

PART C – Decision under Appeal

The decision under the appeal is the ministry's Reconsideration decision dated January 12, 2012, which denied the appellant's request for Persons with Disabilities (PWD) designation. The ministry determined that the appellant did not meet 2 of the 5 statutory requirements of Section 2 of the *Employment and Assistance for Persons with Disabilities Act - EAPWDA* for designation as a PWD. The ministry determined that the appellant met the age requirement and that her impairment is likely to continue for 2 years. The ministry further determined that the appellant has severe mental impairment. However, the ministry was 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 period of time. The ministry also determined that a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the appellant requires help 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 reconsideration decision included:

- Persons with disabilities designation application dated May 27, 2011;
- Physician Report dated September 25, 2011;
- Assessor Report dated October 4, 2011 completed by a life skills instructor; (Assessor Report # 1)
- A letter from the ministry requesting that the Assessor Report completed by a prescribed professional;
- Assessor Report dated October 27, 2011 completed by the same physician who completed the Physician Report; (Assessor Report # 2)
- Ministry's decision dated November 24, 2011 denying the appellant's request;
- Request for reconsideration dated December 1, 2011;
- A note from the appellant's physician dated December 6, 2011;
- A hand written note by the appellant dated December 8, 2011 stating that she provided new information from her physician.

At the appeal hearing, the appellant provided a written submission dated February 5, 2012 in which the appellant stated that as a result of her severe depression on some days she is unable to get out of bed and remains in bed for days. The appellant further submitted that she often experiences suicidal thoughts and sometime such thought are so severe that she has to admit herself in to a hospital. The appellant submitted that she often cannot eat due to depression.

The appellant also provided 3 letters: one from a Personal Development Plan (PDP) worker, second from a life skills instructor and a third from the Chaplain of the community residence. These letters speak of the appellant's health issues and motivation, her memory deficit, and her lack of sleep and ongoing mental and physical health issues.

The ministry did not have any objections to admitting the appellant's written submission and the three letters into evidence.

The Panel admits the Appellant's written statement and the three letters from the staff of the community residence as evidence in support of the information and records before the ministry at reconsideration pursuant to Section 22(4) (b) of the Employment and Assistance Act.

The ministry provided a written submission summarizing the facts of this case from the ministry's point of view.

The appellant in the application for the PWD designation stated that she experiences severe and continuous pain as a result of her colitis. She is on very strong pain killer drugs but the pain does not go away. The appellant further stated that she requires a special diet which she cannot afford on her limited benefits. The appellant stated that she also has been diagnosed with COPD and is functioning at 40% lung capacity. Her prescription medications are not covered by medical insurance and that leaves her with little money for food. The appellant further stated that she has asthma and severe depression that further affect her ability to perform her Daily Living Activity – DLAs. The appellant stated that she was hospitalized in May 2011 for experiencing suicidal thoughts. The appellant relies on the staff at her residence for cooking, shopping and cleaning. The appellant further stated that she has been diagnosed with chronic agoraphobia which affects her ability to shop and or being in crowded areas.

The same life skill instructor, who provided a letter, completed the Assessor Report #1. The instructor who has been working with the appellant on a daily basis reported that the appellant struggles with stairs and needs frequent breaks and the appellant cannot lift heavy objects. In the cognitive and emotional functioning section, the life skill instructor reported that the following mental impairments restrict the appellants functioning:

Major impact:

- 1- Emotion
- 2- Executive
- 3- Motivation

Moderate impact:

- 1- Bodily functions
- 2- Attention/concentration

The life skill instructor further reports that the appellant's depression can affect her daily living. She stated that when the depression is active, the appellant has difficulty leaving her room, attending groups, taking care of her hygiene, and eats very little. The instructor noted that the appellant needs continuous assistance from another person in the following Daily Living Activities (DLA):

- 1- Meal planning
- 2- Food preparation
- 3- Cooking
- 4- Budgeting
- 5- Taking medication as directed
- 6- Safe handling and storage.

The life skill instructor stated that the community residence is taking care of meals for the appellant. The appellant is only required to budget for meal tickets; however, if this service was not available to her, she would not eat/cook healthy meals. The instructor further stated that the appellant, for performing her DLAs, is being assisted by her friends, family and community service agency.

The appellant's physician, who has known her for over 10 years, in the Physician Report reported the appellant's medical diagnoses as:

- Colitis; Chronic abdominal pain;
- Chronic renal Calculi;
- COPD/Asthma;
- Chronic Depression/Phobias;
- Hypothyroidism/Migraine.

