

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 17, 2012 which found that the appellant did not meet three of the five 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 her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that she has a severe physical or mental impairment. The ministry was also not satisfied that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that she 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 evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated November 7, 2011, physician report dated November 7, 2011, and assessor report dated September 6, 2011;
- 2) Letter from the ministry to the appellant dated December 6, 2011 denying person with disabilities designation and enclosing a copy of the decision summary;
- 3) Letter from the appellant's physician dated November 18, 2011; and,
- 4) Request for Reconsideration- Reasons.

At the hearing, the appellant provided several additional documents, namely:

- 1) Medical Imaging Report (1st of 2 pages) dated May 26, 2011 for a CT scan of the appellant's chest stating in part that an acute pulmonary embolism is noted as well as moderate centrilobular emphysema within both lungs;
- 2) Consultation Report (1st of 3 pages) dated May 30, 2011 stating in part that the appellant came in because of shortness of breath which started about 3 weeks ago and was found to have a pulmonary embolism;
- 3) Valve Assessment Study (2nd of 2 pages) stating in part that the visual estimate of ejection fraction and semi-quantitative measurement of 19% are congruent and appear slightly better than the previous measurement of approximately 10%. Septal motion remains dyskinetic and there is global severe hypokineses of the left ventricle; these findings are consistent with dilated cardiomyopathy;
- 4) Print out from a website on types of cardiomyopathy and treatments;
- 5) Print out from a website on Trigeminal Neuralgia.

The ministry did not object to the admissibility of these documents. The panel reviewed the documents and admitted them as being a further description of the appellant's diagnosed impairments and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

The appellant's advocate stated that the appellant suffers from a number of severe health conditions, as set out in the physician's report, including cardiomyopathy, COPD, breast cancer, osteoporosis, Trigeminal Neuralgia, and possible Hepatitis C, which indicates liver failure. The advocate suggested the physician centered his report on the list of health conditions and did not focus on the other part of the report regarding the affect on daily living activities. The advocate highlighted the Valve Assessment Study which confirms that 4/5ths of the appellant's heart movement is restricted. The advocate states that when the appellant went in for her operation, her heart function had gone down to 10%, and she was in hospital for a month last year. The advocate states that most people would be disabled by just one of these conditions and the appellant is 60 years old and lives in a trailer park that is isolated from the main road which makes her circumstances difficult as well. The advocate stated that the appellant wears braces on both knees all the time due to arthritis in her legs. The advocate states that the appellant cannot do any lifting and is perfunctory in performing any other daily functions. The advocate stated that the appellant does everything mechanically and slowly and she went to feed her cat, for example, and had to sit and rest for 5 minutes afterwards, before she could get the cat some water. The advocate stated that the appellant tries to function as best she can with help from the people around her, which involves incredible hardship. The bus stop is a mile away from the appellant's home and she cannot walk more than a block. The advocate stated that the appellant has someone drive her to the store. The advocate stated that the appellant has more things wrong with her than most people see in a lifetime.

The appellant stated that she has been an independent person all her life and now everything is a chore, especially shopping, and when it snowed she could not have been able to get to the hospital for her appointments except the cancer society sent someone to get her. The appellant stated that her heart function was down to 10% but now that she has been on the medications it is up to 19%. The appellant stated that she is still recovering from the surgery to remove her breast, and that there have been emotional impacts as well.

The appellant stated that she has to walk about 300 yards to the laundromat in her trailer park and she has to stop and rest before she comes back. The appellant stated that she realizes that she did not give her doctor the right information because she needs periodic help with most daily living activities since she is too ill to do much. The appellant stated that the doctor just asked her can you do a certain activity- yes or no- and that she did not think about her bad days, and the doctor was rushing through the forms. The appellant stated that her neighbours will help her when she calls on them, like when her fridge stopped working recently.

