

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated November 29, 2011 which held that the appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement and that his impairment is likely to continue for at least 2 years. The ministry is not satisfied that the appellant has a severe physical or mental impairment. The ministry is not satisfied that his daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry also found that as the appellant is not significantly restricted with DLA, it could not be determined that he requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

PART D – Relevant Legislation

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

The Advocate provided the panel with a 4 page summary of her submission, which included copies of the appellant's prescriptions.

The panel did not accepted these documents under section 22(4) of the Employment and Assistance Act as the prescription receipts do not pertain to the information and records before the ministry at the time of reconsideration.

The evidence before the ministry at the time of reconsideration was:

- The Persons with Disabilities Designation Application dated 2011/02/08 which was completed by the advocate and dictated by the appellant.
- A letter from the appellant's mother which describes her observations of her son's illness dated April 19, 2011.
- The Persons with Disabilities Designation Application Physician Report signed and dated 2011/05/31 by the appellant's family physician.
- The Persons with Disabilities Designation Application Assessor Report signed and dated 2011/07/20 by a prescribed professional.
- A Request for Reconsideration- reasons, prepared by an advocate on behalf of the appellant.

The appellant describes his disability as HIV, with chronic fatigue and depression, eye glasses for reading, a learning disability and a special needs class in school.

The appellant states that he is under the monthly supervision of a specialist for his HIV and that he takes HIV medication, cholesterol medication, and metabolism medication. He states that he has an outreach worker who provides transportation to appointments to hospital for blood work and to pick up prescriptions. The appellant states that he must be careful to avoid infection due to his compromised immune system. He feels he has chronic fatigue, can only walk 4 blocks maximum because of the fatigue. He feels socially isolated and does not leave the house 5 of 7 days because of his depression. The appellant says he feels people do not want to be around him because of his HIV and this leads to depression and low motivation which in turn leads to missed appointments. At the time the application was completed the appellant lived with his mother but now lives on his own as his mother is not allowed to have him in her place of residence.

The appellant's mother wrote that she sees her son often fatigued and napping frequently. While the appellant was living with his mother she would ensure that he got the proper nutrition. When he does not get the proper nutrition he doesn't manage because of low energy. She goes on to say that he is quite isolated and tends to stay in the clothes he slept in and stays in the house. He constantly requires reminding to take his medications.

The physician reports that the appellant suffers from HIV and obesity and that he has seen the appellant 11 or more times in the past 12 months. He states that the appellant has only subjective complaints related to weight and immune status.

He reports that the appellant is currently on retroviral therapy which will be permanent.

The physician states that the appellant can walk 2 to 4 blocks unaided however he states he doesn't know how many stairs the appellant can climb or how much he can lift or how long he can remain seated. With regard to cognitive and emotional function he reports that the appellant has a loss of initiative or interest.

When answering the question regarding whether the impairment directly restricts the persons ability

to perform Daily Living Activities the physician marks the unknown box but then goes on to report that the appellant is restricted with mobility outside the home, use of transportation and management of finances but does not comment on whether this is continuous or periodic. In regards to what assistance the appellant requires, the physician states medication management, transportation and appointments.

The Assessor has known the Appellant for 2 to 3 months and has seen him 2 to 10 times in that time period. The appellant has been a client of the Health Outreach Program since February 2010. The Assessor's report was completed by a Registered Nurse who describes the appellant's impairments as a lack of motivation in dealing with DLA's. Difficulty with basic problem solving re instrumental DLA's resulting in ineffective action that takes a much longer time than usual. The Assessor states that the appellant is able to communicate well, and that he is independent in walking indoors and outdoors, climbing stairs, standing, lifting, carrying and holding. In the Cognitive and Emotional functioning section of the assessment, the Assessor reports that the appellant's impairment has minimal impact on his ability to perform bodily functions, consciousness, impulse control, language, and other neurological problems such as visual/spatial, psychomotor problems or learning disabilities. There is no impact on motor activity or psychotic symptoms. The appellant's impairment has moderate impact on his emotions, insight and judgment, and executive planning. Major impact is seen in the areas of attention/ concentration, memory, and other emotional or mental problems. The Assessor explains by writing the appellant "tends to be very distractible. May begin a task and get side tracked several times. Sets out to do something and may forget what the task was before beginning. Requires support and direction to follow through with tasks. Lacks motivation and initiative in planning ADL's"

