

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the ministry's reconsideration decision dated 22 August 2011, which held that the appellant was not eligible for the Persons with Disabilities (PWD) designation. The ministry determined that the appellant met two of the legislated criteria in that the appellant has reached 18 years of age and has an impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry determined, however, that the appellant did not meet the remaining three criteria for the PWD designation: a severe mental or physical impairment, a significant restriction in ability to perform daily living activities, and a requirement for significant help or supervision of another person, an assistive device or an assistance animal in order 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 (EAAPWDR) 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 reconsideration consisted of:

- The appellant's 01 April 2011 application for a Persons with Disabilities designation
- Additional application information, Section 2 Physician's Report made by the appellant
- A copy of a disability benefits statement for the appellant received from the Ministry of Community and Social Services in Ontario for 10 December 2010
- Copies of medical documentation concerning the appellant from Dr. Trudy Linn Mahood (Ontario) from 2003 to 2010
- Copies of documents concerning the appellant from Lakehead Psychiatric Hospital – a 2006 report, and Thunder Bay Regional Health Science Centre, Mental Health Services from 2004 to 2009
- Copies of the appellant's medical reports from the Nanaimo Caledonia-Surgical Clinic dated 25 January 1996, Dr. D.M. Petrunia Internal Medicine report dated 19 February 1998, and Dr. K. R. Waterman, Neurology dated 28 June 2000

In the Physician's Report (PR) dated 27 March 2011 the physician diagnoses the appellant with Dysthymia, Obsessive Compulsive Disorder, Social Anxiety, and Diabetes Type 2. The physician reports the appellant has several anxiety disorders which affect the appellant's daily interactions outside her home in public and when she is not accompanied by her disabled daughter for whom she provides care. The appellant has been prescribed Effexor and the physician has indicated that this will interfere with her ability to perform daily living activities (DLA).

The PR states the appellant's impairment is likely to continue for two or more years.

With respect to Functional Skills the PR indicates it is not known how the appellant's impairment affects her ability to walk unaided on a flat surface or how many steps she can climb unaided. No limitation is noted for the appellant's ability to lift or how long she can remain seated. No communication difficulties are noted. In the areas of cognitive and emotional function the PR notes the appellant has significant deficits with respect to executive functions, memory, psychotic symptoms, emotional disturbance, motivation and motor activity.

In the Daily Living Activities portion of the PR the physician does not indicate that the appellant's impairment does directly restrict her ability to perform DLA and that this is continuous. None of the DLA categories were checked by the physician.

The Assessor Report (AR) dated 26 April 2011 was also completed by the physician. The AR states the appellant suffers from severe anxiety disorder and social anxiety and this disorder impacts her ability to manage DLA. The assessor found the appellant's ability in all aspects of communication to be good and she is able to be independent with respect in all aspects of her mobility and physical ability.

The Cognitive and Emotional Functioning portion of the AR describes the appellant as having no

impact from her impairment in the aspects of bodily functions, consciousness, impulse control, insight and judgment, motor activity, language, other neurological problems or other emotional or mental problems. In the areas of attention/concentration, executive functions, memory, motivation, and psychotic symptoms her impairment is described as having a minimal impact. The assessor found the appellant's mental impairment did have a major impact in the aspect of emotion.

Under DLA the AR found the appellant able to function independently with respect to all elements of personal care and basic housekeeping. Under "Shopping" the AR notes the appellant takes significantly longer going to and from stores due to anxiety. With respect to all aspects of meals, pay rent and bills, medications and transportation the AR indicates the appellant is independent and requires no assistance.

In the area of Social Function DLA the AR reports the appellant is independent in the aspects of appropriate social decisions, ability to deal appropriately with unexpected demands, and ability to secure assistance from others. The appellant is seen as requiring continuous support/supervision in the aspects of her ability to develop and maintain relationships and interacting with others. This is attributed to her general Anxiety Disorder and Social Anxiety. The impact of the appellant's mental impairments on her relationship with her immediate social network is described as marginal functioning and with regard to her extended social networks it is described as being very disruptive functioning. Help for the appellant with her DLA is noted as being provided by her family.

