or interacting with others effectively.

ATTACH EXTRA PAGES IF NECESSARY

The ministry's position is that the appellant is not eligible for designation as a Person with Disabilities because the appellant's physician indicates that the impairments will not continue for two or more years. The ministry also contends that the evidence does not establish the existence of a severe mental or physical impairment. It further notes that the significant deficits noted with cognitive and emotional functions and major impacts on the majority of cognitive and emotional functioning did not include respectively, comments to provide details about the deficits and no narrative to explain the reason for indicating the level of impact. It also found the March 11, 2010 letter from a medical practitioner indicating poor concentration, decreased self-esteem, and no energy and an inability to clean house on a regular basis due to low mood and lack of energy as a limitation that does not establish a severe mental impairment. It also reports that no recent medical consultations, psychological or psychiatric reports were included in her Request for Reconsideration that would confirm the severity of her mental impairments. The ministry's position is also not satisfied that the physician has confirmed that the appellant's impairments directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods. It contends that the physician reports periodic, continuous assistance with certain DLA, but has not described the frequency and duration of this assistance and does describe the type and amount of assistance required. The ministry argues also that while continuous support/supervision with the majority of social functioning is required a description of the degree and duration of the support/supervision is not included. The ministry states, the evidence does not support a conclusion of significant restriction with daily living activities, or that significant assistance is required to perform them.

The appellant contends that she has a severe mental impairment that is likely to continue for two years and that this impairment directly and significantly restricts her ability to perform DLA for which she needs help.

The panel relies on the physicians comments that "PW development disorders are always permanent" to indicate that the appellant's mental impairment is likely to continue for two years or more and therefore, meets the legislative criteria.

The panel also finds that the evidence indicates that the appellant has good functioning with her physical motor skills associated with certain DLA and that while there may be some limitations imposed by her depression and associated lack of energy, the evidence provided by the PR and AR fail to provide sufficient evidence to conclude the appellant has a severe physical impairment.

The panel finds that the appellant has a severe mental impairment. In doing so it relies on the PR where the physician writes as a diagnosis "Major depressive disorder" and in the AR "Pervasive developmental disorder". In addition, it relies also on the PR which indicates 5 significant deficits with cognitive and emotional functions involving emotional disturbance, executive, memory, motivation and attention or sustained concentration. It further relies on the AR where the appellant's mental impairment has a major impact in 6 categories of cognitive and emotional functioning including emotion, insight and judgement. Additionally, it accords weight to the most recent March 11, 2010 letter from a prescribed professional that describes with regard to "severity of impairment" that the appellant's "impairments are consistent through nearly each day of each month".

With respect to DLA, it would have been useful and helpful for the physician to have provided more narrative details and reasoning regarding such matters as frequency and duration, level of impact, etc. However, both the PR and the AR and the March 11, 2010 letter from a medical practitioner collectively provides sufficient evidence that the appellant's mental impairment directly and significantly restricts her ability to perform the majority of DLA. The AR indicates that the appellant requires periodic or continuous assistance in 20 of 33 aspects of DLA. In 3 of these categories continuous assistance and/or continuous support/supervision is indicated. Additionally, very disrupted functioning is indicated for immediate and extended social networks. The March 11, 2010 letter from a medical practitioner indicates the appellant does not prepare her own food, is unable to clean her house on a regular basis, finds it difficult to concentrate and maintain focus on most tasks and that her impairments are consistent daily. Collectively, the panel finds the PR, AR and the March 11, 2010 letter completed by prescribed professionals provide sufficient evidence to the panel that the appellant's severe mental impairment directly and significantly restricts her ability to perform DLA and that she needs help to perform them.

The panel finds that the ministry decision was not reasonably supported by the evidence and, therefore, rescinds the ministry reconsideration decision.