

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated February 17, 2011 which held that the appellant did not meet all of the legislative criteria required for designation as a person with disabilities (PWD) under section 2 of the *Employment and Assistance for Persons with Disabilities Act*. The ministry concluded:

- that the information does not satisfy the minister that the appellant has a severe mental or physical impairment
- that the information from a prescribed professional does not confirm that the impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and
- that the information from a prescribed professional does not confirm that as a result of direct and significant restrictions, she requires assistance to perform daily living activities.

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 evidence before the Ministry at the time of reconsideration was comprised of:

- An application for PWD designation dated August 25, 2010 containing 12 pages of a self report, a Physician report dated August 19, 2010 and an assessor report dated August 19, 2010 completed by the same doctor.
- A letter from the same doctor (undated) and containing among other comments, updated information on medical records received from another province.
- A letter from a Community Services Society dated January 12, 2011

The appellant provided to the Panel 69 pages of copies of tests, medical progress notes and mental health services' notes from another province for appointments between January 2009 and January 2010 and a letter from a neighbour friend dated March 21, 2011. The ministry recorded no objection to admitting this information as evidence. The Panel admitted this information pursuant to section 22(4) of the EAA as evidence in support of the information before the Ministry when the decision was made.

In the Application for PWD designation, the doctor diagnoses the appellant with bipolar affective disorder, hypertension, type 2 diabetes mellitus and osteoporosis which are likely to continue for 2 years or more. The doctor notes she has difficulty in functioning with daily living activities (DLAs) and experiences social phobia but notes in the Physician and assessor reports that she has no limitations in her functioning skills with the exception of lifting as she can only lift under 5 lbs. In mental functioning, the doctor notes significant deficits with the cognitive/emotional functions of executive thinking, motivation and attention but no deficits in the other 9 areas listed. The doctor further states in the assessor report that the appellant's deficits in cognitive and emotional functioning has no major impact on her daily functioning, a moderate impact on the two areas of attention/concentration and motivation and minimal or no impact on the other 11 areas listed. The appellant's communication skills are assessed as good with the exception of poor writing due to tremors related to medication. The assessor report states the appellant is independent in all areas of personal care, shopping, meal planning and food preparation, paying her rent and bills and handling her medication. The doctor notes that she takes significantly longer to do basic housekeeping and, while she can get into and out of a vehicle independently, she cannot use public transportation as she has a social phobia. The doctor is unsure of her ability to develop and maintain relationships and states she has marginal functioning in both immediate and extended social networks. The doctor notes she needs psychiatric help, counselling and no help is currently provided to her by other people, devices or an assistance animal. In his undated letter, the doctor confirms his diagnosis, notes he received medical information from the other province from her doctor and a psychologist but no notes since 2008 from her psychiatrist. He states the psychologist notes she has a history of bipolar disorder since 1991 but he reports only symptoms of worsening depression on her last two visits. The doctor states that after reviewing the appellant in conjunction with the medical information from the other province, he finds evidence of significant depression, with reported past history of abuse. He notes she has significant difficulties with concentration, sleep, motivation, socialization, shopping, fatigue and personal care. He notes she needs support beyond what she is receiving and states she has been referred to a psychiatrist.

In her 12 pages of self report which she states she completed on September 14, 2010, the appellant talks of childhood trauma when she was separated from a beloved grandmother, became the scapegoat of the family, was abused by an older brother and as a result, became fearful and has never been able to love another or have a close friend even in school. Her father blamed her for the abuse, he whipped her, her mother was afraid of him so did nothing, she feared all men, was sent to an all girls' school where she was lonely, developed social phobia and lost her voice. She married a 20 year old boy who reminded her of her sister and they went to university together. She received a nursing degree and she worked until 1993 because she had no choice. She says she lives with physical challenges as during the low cycle of her bipolar disorder, she is extremely tired, sleeps a lot, can't cook so eats the same easy items for breakfast, lunch and dinner. However during the hypomanic phase, she is able to do everything at home but walks too fast, had a bad fall in July 2010 and her stability has changed so she loses her balance if she closes her eyes in the shower, and has to hang on to the towel rack. The medication gives her tremors and she has difficulty tolerating other medications she has been prescribed. She believes she has effects from the medication as her short term memory is bad now, she was unable to breathe one night, had low grade fever, chills, she felt like she was dying and has had excruciating pain in her back, shoulders and cannot lift anything heavy or walk far.

The 69 pages of copies of tests, medical progress notes and mental health services' notes from another province for appointments between January 2009 and January 2010 outline and confirm the diagnosis of the doctor who completed the Physician Report and the difficulties the appellant has in tolerating the medication. The summary of the psychological counselling letter is dated February 19, 2010, and states she has addressed the issues of severe childhood trauma,

current marital difficulties and notes she has stabilized and will continue to see her psychiatrist. It notes she was referred to mental health in 2008 when she was admitted to emergency in a hypomanic phase after stopping her medications. The notes state she worked as a nurse from 1979 to 1993 and has little or no support from her husband or adult sons. The letter from her physician in the other province dated July 13, 2010 stated she has significant and severe bipolar affective disease, she is incapable of work and would need assistance. A letter from a neighbour friend dated March 21, 2011 states she has known the appellant since 2001, she finds her to be trustworthy, likes to have her to dinner or lunch and they take her with them to grocery shop and carry the heavy groceries for her. A letter from a Community Services Society details the appellant's social phobia, difficulty with shopping, falling frequently, difficulty with DLAs and assistance needed.

