

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

Under appeal is the ministry's reconsideration decision of May 6, 2010 denying the appellant Persons with Disabilities (PWD) designation on the basis that he failed to meet all of the legislative criteria. The ministry found that the appellant met the age requirement and has an impairment that his doctor has confirmed is likely to continue for at least two years, but was not satisfied that:

- he 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
- a prescribed professional has confirmed that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities from an assistive device, an assistance animal or with significant help or assistance from another person,

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 appellant is diagnosed with and suffers from Asperger's Disease, hypertension, kidney disease, hyperlipidemia, depressive symptoms and attention deficit disorder.

The evidence at the time of the ministry's reconsideration decision was :

1. Original PWD application dated September 21, 2009 submitted by the applicant that includes a Physician Report and an Assessor report both dated September 25, 2010 and completed by the same physician.
2. The Physician's Report (PR) with respect to health history notes interstitial nephritis, hypertension and hyperlipidemia and comments "no impairment to function" with each. With respect to the appellant's attention deficit disorder the physician comments that it is "chronic-does use Dexedrine; however has very little job training and tends to be socially isolated." With respect to functional skills, no limitations are indicated. With cognitive and emotional function the physician indicates deficits with executive, memory, motivation and attention or sustained concentration with a written comment "attention deficit disorder" and adds further written comments "inability to follow instructions", "poor motivation, no initiative" and "minimal vocational skills."
3. In the Assessor Report (AR) with respect to the question what are the applicant's mental or physical impairments that impact his/her ability to manage Daily Living Activities (DLA) the physician comments "Attention Deficit Disorder". The appellant's ability to communicate is reported as good in all categories and that he is independent in all mobility and physical abilities. With regard to cognitive and emotional functioning major impacts are noted with insight and judgement; moderate impacts with emotion, attention/concentration, executive, memory and motivation; minimal impacts with impulse control and other emotional or mental problems (the physician with respect to this comments "occasional hostile behavior, immature, impulsive, does not think of consequences, poor motivation, no initiative") and no impact with bodily functions, consciousness, motor activity, language, psychotic symptoms and other neuropsychological problems. With respect to all DLA, the appellant is reportedly independent except for medications where the physician comments "very poor compliance-potentially dangerous in view of renal failure." The AR report that allows a DLA assessment for social functioning indicates the appellant requires periodic support/supervision in all the categories listed with comments "does not take medications, does not keep medical appointments", "poor social skills" and "easily frustrated". Marginal functioning is indicated with immediate and extended social networks. In regards to an applicant requiring help the physician describes the support/supervision required in his comments "Needs to be reminded to take medications". Also comments of "N/A" were made in the sections of the AR that allow for comments on details regarding assistance provided for the applicant by people, devices or animals.

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4. The appellant's Request for Reconsideration signed and dated March 24, 2010. Included with this request was :

-a letter dated March 22, 2010 and written by the appellant indicating his kidney problems and associated low and fluctuating energy levels and a depression that appears linked to this. The appellant indicates that his kidney disease is mostly manageable with medications. The appellant also reports his problems interacting in social situations and his difficulty maintaining his medications due to side effects that increase his irritability, anger and worsening of his mood and mental outlook.

-51 pages of what appear to be very specific and technical blood test results of the appellant from January 2005 to September 2009. No explanation of them is provided. The ministry indicates that they do not provide any specific details that establish a degree of physical or mental impairment of functioning of the appellant.

- a report dated March 21, 2010 from a people and business consultation company that provides an assessment of the appellant's physical and mental health, emotions management and general functioning. The report concludes that the appellant "manages to function at a level to which he can attend to his basic needs." It further reports the appellant's overall challenges in the categories noted above and that a disability designation would assist him to become more independent and provide him the resources to improve his future.

