

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the Ministry's reconsideration decision dated January 28, 2010, which held that the appellant does not meet the legislative criteria for designation as a person with a disability.

Section 2 (2) of the Employment and Assistance for Persons with Disability Act (EAPWDA) lists five criteria that must be met in order for a person to be considered a Person with a Disability (PWD). The Ministry found that the appellant met two of the five. The ministry found that the appellant met the age criteria and the duration of the condition. The ministry found that there was insufficient evidence to establish that his impairment is severe or that his impairment directly and significantly impacts his Daily Living Activities (DLAs). The ministry also did not find that his impairment requires an assistive device, help or supervision of another person, or the services of an assistance animal.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disability Act (EAPWDA), section 2 (2)  
Employment and Assistance for Persons with Disability 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 the time of the reconsideration was:

- A Self Report signed by the appellant. In this report he writes that he suffers from severe depression and suicidal thoughts. He adds that his aggression is high and that he doesn't like being out in public. He writes that his disability causes him to be isolated, he has a short attention span, poor memory, and that he lacks the ability to focus. He writes that he needs reminders to complete his personal self-care as well as to take medications, and to pay his bills.
- A Physician's Report completed by the appellant's physician in which he describes the appellant as suffering from depression, personality disorder, and substance related disorder and that his conditions are chronic. The physician notes that the appellant has deficits in several areas including emotional disturbance, impulse control, motivation, and attention.
- An Assessor's Report completed by the appellant's physician. In the section detailing cognitive and emotional function the physician noted moderate impacts in four areas and major impacts in five areas including emotion, impulse control, attention, motivation and anger management. The physician writes that the appellant is either independent or needs periodic assistance in all of his daily living activities (DLAs) and notes that he "needs guidance for making better choices."
- A letter written to the physician by the appellant's advocate that required the physician to confirm or deny several statements about the appellant's condition. In this letter the physician indicates that the appellant requires constant support to perform several of his DLAs including meal planning and preparation, banking and budgeting, filling prescriptions/taking as directed, as well as several aspects of social functioning. In the letter the physician concurs that the appellant's depression is episodic and severe as well that he has had previous bouts of uncontrollable crying spells, suicidal thoughts and angry outbursts. The physician also notes that the appellant does not need continuous support to perform his personal care, regulating his diet, housework & laundry, or shopping (making choices).

At the hearing the appellant's advocate summarized the appellant's condition. She opined that the ministry did not consider his suicidal thoughts of his self assessment when making their decision and that she considers his mental health condition to be severe. She pointed out that the physician confirmed that the appellant's mental health episodes are severe. She stated that he is taking medication to control his anger however this medication has several side effects that include reduced motivation and suppressed appetite. She noted that he requires near daily contact with a counsellor to plan his day.

The appellant's advocate submitted a letter written by the appellant's mother as evidence. In this letter the mother describes the challenges the appellant faced as a child which may have contributed to his current condition. The letter noted the appellant's low self esteem, depression, anxiety, mental breakdown, and his suicidal treats. On the issue of admitting this letter as evidence, the ministry had no objections. The panel found that it was in support of evidence that was before the ministry at the

time of the reconsideration decision and therefore it was admitted pursuant to EAA section 22 (4)(b).

The appellant stated that he finds his mental health improvement to be very slow and depressing. He sought help for his mental health issues when he began to have regular suicidal thoughts and angry outbursts that tempted him to act out in violence against other people. This condition was precipitated by his separation from his wife about five years ago. He attends a program offered locally where he meets with a counsellor to work through his depression and low self-esteem as well as to plan his day-to-day activities. He said that if it wasn't for this support he would simply sleep all day. He finds it hard to motivate himself to get up and out of the house and finds that he will end up sleeping in his clothes all day. He stated that his self esteem is "not where it needs to be." He told the panel about the difficulties he has had with his Daily Living Activities (DLAs). He said that up until recently he had been living with his nephew who would do all of the cooking and shopping for the household. The appellant recently moved into a new home, closer to his counsellor, that he now shares with one of his sons. He said that maintaining his home has been difficult and that he gets help from his son as well as support from his sisters and his mother. He is not sure if his son will stay with him and if he leaves the appellant is not sure how he will be able to cope.

The appellant had a witness appear on his behalf who is his counsellor at the program provider he attends daily. The counsellor stated she works with the appellant on an almost daily basis to set his daily plan. She assisted him in finding his new apartment to move to. She considers that the appellant is making progress and that he wants to receive help. She listens to him when he is having a bad day and helps him understand his feelings in order for him to develop coping skills.