Documents on from the Province of Ontario confirm the appellant was in the Ontario Disability Support Program prior to moving to British Columbia. Documents from Dr. T. L. Mahood, the appellant's family physician in Thunder Bay, Ontario confirms the appellant has a problem with her left shoulder rotator cuff which will require surgery. It is also reported in May 2006, by Dr. Paul Mulzer at the St. Joseph's Care Group at the Lakehead Psychiatric Hospital in Thunder Bay, that the appellant has been diagnosed with depression, Dysthymia, Obsessive Compulsive Disorder, Panic Disorder, and Schizoaffective Disorder.

At the hearing the appellant introduced further information from her psychiatrist written on a PWD form and further information from her using the same form. The parties agreed the use of the PWD Application form was not in fact a new application but rather a convenient way for the appellant to present this information which was in support of her original application. The ministry was asked if they objected to the introduction of this information and indicated they did not. The panel accepted the information as oral or written testimony in support of the information and records before the minister when the decision was being appealed consistent with the EAA s.22 (4) (b).

In the new document from the psychiatrist the appellant was diagnosed as having complex personality disorders due to childhood trauma, mixed anxiety disorders including Obsessive Compulsive Disorder (OCD), General Anxiety Disorder (GAD), social phobia, and panic. Further, she was diagnosed with Dysthymia Disorder- early onset with atypical features; dissociative condition may overlap with a Borderline Personality Disorder with aspect of trauma, and complicated Post Traumatic Stress Disorder. The physician describes the appellant's Medical History:

- Lifelong sadness and anxiety from trauma as a child
- Associated inherited OCD with obsessive anxiety related to her compulsions
- Life-long visions, voices, psychic beliefs and magical rituals

- Sleep disorder and trauma related nightmares
- Early childhood sense of profound sadness and suicidal ideation; life-long personality traits of mood swings, instability and amnesia
- Life-long anxiety with periods of panic disorder and associated general anxiety and social phobia
- Variable diagnosis of Schizoaffective Disorder and in the past, on several occasions, hearing voices – and could be transitional micro-psychotic episodes characteristic of severe personality disorder
- Atypical psychosis

The psychiatrist reports the appellant has been prescribed the medication Olanzapine that interferes with her ability to perform DLA. The life-long nature of the appellant's impairments is affirmed.

With respect to the appellant's Functional Skills the psychiatrist reports she can walk 4+ blocks on a flat surface unaided, has no limitations for lifting or sitting, and has no difficulties with communication. No comment is made respecting the appellant's ability to climb stairs.

Regarding the appellant's cognitive and emotional function the psychiatrist indicates there are significant deficits in the areas of executive function, memory, psychotic symptoms, emotional disturbance and motor activity. No deficits are noted for language, impulse control, or attention or sustained concentration. The physician comments that these difficulties are primarily due to anxiety, bouts of depression, and interpersonal distress.

In the area of DLA the physician reports the appellant's impairment directly restricts her ability to perform DLA. No restriction is reported for the DLA of personal self-care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, mobility outside the home, use of transportation or management of finances.

The area of social functioning DLA is noted as being restricted and on a continuous basis. This is attributed to severe social anxiety, poor interpersonal coping skills, transient psychotic/dissociative experiences and impaired reality testing. The psychiatrist comments that the degree of restriction for the appellant is that she is unable to tolerate the competitive workforce due to severe anxiety, social phobia, panic attacks, and unstable social skills. The physician notes that to address her assistance needs with DLA the appellant had to move back with her family in 2011 to get help caring for her disabled child and managing home self-care.

In the appellant's information presented in writing at the hearing she indicates she believes her mental and physical problems are getting worse. Of the greatest concern to her are the panic attacks she suffers when out in public and the toll it takes on her in preparation and getting the necessary tasks done. She states she is dependent on her daughter to function when making public outings. She clearly states she returned to British Columbia to gain the assistance of her family in managing her disabled daughter. On the days when the appellant can't function because of her rotator cuff her family helps her with everything including dressing, cooking, and shopping. In her oral testimony the appellant indicated she had been on a wait list in Ontario for her surgery on her rotator cuff but has not yet pursued doing that in British Columbia.

