

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

In a reconsideration decision dated September 9, 2010, the Ministry denied the Appellant a person with disabilities designation because they concluded he did not meet 2 of the 5 statutory requirements for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement, he met the requirement that his mental impairment is likely to continue for at least 2 years and he met the requirement that he had a severe mental impairment. The Ministry found the Appellant did not meet the requirement that the impairment directly and significantly restricts his ability to perform daily living activities and that he requires significant help or supervision of another person to perform daily living 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 included a letter from the Appellant describing his medical, personal and employment history, a letter from the Appellant's psychiatrist to Revenue Canada, a letter of support from a mental health worker, a letter from a coordinator of supported housing, letters of support from 2 friends, an additional letter from the Appellant describing his mental status as of November 2009, a letter from the Appellant to a second psychiatrist, and a letter from the Appellant to his medical practitioner.

Also before the Ministry was a completed Person with Disabilities (PWD) designation application which included a physician report completed by a medical practitioner (MP) and an assessor report completed by a psychiatrist (Psy). The Appellant submitted a letter as the applicant section to the application. In it he explained his difficulties coping with his medical and emotional issues through out his life.

The Appellant's letter with his request for the Reconsideration decision outlines his history and how he has looked for help to cope with his impairment. In it, he summarizes that he wants "to focus and manage my emotions, take my meds, meet better dietary needs and exercise". He also writes that he "needs to get back control of my life and have emotional independence".

In the physician report, the MP states the Appellant has an acquired brain injury, schizo typical personality disorder, brief reactive psychosis and periodic substance abuse as impairments. The MP reports there is no cure for the brain injury, only 'management'. The MP determines significant deficits in the Appellant's cognitive and emotional function and specifies 3 of the 11 deficits (executive, psychotic symptoms, and emotional disturbance). The MP states the impairment does restrict one of the Appellant's daily living activities (dla) and specifies the aspect of social functioning. The MP refers to the Appellant's letter for explanation of the periodic restriction in social functioning. In his additional comments, the MP states the Appellant will need very low stress and well directed work and even then might well degenerate.

In the assessor's report, the Psy reports the Appellant has a schizo typical personality disorder with poor concentration and focus. He notes the Appellant's brain injury combined with stress causes the Appellant to dysfunction and become vulnerable for psychosis.

Under the communication section the Psy reports poor speaking, reading and writing ability with the note: "loose association and poor frame". In the mobility and physical ability section the Psy notes climbing stairs, lifting, and carrying and holding take significantly longer due to the Appellant's knee injury.

Under cognitive and emotional functioning, the Psy reports major impact in 5 of the 14 functions, moderate impact in 3 functions, no impact in 4 functions, and no comment in the remaining 2 functions.

ATTACH EXTRA PAGES IF NECESSARY

Under d1a, the Psy specifies the Appellant as independent in all but one d1a, and that single aspect is dealing appropriately with unexpected demands, noting the Appellant can not handle stress. The Psy also notes the Appellant has "good functioning in immediate and extended social networks".

At the hearing, the Appellant read a letter as his submission and expanded orally on parts of the letter. In it he expresses his wish to manage his life. He states he uses mental health services like the vocational rehabilitation service. He finds these services give him a social network and a safe and structured environment. He states he is unable to organize his finances and requires help on a weekly basis to keep himself focused and organized. He also states that he would like to see a psychologist and get constructive counseling. He says he loves to cook and shares food with friends on the weekends.

At the hearing, a vocational rehabilitation counselor said she has known the Appellant since 2004. She stated the Appellant needs to connect with someone on a weekly basis for support. She said he has difficulty in organizational thinking and struggles with the "ability to manage himself".

At the hearing, the Ministry reviewed the legislative criteria for PWD status and stated the information provided in the PWD application was not sufficient to meet the criteria.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue in the case is the reasonableness of the Ministry's decision to deny the Appellant a Person with Disabilities designation based on the Appellant not meeting 2 of the 5 necessary statutory requirements for PWD designation. The Ministry found the information submitted by a prescribed professional did establish that the Appellant has a severe mental impairment but that impairment does not directly and significantly restrict his ability to perform daily living activities and that he does not requires significant help or supervision of another person to perform daily living activities.

The criteria for PWD designation is set out in EAPWDA, Section 2 as follows.

(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.

The definition of daily living activities is set out in EAPWDR, Section 2 as follows.

ATTACH EXTRA PAGES IF NECESSARY

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;*
- (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 Ministry argues that based on the information provided by the MP and the Psy, the Appellant's impairment does not directly and significantly restrict the Appellant's ability to perform dla nor does the Appellant require significant help or supervision from another person to perform his dla.

The Appellant argues he has a severe mental impairment that significantly restricts his dla and he requires continuous assistance to perform these activities.

The legislative criteria states in the opinion of a prescribed professional the daily activities must be directly and significantly restricted either continuously or periodically for extended periods.

The Panel finds the following facts. The MP states the Appellant's impairment does restrict his dla and specifies 1 of 10 dla, that is, social functioning. The Psy states the Appellant is independent in 33 of 34 and under immediate and external social networking specifies good functioning. The Appellant in his letter does not address his ability to perform his dla. The letter from the coordinator of supported housing gives a third opinion from a prescribed professional. The coordinator states the Appellant needs daily support in the management of stressors because when under stress the Appellant cannot carry out his responsibilities with respect to his dla. The Panel finds this opinion

does not specify how severely the dla are impacted or how long the dla may be restricted by stress..

The Panel finds it has not been established by the opinion of a prescribed professional that the Appellant's dla are directly and significantly restricted either continuously or periodically for extended periods because in the opinion of the MP 9 of 10 dla are unrestricted; in the opinion of the Psy the Appellant is independent in 33 of 34 aspects of dla; and the opinion of the coordinator does not establish the dla are significantly restricted either continuously or periodically for extended periods.

The final legislative criteria states the Appellant must require significant help or supervision to perform his daily living activities.

The Panel finds because it has not been established that the Appellant dla are restricted, it cannot be determined that significant help is required from another person.

The Panel finds the Appellant does not meet all the statutory requirements for designation as a PWD.

The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.