In the areas of DLA's the Assessor states that the appellant is independent with dressing, toileting, feeding himself, transfers in and out of bed and chairs and getting in and out of a vehicle. The appellant requires reminding in the areas of grooming, bathing, going to and from stores, reading prices and labels, paying for purchases, and carrying purchases home, safe storage of food, safe handling of medication, banking and using public transportation. Continuous assistance from another person is required to regulate diet, laundry, basic housekeeping, meal planning, food preparation cooking, budgeting, paying rent and bills, filling prescriptions, taking prescriptions as directed using transit schedules and arranging transportation and making appropriate choices.

In the areas of social functioning, the appellant requires periodic support from another person to make appropriate social decisions; he tends to isolate himself and is overwhelmed by meeting new people. The appellant is guarded about developing and maintaining relationships. The appellant does not interact appropriately with others and requires regular family support. The appellant requires periodic assistance from others in the area of securing assistance from others.

Continuous assistance is required in order to deal appropriately with unexpected demands.

The Assessor indicates that the appellant has marginal functioning in relationships he has with his immediate social network. With extended social networks the appellant has marginal functioning- little more than minimal acts to fulfill basic needs. The Assessor states that the appellant "tends to isolate in the home, needs to be accompanied by supports to attend doctor's appointments or accessing community services."

The Assessor states that the appellant has had a recent diagnosis of diabetes which is being managed by oral medication as well as elevated blood cholesterol, and hypertension which are being managed by medication. The panel finds that this diagnosis of diabetes was not before the ministry at the time of reconsideration as the diagnosis was not confirmed by the opinion of a medical practitioner, and so cannot be considered by the panel. The appellant has difficulty with

organizational skills so requires assistance in managing physical health care such as taking and reordering medication, and accompanying to appointments and lab work as well as picking up medications.

The ministry states that the appellant has met the age and duration requirements required under EAPWDA section 2 (2) and (3).

The ministry maintains that the requirements of a severe impairment, directly and significantly restricted daily activities, and assistance required with daily living activities as a result of significant restrictions have not been met. The information provided by the physician does not establish that the appellant's Daily Living Activities are significantly restricted. The physician indicates that the appellant encounters restriction to mobility outside the home, use of transportation and management of finances, he does not however describe whether these restrictions are continuous or periodic nor does he complete the question to describe the degree of restriction the appellant faces.

The ministry maintains that mental health difficulties have not been diagnosed by the physician and that without being diagnosed with a mental condition, it cannot consider direct and significant restrictions to the appellant's cognitive and emotional functioning. The physicians comment in the application regarding deficits with cognitive and emotional functioning, that the appellant has a significant deficit with motivation cannot be construed as a diagnosis.

The ministry provided information to the panel however, that the lack of complete medical information provided by physicians in the town the appellant lives in is an ongoing problem.

The Assessor report confirms the comment by the physician that the appellant has a lack of motivation in dealing with DLA's but this does not indicate that the appellant is unable to perform DLA's. The Assessor notes that the appellant is independent in mobility and physical ability and communication. The majority of the comments made by the Assessor are that the appellant requires reminding on a periodic or consistent level with his personal care, basic housekeeping, shopping, meal planning, paying bills, medication refills and administration.

The Assessor provided information in the area of social functioning which was considered by the ministry even though there was not a supporting diagnosis for the completion of this section of the application.

PART F – Reasons for Panel Decision

The issue is whether the evidence reasonably supports the ministry's Reconsideration Decision declining to designate the appellant as a person with disabilities ("PWD") under s. 2 of the Act, because the ministry is not satisfied that the information provided establishes that the appellant meets all five criteria.