APPEAL #

The ministry stood by the record.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue is whether the ministry's reconsideration decision dated 22 August 2011, which held that the appellant was not eligible for the Persons with Disabilities (PWD) designation, was a reasonable application of the legislation. The ministry determined that the appellant met two of the legislated criteria in that the appellant has reached 18 years of age and has an impairment that, in the opinion of a medical practitioner, is likely to continue for at least 2 years. The ministry determined, however, that the appellant did not meet the remaining three criteria for the PWD designation: a severe mental or physical impairment, a significant restriction in ability to perform daily living activities, and a requirement for significant help or supervision of another person, an assistive device or an assistance animal in order 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.
- (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.

ATTACH EXTRA PAGES IF NECESSARY

Section 2 of the EAPWDR defines 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.

The ministry's position is that the appellant is not eligible for designation as a Person with Disabilities because the evidence does not establish the existence of a severe mental or physical impairment. The ministry notes that having reviewed the PR and AR and the appellant's self-report (available at reconsideration) the appellant has been diagnosed with dysthymia, obsessive compulsive disorder, general anxiety disorder, social anxiety and diabetes II. Also, that in the appellant's application submission she indicates diagnoses of OCD, post-traumatic stress disorder, schizophrenia and major panic attacks. The appellant's physician, however, has not confirmed all of these diagnoses in the application. Further, the ministry states the physician has not indicated the appellant suffers significant restrictions to her physical functioning or mobility in that she can walk indoors and outdoors, climb stairs, stand, lift/carry/hold independently, and no assistive devices are required. As such the information does not establish evidence of a severe physical impairment.

Acknowledging the appellant's information that she needs help with dressing, housework, and cooking due to pain from a rotator cuff injury, the ministry found the assessment does not demonstrate that this injury severally impairs her walking, stair climbing, sitting, lifting, carrying, and

holding skills. As such the ministry is not satisfied the appellant's condition constitutes a severe physical Impairment.

The ministry notes the physician indicates the appellant has significant deficits with cognitive and emotional function – including executive, memory, psychotic symptoms, emotional disturbances, motivation and motor activity- however he does not provide information to establish how severe and how often these deficits restrict the appellant's DLA. Further, the impacts on daily functioning are reported by the physician as mostly minimal to no impact with the exception of emotion which is noted as being major. The ministry notes the appellant is receiving medical treatment with medication and that the appellant appears to function well on her regime. Therefore the ministry is not satisfied that the appellant's condition constitutes a severe mental impairment that significantly restricts her ability to perform DLA.

The ministry notes the appellant, in her original application, indicated her diagnosis does affect her daily interaction outside the home in public when she is not accompanied by her disabled daughter. Also that the appellant reports suffering from panic attacks, has difficulty with social interaction, and can't take public transportation. As this information has not been confirmed by a physician the ministry is not satisfied that the appellant's condition constitutes a severe mental condition.

The ministry notes the appellant has received assistance from the Ontario Ministry of Community and Social Services and that the ministry has reviewed the information provided about medical findings from physicians in Ontario from 1998 to 2010. Referencing the diagnosis of the appellant's family physician, the ministry noted the appellant had diagnoses including depression, OCD, agoraphobia, schizophrenic disorder and diabetes mellitus but the physician indicated there were no or minimal symptoms. And, medium or moderate limitation to orientation to time, person, and place were indicated. The ministry found the remaining five issues were within normal limits with slight or minimal limitations. Based on this assessment the ministry was not satisfied that the appellant's condition constitutes a severe mental impairment.

The ministry also noted the medical reports from Ontario do not address the appellant's current functionality.

With respect to DLA the ministry found the appellant, as reported by her physician, functions independently with all 28 DLA acknowledging going to stores takes longer due to anxiety. Also, social functioning is independent with 3 of 5 aspects while continuous support/supervision is reported to develop/maintain relationships and to interact appropriately with others. The ministry found the appellant is able to perform the vast majority of DLA and the information does not support that the appellant's impairment significantly restricts her ability to do DLA.