The ministry relies on the medical information and the information in the reconsideration decision and summary.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably concluded that the appellant is not eligible for PWD designation as she did not meet all of the legislative criteria required for the designation, namely that she did not meet the following three legislative criteria:

- that the information does not satisfy the minister that the appellant has a severe physical or mental impairment
- the information from a prescribed professional does not confirm that her impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods and
- her prescribed professional does not confirm that as a result of direct and significant restrictions, she requires help to perform daily living activities.

Section 2 of the EAPWDA sets out the requirements to qualify for PWD designation.

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

(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.

Section 2 of the EAPWDR defines DLA in relation to persons who have a severe physical or mental impairment.

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 acknowledges that the appellant is over 18 years of age, that the doctor confirms that her conditions are likely to continue for at least two years. However, the ministry found in the reconsideration decision that the information does not satisfy the minister that the appellant has a severe mental or physical impairment and the information from the prescribed professional does not confirm that the appellant's mental or physical impairment directly and significantly restricts her ability to perform her DLAs and that she needs significant help to perform her DLAs.

The appellant and her advocate contend that she meets the criteria for PWD designation because the medical information establishes that she has a severe mental or physical impairment which directly and significantly restricts her ability to perform DLAs and that she requires significant assistance from other persons to perform her DLAs. In her appeal to the Tribunal, the appellant states the ministry's decision is wrong due to unreasonable interpretation of the legislation. Her advocate submits that her doctor identifies a restriction with lifting, significant deficits with cognitive and emotional function and that she needs support and supervision in social interaction due to her mental health issue. The advocate submits the doctor notes she is restricted in personal self care, shopping, going outside the home and use of transportation and asks the Panel to consider that the doctor in completing the original application did not have all the information but after receiving medical records, the doctor notes her restrictions and need of help in his letter dated January 18, 2011.

The Panel finds the appellant's doctor had only known her for two weeks at the time of the application for PWD. While the ministry's decision that the information provided at reconsideration did not establish that the appellant has a severe physical or mental impairment may have been reasonable at the time of reconsideration, the Panel finds that the further information from the physician in the other province dated July 13, 2010 states that the appellant has severe bipolar affective disorder and is on multiple medications. The Panel notes that the EAPWDA states that "*For the purposes of subsection (2), (a) a person who has a severe mental impairment includes a person with a mental disorder*". On March 18, 2009, the medical records show the appellant was admitted to hospital for 7 to 10 days with major affective disorder depression. The latest letter from her doctor notes that due to her disorder, she has difficulties with concentration, sleep, motivation, socializing, shopping, fatigue and personal care. Based on this further information which the appellant provided in support of her application for PWD, the Panel finds the ministry's decision that the information does not establish that the appellant has a severe physical or mental impairment is not reasonably supported by the evidence.

However, the Panel finds that the ministry's decision that the information from the prescribed professional does not confirm that the appellant's mental or physical impairment directly and significantly restricts her ability to perform her

DLAs and that she does not need significant help to perform her DLAs is reasonable based on the medical information. The doctor who completed the application and assessment indicates she is independent in 24 out of 28 listed DLAs, is independent in social functioning and has marginal functioning with both immediate and extended social networks. After reviewing the information from the other province, the updated letter from the same doctor notes she has significant difficulties with concentration, sleep, motivation, socializing, shopping, fatigue and personal care and she needs help beyond what she receives from social services. However, the Panel finds the doctor provides no details of how her difficulties restrict her in her DLAs or what kind of assistance is required; he refers only to mental health programs. Furthermore, in the assessment, the doctor noted that while her mental impairment had some moderate or minimal impact, it had no major impact on her DLAs and the Panel finds the updated medical information is not inconsistent with this assessment. Although the doctor noted in the assessment that the appellant takes significantly longer to do laundry and basic housekeeping, the doctor provides no details to establish how much longer she takes or how she is restricted in these activities. While the appellant's letter and the letter from Community Services states difficulties with walking, cooking, laundry, housework and bathing, the legislation states that information must be confirmed by a prescribed professional that the appellant's impairment directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods and that as a result of direct and significant restrictions, she requires help to perform daily living activities. The Panel finds the information provided from her prescribed professionals which she has provided at this time does not confirm the details regarding restrictions in DLAs and assistance required which she has provided in her self report and stated to the Community Service worker.

The Panel concluded that the Ministry's decision that the appellant does not have a severe mental impairment is not reasonably supported by the updated medical evidence. However, the Panel finds the Ministry's decision that the appellant does not meet the remaining two legislative criteria for PWD designation as required by *EAPWDA*, section 2 is reasonably supported by the evidence. The Panel confirms the Reconsideration Decision.