In her self-report included in the PWD application, the appellant adds that she had a malignant tumor on her right breast which was removed September 12, 2011. The appellant states that she has limited physical function and is tired after each function. The appellant states that she cannot walk more than a block at a time. The appellant states that the prospects of health and possible mortality are very stressful. In her Request for Reconsideration, the appellant adds that her ability to get food is deteriorating, she needs someone to drive her to the store and assist with her bags and public transport is not available where she lives. The appellant also states that there are mornings when she cannot get out of bed because of pain and stress due to medical issues and finances.

The physician who completed the physician report has confirmed that the appellant has been his patient for 4-5 months and that he has seen the appellant 11 or more times in that period. In the physician report, the physician confirms a diagnosis of heart failure due to cardiomyopathy, chronic obstructive bronchitis due to pulmonary embolism, carcinoma of breast, osteoporosis, and Trigeminal Neuralgia. The physician adds comments that the appellant "...is getting easily short of breath, tired easily, unable to lift more 10 kg., unable to carry." The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA, and she does not require an aid for her impairment. The physician reports that the appellant can walk 1 to 2 blocks unaided on a flat surface, she can climb 2 to 5 stairs unaided, she can lift 15 to 35 lbs., and has no limitation with remaining seated. The physician reports that the appellant has no difficulties with communication. The physician also indicates that there are no significant deficits with cognitive and emotional function. In response to the question whether the impairment directly restricts the appellant's ability to perform daily living activities (DLA), the physician checks of "no", and confirms no restrictions in personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, management of finances, and social functioning. The physician indicates a periodic restriction with mobility outside the home and notes that the appellant is "...not able to walk for prolonged period." The physician also notes that the appellant "...has diseases that will be chronic, she is unable to do any work due to her medical conditions."

The physician has also completed the assessor report and indicates that the appellant is independent with walking indoors and walking outdoors ("but must rest due shortness of breath"), as well as with climbing stairs and standing, and lifting and carrying and holding, and notes that the appellant "...unable to do the above for prolonged period as she gets easily tired and short of breath." The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. The physician reports that the appellant is independent with doing laundry and with basic housekeeping. The physician indicates that the appellant is independent with all of the tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home, with no further comments. Further, the assessor reports that the appellant is independent with all of the tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food. The physician indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting), managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage) and transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). In the assessor report, the physician has also indicated that there is no impact to each area of daily cognitive and emotional functioning, and that the appellant is independent in all areas of social functioning, with good functioning in both immediate and extended social networks. The physician makes a note that family and friends help the appellant do "...heavy work or shopping."

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant 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.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to Section 2(2), the person must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under Section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform DLA either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry points to the physician report where it is indicated that the appellant is able to walk 1 to 2 blocks unaided, to climb 2 to 5 steps unaided, to lift 15 to 35 lbs., and has no limitation with remaining seated. The ministry points out that the physician also notes that the appellant "...is unable to do any work due to her medical conditions" and argues that employability is not an eligible criterion for designation as a PWD. The ministry argues that the functional skill limitations described by the physician are more in keeping with a moderate degree of impairment. The appellant's advocate argues that the evidence establishes that the appellant suffers from a severe physical impairment as a result of the combination of a long list of serious and severe health conditions diagnosed. The advocate argues that the physician centered his report around the diagnoses and that he did not give as much attention to the impacts to the appellant's DLA. The advocate argues that although the appellant can perform many DLA, she does so in a mechanical and perfunctory way, requiring rest after each step in the process.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of heart failure due to cardiomyopathy, COPD due to pulmonary embolism, carcinoma of breast, osteoporosis, and Trigeminal Neuralgia. The physician report indicates that the appellant does not require an aid for her impairment and that she can walk 1 to 2 blocks unaided on a flat surface and she can climb 2 to 5 stairs unaided. The appellant states in her self-report that she cannot walk more than 1 block, and the physician also confirms that the appellant is restricted with mobility outside the home and that she is "...not able to walk for prolonged period." In the assessor report, however, the physician indicates that the appellant is independent with walking indoors, with walking outdoors, with climbing stairs and lifting and carrying and holding, with the comment that the appellant is unable to do these activities for prolonged periods as she gets easily tired and short of breath. . The physician adds comments that the appellant "...is getting easily short of breath, tired