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 from other persons.

The appellant's position is that she needs help and is seeking PWD status because of the physical and mental impairments she suffers. She saw a psychiatrist prior to the Tribunal hearing and submitted the psychiatrist's report which provided a further diagnosis and elaborated on the initial PR and AR. The psychiatrist found the appellant's impairment directly restricts her ability to perform

DLA. The restriction, however, is only in the aspect of social functioning and no reference is made in his report or the PR to any severe physical impairment which restricts the appellants DLA either continuously or periodically for extended periods. The appellant says when her rotator cuff is causing pain she requires assistance doing some DLA such as dressing, cooking and cleaning. She does not, however, indicate how often this is necessary or for how long when it does occur or how significant the help is required to accomplish her DLA. She does not use any assistive devices.

The appellant's position is also that her anxiety attacks are quite debilitating and when they occur she takes much longer than is normal to prepare to go out in public and carry out such DLA as shopping. She indicates she is best able to cope when out in public is her daughter is with her and she can focus on her daughter's needs. If her daughter is difficult to manage when on an outing the appellant says once home again she has to take medication which assists with her anxiety but causes her to need to rest for a period of time.

The panel finds that the ministry reasonably determined the assessments from the appellant's physician and psychiatrist and the submission of the appellant do not establish that the appellant suffers from a severe physical impairment that imposes a direct and significant restriction in her ability to perform daily living activities. The PR shows no limitations or unknown for the appellant's functional skills and indicates none of her DLA are restricted by her impairment. The AR indicates the appellant is independent for all aspects of mobility and physical ability and, with the exception of going to and from stores, she is independent in personal care, basic housekeeping, shopping, Meals, paying rent and bills, medications and transportation ADL. The psychiatrist's report indicates the appellant can walk 4+ blocks on a flat surface unaided, no limitations for lifting or length of time she can remain seated, and no indication with respect to stair climbing. Further, the psychiatrist indicates, with the exception of social functioning, the appellant's ADL are not restricted. The appellant notes the pain in her rotator cuff can cause some physical impairment and when it does she requires some assistance but there is no indication of the frequency of this occurring and for the duration when it does occur.

After considering the evidence and submissions the panel finds that the ministry reasonably determined assessments from the appellant's physician and psychiatrist do not establish that the appellant's mental impairment imposes a direct and significant restriction in her ability to perform daily living activities. The PR and the psychiatrist note there are significant deficits with cognitive and emotional function. They concur that these are evident in the areas of executive, memory, psychotic symptoms, emotional disturbance motivation and motor activity. The psychiatrist does comment that the reasons these difficulties arise are primarily due to anxiety, bouts of depression, and inter personal distress. He does not, however, address how this significantly impacts her DLA. As a result the panel finds the ministry decision that the appellant does not suffer from a severe mental impairment was not unreasonable.

The PR does not affirm the appellant's impairment directly restricts her ability to perform DLA and none of the DLA listed are checked as to whether or not the activity is restricted. Social functioning is marked as a continuous restriction and is not addressed in the physician's comments. The AR does indicate the appellant is assisted by her family but does not say if this assistance is required

continuously or periodically for extended periods or how significant the assistance may be. The appellant's psychiatrist has indicated yes to the appellant's impairment restricting her ability to perform DLA and has checked the social functioning DLA indicating it is continuous. He states the appellant is unable to tolerate the workforce due to severe anxiety, social phobia, panic attacks, and unstable interpersonal skills. The extent to which the appellant requires the significant help or supervision of another person to perform DLA is not addressed.

The panel finds that the ministry reasonably determined the assessments from the appellant's physician, psychiatrist and the submission of the appellant do not establish that the appellant requires the significant help or supervision of another person, an assistive device, or an assistance animal to perform her DLA. Therefore, the ministry reasonably determined that the appellant did not require help to perform DLA as set out in the EAAPWDA s.2 (3).

The panel finds the ministry decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.