At the hearing, other documentation was admitted into evidence under Section 22(4) of the Employment and Assistance Act as follows:

- May 12, 2010 the appellant's Notice of Appeal in which he indicates he was not aware that the people and business consultation assessment of him would not be considered. The appellant states "I am going to get a formal assessment (sic) to correct my error to help with your assessment by a clinical psychologist."
- June 30, 2010 a detailed psycho-vocational assessment/ report completed by a prescribed professional that concludes that diagnostically the appellant demonstrates behaviors consistent with Asperger's Disorder. The assessment suggests a significant impairment in social interactions/functioning and occupational functioning with social skill deficits, alienation of others, narrow vocational interests', attentional disorders frequently present in those suffering from Asperger's Disorder. It further concludes a diagnosis of a Learning Disorder in Writing (basic and applied skills) notwithstanding a normally developed intellectual ability and deficits in reading and especially mathematics. A profile that provides strong evidence that the appellant will not be able to engage in competitive employment. It states "It is recommended that this report be made available to his physician for the purposes of gaining Social Assistance with the supplement provided for those unable to work due to disabilities." Also noted is the related possibility of the appellant working in a supported work environment where his lack of social skills would be accommodated. It further observes a medical approach to assist his attention deficits and depressive symptoms and cognitive/behavioral therapy and education/training accommodated by specialized software to help with difficulties in written language, quiet environments for exams, 100% extra time to complete tests and examinations

due to his fluency deficits and slower Processing Speed as well as the use of tape recorders in class or from a copy of lecturer notes or a note taker.

- July 7, 2010 an updated letter from the appellant's physician supporting his application and noting the up to date and complete psychometric and psychological evaluation by a registered psychologist. It notes the findings of this evaluation regarding significant cognitive deficits involving attention and information processing and other findings noted above. The physician comments that the appellant "demonstrates elements of Attention Deficit Disorder and Depression"....that the appellant has "severe chronic kidney disease" and has difficulty managing this "because of his learning disorder and his consequent inability to follow instructions regarding the medical management of his kidney disease." The physician summarizes the clinical problems of the appellant as: Asperger's Syndrome, Learning Disorder, Attention Deficit Disorder, Depression and Chronic Kidney Disease and notes in his clinical opinion based on interviews with the appellant and the latest psycho-vocational report that the appellant is a person with significant disabilities.
- July 14, 2010 a letter and attached health narrative of the appellant by his father and advocate, who is also a prescribed professional. The letter outlines the latest documentation obtained regarding the appellant that are summarized above and below. It includes a health narrative that notes that the appellant's renal disease has no cure requiring immunosuppressant therapy and corticosteroid medication and that it has worsened. It reports the appellant has high blood pressure and very high cholesterol and that his renal function has deteriorated resulting in gout that has not responded to medication. The narrative points out the appellant's compliance problems with medications and missed doctor appointments and inability to discuss his mental-social situation, his self isolation and lack of motivation. That with respect to transportation he refuses to take public transport or to ride a bike, but does borrow the parent's vehicle. With regard to mental health it describes the appellant's difficulty with learning and schooling since Grade 2 and that various medications have not had a positive effect with his concentration. The appellant's father notes that the appellant and he bought a house together and that the appellant acted as landlord at some point, duties now his mother performs and that he continues to obsess about any breaches on rules relating to noise, parking, parties , etc. Further that with respect to work and maintenance of his home his inability to self direct and lack of confidence and with respect to social functioning his general social withdrawal from a range of activities and his episodic bouts of anger. The appellant's father summarizes the overall diagnoses of the appellant that include Asperger's Disease , associated inattention and dysthymia, learning disorder, renal problems and related health issues.
- July 15, 2010 a letter from a family friend and a prescribed professional noting the appellant's severe kidney disease and the medications for this that has had a markedly detrimental effect on his energy and cognitive ability. It also observes his severe learning disability, physical limitations regarding coordination and motor skills and his problems with empathetic interactions regarding other people, inability to maintain work. The reports that the appellant spends most of his life in his apartment alone and in view of his problems will not be employable in the future.