Employment and Assistance for Persons with Disabilities Act

Under s. 2(2) of the Act, the minister may, for the purposes of the Act, designate as a person with disabilities a person who meets all of the following criteria.

1. The person has reached 18 years of age.
2. The minister is satisfied that the person has a severe mental or physical impairment.
3. In the opinion of a medical practitioner, the impairment is likely to continue for at least two years.
4. In the opinion of a prescribed professional, the impairment directly and significantly restricts the person's ability to perform daily living activities either continuously, or periodically for extended periods.
5. In the opinion of a prescribed professional, as a result of the restrictions created by the impairment, the person requires help to perform daily living 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.

An applicant must satisfy five criteria to obtain PWD designation. The ministry concluded on the evidence, that the appellant satisfies 2 of 5 criteria, both the age requirement and that he has a mental or physical impairment which is likely to continue for at least two years.

The panel finds that the physician provided limited information and did not include any information regarding the care provided to the appellant by the specialist who the appellant sees once a month. The appellant reported that the specialist did not complete the application for PWD status as he told the appellant he felt that this was the family physician's role and that he was providing the family physician with all of his reports and findings.

The family physician did not specifically diagnose a mental impairment but does indicate in section D (6) of the Persons with Disabilities Designation Application Physician Report, that there are significant deficits with cognitive and emotional function, specifically motivation (loss of initiative or interest). The appellant spoke clearly about the fact he is afraid to leave his place of residence due to his belief that

others do not want to be around him because of his HIV. He describes his fatigue, depression, self isolation and lack of motivation as being a direct result of his HIV diagnosis.

The physician appears to have chosen not to assess the appellant's functional skill by referring to the questions as "subjective", but then later assesses the appellant as unrestricted in the areas of personal care, meal preparation, medication management, basic housework, daily shopping and mobility inside the home. The areas of mobility outside the home are now described as restricted by the physician as are use of transportation and management of finances. In the question regarding what assistance the appellant requires with DLA's, the physician then says he requires the help of another person in the areas of medication management, transportation and appointments.

The panel looked at all the physician information, the Assessor information and the oral testimony of the appellant and concluded that the appellant's depression and lack of motivation and self isolation may be a result of his diagnosis of HIV and obesity. The appellant says he is unable to prepare meals for himself or to perform basic housekeeping. He frequently goes to his mother's residence for meals and she comes to his apartment to clean. He has difficulty remembering to take his medication or to keep appointments and he requires the continuous assistance of another person to assist him.

The Assessor spoke directly about the effect of depression or lack of motivation on the appellant. He requires continuous assistance from another person to regulate diet, do laundry, basic housekeeping, meal planning, food preparation cooking, budgeting, paying rent and bills, filling prescriptions, taking prescriptions as directed using transit schedules and arranging transportation and making appropriate choices and then comments in the explanation section that the appellant requires "reminders" or "relies on others to do".

The panel finds that the reference in the file, to a recent diagnosis of diabetes made by the Assessor was not addressed by the ministry. The appellant confirmed to the panel that the diagnosis and subsequent treatment with medication was made after the application was made.

The panel finds that the appellant has HIV, obesity and emotional issues which he says are related to his HIV. Considering the assessment for functional skills and mobility and physical ability made by the physician and the prescribed professional in the application, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment was reasonable. As the physician did not diagnose a mental disorder and his assessment of a significant deficit in cognitive and emotional functioning in the area of motivation cannot be considered a diagnosis of a condition likely to continue for 2 years or more, the panel finds that the ministry's conclusion that the evidence does not establish a severe mental impairment was reasonable.

The Assessor who is a prescribed professional under EAPWDA S 2 (2) has clearly determined that the appellant requires assistance of another person either continuously or periodically for extended periods. The panel finds that there are inconsistencies in the physician report and, without a specific diagnosis in the opinion of a medical practitioner to confirm the existence of a mental impairment, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction to the appellant's ability to perform DLA's either continuously or periodically for extended periods as required in EAPWDA S. 2, was reasonable.

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