The ministry was present at the hearing and she read the ministry's reconsideration decision verbatim and did not offer any new information or commentary. The reconsideration decision held that the appellant met the age criteria and the duration of the condition. The ministry found that there was insufficient evidence to establish that his impairment is severe or that his impairment directly and significantly impacts his Daily Living Activities (DLAs). The ministry also did not find that his impairment requires an assistive device, help or supervision of another person, or the services of an assistance animal.

**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 that the appellant does not qualify as a person with a disability. To be considered a person with a disability the legislation requires a person to meet five criteria. These are detailed in EAPWDA Section 2 (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 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)

For the purposes of the legislation above, Daily Living Activities are described in section 2 of the EAPWDR as follows:

- 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;

**ATTACH EXTRA PAGES IF NECESSARY**

- (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.

The Appellant argues that his condition is severe and it directly and significantly affects his DLAs either continuously or periodically for extended periods of time. He maintains that he requires the assistance of both an assistive device as well as the assistance of another person. In his case he uses the assistance of family, his counsellor and his mental health workers.

It is the ministry's position that the appellant meets the age requirement of the legislation and that his condition is likely to last more than two years. However the ministry argues that his condition is not severe and does not meet the requirements set out in the legislation. The ministry maintains that he is able to perform his DLAs independently and without the assistance of others or the aid of an assistive device.

As the ministry is satisfied that the appellant meets two of the five requirements of the legislation the panel will address the three that the ministry found that the appellant did not meet.

With respect to the reasonableness of the ministry's decision that the appellant does not have a severe physical or mental impairment the panel finds the following. In the Physician's Report the physician writes that he suffers mood disorder, personality disorder, and substance related disorder which he considers to be chronic. The physician notes that the appellant has "difficulty coping & mood disorder." The physician indicates in the Assessor's Report that the appellant has moderate or major impacts in 9 out of 14 areas listed in the Report. The areas that are considered to have major impacts include Emotion, Impulse Control, Attention/Concentration, Motivation, and Other (noted as poor anger control). In his Self Report the appellant writes that he thinks of suicide daily, he suffers from severe constant depression and that he cries at anything. After considering the information noted above as well as the oral testimony of the appellant, the panel finds that there is sufficient evidence to find that the appellant does have a severe mental impairment.

With respect to the reasonableness of the ministry's decision that the appellant's condition does not directly and significantly restricts his ability to perform his DLAs, the panel finds the following. In the Physician's Report the physician writes that the appellant requires periodic assistance from another person with several activities including meal planning and preparation, cooking, banking, budgeting, paying bills, making appropriate choices, maintaining relationships, his ability to deal with unexpected demands, and making appropriate social decisions. The physician also writes that he has marginal functioning in his relationships with his immediate social network and his extended social network. The appellant stated that he has no friends and he does not like to talk to people or being around others. In the letter written to the physician by the appellant's advocate the physician indicates that the appellant requires constant support to perform several of his DLAs including meal planning and preparation, banking and budgeting, filling prescriptions/taking as directed, as well as several aspects of social functioning. It was noted in the Reconsideration Decision that the physician had not commented on the duration and regularity that the appellant is restricted by his illness in his DLAs, however, at the hearing the appellant clarified this issue by stating that these restrictions are regularly occurring and have not improved but some areas have been made worse by his reaction to the medication he is taking which make him soporific and unmotivated. He stated at the hearing that his personal care has been affected as he often sleeps in his clothes and does not always care for himself. Upon consideration of the documents and the testimony of the appellant and his advocate, the panel finds that there is sufficient evidence to find that the appellant's condition directly and significantly restricts his ability to perform his daily activities continuously or for extended periods.

With respect to the reasonableness of the ministry's decision that the appellant does not require the use of an assistive device or the significant help of another person to perform his DLAs the panel finds the following. In the Assessor's Report the physician indicates that the appellant receives assistance with his DLAs from family, friends, Health Authority Professionals, and Community Service Agencies. At the hearing the appellant told the panel that his sisters provide him with assistance around his home and bring him supplies that he needs as well as helping him when he moved. His mother regularly brings him food to consume fresh as well as premade meals that he can heat and serve. His counsellor stated that the appellant visits her four to five days per week to plan his day and make arrangements for all the things that he needs to accomplish (appointments, getting medication, etc). When they meet they also discuss his feelings and his self-esteem. He also is regularly meeting with a worker at the Mental Health office to work on ways of coping with his illness. In the self assessment letter the appellant writes that his roommate does his shopping for him. In the letter written to the physician by the appellant's advocate the physician indicates that the appellant requires constant support to perform several of his DLAs including meal planning and preparation, banking and budgeting, filling prescriptions/taking as directed, as well as several aspects of social functioning. The panel finds that there is sufficient evidence that the appellant requires assistance with these activities to an extent that can be considered significant.

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