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 because he failed to meet the following legislative criteria:

- he 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
- a prescribed professional has confirmed that as a result of direct and significant restrictions, the appellant requires help to perform daily living activities from an assistive device, an assistance animal or with significant help or assistance from another person,

Under the EAPWDA, Section 2 states that:

(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;

"**health professional**" repealed

"**prescribed professional**" 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

(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.

(3) For the purposes of subsection (2),

(a) a person who has a severe mental impairment includes a person with a mental disorder, and

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(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).

Under the EAPWDR, Section 2, states that:

Daily living activities

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.

(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 ministry's position is that the appellant is not eligible for designation as a Person with Disabilities first because the evidence does not establish the existence of a severe mental or physical impairment. The ministry notes that his physician reports that with the appellant's interstitial nephritis, hypertension and hyperlipidemia there is "no impairment to function". It further notes that no limitations with physical functioning are indicated and the appellant is independent in all activities requiring mobility and physical ability. As a result, it cannot establish the appellant has a severe physical impairment.

The ministry also argues that the physician indicates the appellant has significant deficits in cognitive and emotional functioning in the areas of executive, memory, motivation and attention or sustained concentration and writes "attention deficit disorder". However, it points out that the majority cognitive and emotional functioning in the AR (13 of 14) indicate that the appellant's mental impairment has a range of moderate to minimal to no impact and the physician indicates the appellant has a good ability to communicate and that all DLA are unrestricted by mental impairments. The ministry as result argues that based on the degree of impairment and independence of the appellant a severe mental impairment cannot be found. It also found that the documentation submitted with the appellant's request for reconsideration indicates the appellant cannot keep a job and tends to be socially isolated, but does not establish a severe physical or mental impairment.

The ministry is also not satisfied that a prescribed professional has confirmed that the appellant's impairments directly and significantly restrict his ability to perform daily living activities either continuously or periodically for extended periods. The ministry argues that the appellant while requiring periodic assistance with filling/refilling prescriptions, taking medications and with all activities of social functioning, he is independent in the majority of DLA (26 of 33). Further, it contends the AR does not provide details to describe the type, frequency and duration of the periodic support/supervision needed. It also points out that the assessment from a people and business consultation that accompanied his request for reconsideration did not establish that a prescribed professional has provided evidence to satisfy that he has direct and significant restrictions in his ability to perform DLA either continuously or periodically for extended periods. Finally, the ministry argues that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required. The ministry also concludes that the information provided does not conclude that the appellant requires significant assistance from another person with DLA and does not routinely use an assistive device to help compensate for his impairments.

The appellant's argues that he has severe mental and physical impairments which a prescribed professional has confirmed directly and significantly restricts his ability to perform DLA and confirm that he requires assistance to perform them.

The panel, at the outset, points out that a certain emphasis is present in the evidence put forward and is related to employability which is not a determining criterion of the legislation for a Person With Disability Designation (PWD), unlike a Person With Persistent Multiple Barriers (PPMB) designation. For example, in the PR it is indicated the appellant due to his medical conditions and related deficits in cognitive and emotional function that he is "unable to keep a job" and has "minimal vocational skills". In the more updated report of June 30, 2010 titled Psycho-Vocational Assessment it is noted

that the appellant's profile "provides strong evidence that the appellant will not be able to engage in competitive employment", that the appellant has "narrow vocational interests", "demonstrates significant impairment in social and occupational functioning" and states "It is recommended that this report be made available to his physician for the purposes of gaining Social Assistance with the supplement provided for those unable to work due to disabilities." The assessment further notes the related possibility of the appellant working in a supported work environment where his lack of social skills would be accommodated. Finally, the support letter of July 15, 2010 indicates the appellant's inability to work and speculates that because of his problems will not be employable in the future.