The physician stated that the appellant has many physical and mental issues that make it hard for her to live a normal life. The appellant has suffered from severe depression for many years and has been admitted to hospital several times. The appellant is quite agoraphobic and is suffering from renal calculi which is very painful and can occur without any warning.

The physician stated that the appellant is on medications for pain and depression. The appellant does not require any prostheses or aids for her impairment and the appellant's impairment is likely to continue for two years or more.

The physician further stated that the appellant can walk unaided for 4 blocks or more, can lift 2 to 7 kg, and has no limitation to remain seated. The physician further indicated that the appellant suffers from significant mental health problem which cause her to have lack of motivation and inability to focus. The appellant has deficits with executive planning, organizing, calculations judgment and emotional disturbance and that significantly deficits her cognitive and emotional functions.

The physician confirmed that the appellant's impairment directly restrict her ability for performing the following: Personal self-care, meal preparation, basic housework, daily shopping, and social functioning and that her

restrictions compounded by chronic pain. The physician reported that the appellant requires assistance in organizing her day, including simple DLAs such as deciding what to buy and how to cook.

The same physician completed the Assessor Report #2. The physician reported that the appellant is independent in walking indoors and outdoors, climbing stairs, one flight, standing and lifting, depending upon how heavy the item is. The physician further noted the appellant is independent in dressing, grooming, bathing, toileting, feeding self, transfers, going to and from stores, reading prices and labels and making appropriate choices. The physician reported that the appellant has problems carrying groceries home due to an old injury. She needs assistance with carrying purchases home depending on the weight of the groceries.

The physician in the Assessor Report #2 stated that the appellant receives assistance from her friends, family and staff of a community service agency. The physician reported that the appellant does not have an assistance animal. The physician further reported that the appellant is independent and does not require support and supervision with social functioning. The physician noted that the appellant has good functioning in regards to the mental impairment.

The physician reported that the appellant is independent with meal planning, food preparation, cooking, safe storage of food, banking, her medications and transportation. The physician noted that the appellant requires continues assistance with budgeting and paying her rent and bills.

The physician in the cognitive and emotional functioning section noted that the appellant's impairment does not have impact on her insight and judgment, planning/organizing, memory, motor activity, language, psychotic symptoms and other emotional or mental problems. The physician further reported that he appellant's impairment has minimal impact on bodily functions, consciousness, and attention/concentration. However, the physician noted moderate impact with impulse control and major impact on emotion and motivation.

At the hearing, the appellant's mental health advocate stated that the appellant lives in a highly supported program that her attendance in programs is mandatory. The advocate stated that the appellant has been on a suicide watch for the past 3 weeks, and that the appellant needs 24/7 supervision.

The advocate further stated that the appellant receives training for anger management, grief recovery, life skills, stress management, and spiritual classes.

The appellant stated that she needs constant supervision, sometimes the depression is so bad that she has to commit herself to a hospital but suicide thoughts are always there. The appellant stated that she takes 21 prescription drugs daily and her medications are organized for daily use by her pharmacist. The appellant further stated that she started the program in the community resident in May 2011, the program is for up to 18 months and she will ceased to be a resident in November 2012. She needs help to take care of herself and is unable to live on her own without any assistance. The appellant stated that prior to becoming a resident in the community program; she lived with her friend who moved out of the community. The appellant also lived for two weeks with her daughter; she was admitted to a hospital for a week and moved to a transition house for a month.

The ministry stated that the three letters provided by the appellant are mainly relating to the difficult time the appellant is experiencing in participating in the programs of the agency and wondered whether the medications hinder the appellant's ability to participate in such programs.

The panel finds the following:

- The appellant has a severe mental condition;
- The appellant lives in a highly supported program and is being supervised on a daily basis;
- The appellant is suicidal and has been hospitalized on numerous occasions;

- The appellant is in continuous pain and is on pain killer medications;
- The appellant is suffering from chronic depression/phobias;
- The appellant's physical and mental symptoms make it hard for her to live a normal life:
- the appellant's mental problems with memory and emotion have a significant impact on her cognitive and emotional functioning;
- The physician, who completed both the Physician Report and the Assessor Report #2 has provided contradictory reports and assessments.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a Person with Disabilities (PWD). The reconsideration decision stated that the appellant did not meet 2 of the 5 statutory requirements of Section 2 of the *EAPWDA* for designation as a person with disabilities. The ministry determined that the appellant met the age requirement and that her impairment is likely to continue for 2 years. The ministry further determined that the appellant has severe impairment. However, the ministry was 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 an extended period of time. The ministry also determined that a prescribed professional has not confirmed that, as a result of direct and significant restrictions, the appellant requires help to perform the DLAs.