easily, unable to lift more 10 kg., unable to carry." The physician also notes that the appellant "...has diseases that will be chronic, she is unable to do any work due to her medical conditions." Overall, the panel finds that the evidence demonstrates that the appellant has been diagnosed with a number of serious health conditions but, nevertheless, is independent with her mobility and physician functioning and restricted from performing these activities for prolonged periods, which indicates a moderate degree of impairment. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry argues that the physician has identified no significant deficits to cognitive and emotional functioning, and no impacts to daily functioning associated with a mental impairment or brain injury. The appellant argues that the evidence establishes that she suffers from a severe mental impairment as a result of stress. The appellant argues that she finds her health prospects and possible mortality very stressful. As well, the appellant points out that her surgery for breast cancer has also had an emotional impact that she is coping with.

The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a mental disorder. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are no significant deficits with cognitive and emotional function. In the assessor report, the physician has also indicated that there is no impact to each area of daily cognitive and emotional functioning, and that the appellant is independent in all areas of social functioning, with good functioning in both immediate and extended social networks. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry argues that the evidence does not establish that the appellant's 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 points out that the physician indicates that the appellant requires periodic assistance with mobility outside the home and that she has shortness of breath, but the physician reports that the appellant independently performs all her remaining DLA including social functioning. The advocate points out that the physician centered his report around the diagnoses and that he did not give as much attention to the impacts to the appellant's DLA. The advocate argues that although the appellant can perform many DLA, she does so in a mechanical and perfunctory way, requiring rest after each step in the process. The appellant points out that the doctor just asked her whether she could do a certain activity- yes or no- and that she did not think about her bad days, and also that the doctor was rushing through the forms

The panel finds that the legislation requires that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for extended periods. In response to the question whether the impairment directly restricts the appellant's ability to perform daily living activities (DLA), the physician checks of "no", and confirms no restrictions in personal self care, meal preparation, management of medications, basic housework, daily shopping, mobility inside the home, use of transportation, management of finances, and social functioning. In the assessor report, the physician confirms that, in terms of preparing her own meals, the appellant is independent with all tasks, including meal planning, food preparation, cooking and safe storage of food. For managing personal finances, the physician indicates in the assessor report that the appellant is independent with all tasks of banking, budgeting and paying rent and bills. In terms of shopping for her personal needs, the physician indicates that the appellant is independent with all of the tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. In the assessor report, the physician makes a note that family and friends help the appellant do "...heavy work or shopping." The advocate stated that the bus stop is a mile away from the appellant's home and she cannot walk more than a block so she has someone drive her to the store for shopping.

For use of public or personal transportation facilities, the physician indicates that the appellant is independent

with all tasks, including getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician has reported that the appellant is independently able to perform basic housekeeping and do her laundry. The appellant stated that she has to walk about 300 yards to the laundromat in her trailer park and she has to stop and rest before she comes back. For moving about indoors and outdoors, the physician has indicated that the appellant has a periodic restriction with mobility outside the home and notes that the appellant is "...not able to walk for prolonged period." However, the physician also indicates that the appellant does not use an assistive device and is independent with walking indoors and with walking outdoors. Regarding performing personal hygiene and self care, the physician indicates in the assessor report that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off a chair. With respect to managing her personal medications, the physician again indicates that the appellant is independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage.

Looking at the evidence as a whole, the panel finds that the prescribed professional has reported that the appellant is periodically restricted with mobility outside the home, but is not restricted with mobility inside the home and is independent in all remaining areas of DLA. The evidence of the prescribed professional does not show a direct and significant restriction with two or more DLA. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the physician and the appellant that she lives alone and receives assistance from family and friends, and does not use an assistive device. As it has not been established that DLA are significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

Overall, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.