With respect to the existence of a severe mental impairment, the evidence of the appellant's physician in the PR and in particular his written comments is that the appellant's attention deficit disorder is chronic. The more up-dated evidence in a Psych-Vocational Assessment of June 30, 2010 indicates significant impairments in social interactions/functioning and occupational functioning with social skill deficits, alienation of others, attentional disorders and diagnosed the appellant as suffering from Asperger's Disorder and also provides a diagnosis of a Learning Disorder. The PR also indicates 4 significant deficits concerning cognitive and emotional functions and the AR indicates the appellant's impairment restricts or impacts 8 of the 14 cognitive and emotional functions with the majority of these of a moderate or major degree and that all DLA regarding social functioning require periodic support/supervision. This information and the new evidence that is consistent with the above reports including the updated letter from the appellant's physician that the appellant has and suffers collectively from Asperger's Syndrome, Attention Deficit Disorder, Depression and comments that the appellant is "a person with significant disabilities" establish for the panel that the appellant has significant mental challenges. With respect to social functioning the panel found the physician's comments particularly informative. With regard to appropriate social decisions the physician comments "does not take medications appropriately ;does not keep medical appointments" ; "poor social skills" and "easily frustrated" consistent with the appellant's father/advocate , a prescribed professional, who also indicates the appellant's compliance problems with medications and missed doctor's appointments , including his lack of motivation to maintain his home and continue landlord duties, and his characteristics of a general anxiety disorder. The panel also notes the appellant is also mentally competent to have a drivers licence and to drive an automobile. The panel finds also that despite the appellant's mental condition, he is independent in the performance of most DLA with the exception of those dealing with the filling/refilling of prescriptions and taking medications as directed and social functioning needing periodic assistance or periodic support/supervision. The panel, therefore, finds that the ministry was reasonable in its determination that the appellant does not suffer from a severe mental impairment required by the legislation.

With respect to the existence of a severe physical impairment, the evidence provided by the PR indicates no limitations with regard to functional skills. In the AR the appellant's ability to communicate is indicated to be good and the appellant is independent in all aspects of mobility and physical ability. In the AR also completed by the same prescribed professional (excluding DLA respecting social functioning and discussed above), the appellant is independent in all the remaining DLA except two; the filling/refilling of prescriptions and taking medications as directed where periodic assistance is required from another person) and do not sufficiently indicate overall any restrictions of a physical nature. Also while the appellant suffers from a chronic renal disease which requires medical support and is managed to a degree with medication and has some limitations with coordination and motor skills, there are no physical impairments that directly and significantly restrict

his ability with DLA and that he performs most aspects of these independently. Overall, the panel finds no convincing evidence that the appellant suffers from a severe physical impairment. The panel, therefore, finds that the ministry reasonably determined that a severe physical limitation has not been established as required by the legislation.

Regarding the degree to which the appellant's DLA are restricted, the evidence indicates that the appellant needs periodic assistance to fill/refill prescriptions and take medications as directed and requires periodic support/supervision with four aspects of social functioning, chooses not to use public transportation or to ride a bike, but does borrow the parent's vehicle. In the most recent letter from the appellant's physician the focus is on the finding of the appellant's psycho-vocational assessment and the appellant's overall diagnoses, with nothing further noted other than the appellant's failed job attempts and the appellant's overall clinical problems and debilitations which make him not employable. Finally, the appellant's father and advocate, a prescribed professional indicates in a health narrative that the appellant is sedentary and socially isolated, eats poorly and does little cooking, "does little unless pushed", does not do garden maintenance independently and whose apartment is disorganized. The panel finds there is insufficient evidence and is not persuaded that the appellant, in the opinion of a prescribed professional is directly and significantly restricted in his ability to perform his DLA or that a significant level of help or supervision of another person is required to perform DLA as required by the legislation. The panel finds the ministry's determination, therefore, that the appellant did not meet either of these legislative criteria, was reasonable.

The panel finds that although the appellant qualifies for the age requirement and that his impairment will continue for at least 2 years, he does not suffer from a severe mental impairment and the evidence overall does not confirm the requisite level of restriction regarding the appellant's ability to perform DLA. Also without this and the evidence that he requires significant help to perform DLA, the legislative criteria have not been met. The panel did not consider the inability to work as this is not a relevant criterion under section 2 of the EAPWDA.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.



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