Pursuant to Section 2 of the *EAPWDA*, 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.
- (4) The minister may rescind a designation under subsection (2).

Section 2 of the *EAPWDR* states, (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 appellant argued that she is being supervised and assisted 24/7 in a highly supportive environment. She is not able to live on her own without any support.

With respect to the Appellant's physical impairment the Panel's findings of fact are:

- The appellant's physician is a prescribed professional pursuant to the *EAPWDR*, s.2 (2) (a);
- In the Application for PWD Designation the Appellant's physician indicated that her impairment will continue for two years or more;
- The appellant is diagnosed with Chronic Depression/Phobias, Colitis, chronic abdominal pain, chronic renal Calculi; COPD and Asthma; and Hypothyroidism/Migraine;
- The appellant's physician stated that the appellant suffers from, among other problems, a chronic, debilitating pain in her mid-section that is constant in nature.

Based on the evidence available regarding the appellant's physical impairment, the panel finds that the ministry's decision determining that the information does not establish a severe physical impairment is unreasonable. The ministry in determining that the appellant does not have severe physical impairment physician report that stated the appellant can walk 4+ blocks unaided, climbs 5+ steps unaided, lifts 2 to 7 kg and he has no limitation with remaining seated. However, the ministry admits that the appellant in walking and climbing steps has to stop, as she gets short of breath, the panel finds that the ministry did not rely on the physician's most current report indicating that the appellant's other problems, including Colitis, chronic abdominal pain and chronic renal Calculi, COPD and asthma, have a chronic debilitating pain in her mid-section that is constant in nature.

With respect to the appellant's mental impairment, the Panel's findings of fact are:

- The Appellant's physician reported that the appellant suffers from significant mental health problems which cause lack of motivation and inability to plan.
- The physician reported that the appellant in the areas of executive, emotional disturbance and motivation has significant deficits with cognitive and emotional function;
- The physician reported that the appellant's impairment has minimal impact on bodily functions, consciousness, and attention/concentration;
- The physician noted moderate impact with impulse control and major impact on emotion and motivation.

There is no issue that the appellant has a severe mental impairment.

With respect to the Appellant's DLA restrictions, the Panel's findings of fact are:

- The Appellant's physician, acting as Assessor, reported that the Appellant is independent in walking indoors and outdoors, climbing stairs, one flight, standing and lifting, depends on how heavy.
- The physician further noted the appellant is independent in dressing, grooming, bathing, toileting and feeding self.
- The physician reported that the appellant has problems carrying groceries home due to an old injury. She needs periodic assistance with carrying purchases home depending on the weight of the groceries.
- The physician however in the Physician Report that was completed prior to the Assessor Report #2 confirmed that the appellant's impairment directly restrict her ability for performing the following: Personal self-care, meal preparation, basic housework, daily shopping, and social functioning and that her restrictions compounded by chronic pain.
- The physician in the most current report stated that the chronic pain is constant and the appellant, to be able to perform basic DLAs, has to take several pain killers every day.

The ministry's position is that there are contradictions between the Assessor Report and the Physician Report and as such the ministry was not satisfied that the information provided establishes that the appellant's mental condition directly and significantly restricts the appellant's ability to perform the daily living activities set out in the legislation.

With respect to the Appellant's requirement for help to perform DLA's, the panel notes that the physician in the Physician Report confirmed that the appellant requires assistance in organizing her day including DLAs such as what to buy and how to cook.

Regarding the issue as to whether the appellant's severe physical and mental impairment directly and significantly restricts her ability to perform DLAs either continuously or periodically for extended periods, the appellant's physician has provided contradictory evidence.

The evidence in the Physician Report indicates that the appellant is continuously restricted in personal care, meal preparation, basic housework, daily shopping and social functioning. However, the same physician in the Assessor Report #2 contradicted himself by stating that the appellant is independent in all aspects of all listed DLAs, with the exception of carrying groceries home. The physician further noted that the appellant requires periodic assistance depending on the weight of the groceries.

The panel notes that the same physician in his last report on December 6, 2011 stated that the appellant suffers from a chronic and debilitating pain that is constant in nature. The physician further reported that the appellant is depressed, lacking in motivation and needs help with this lack of motivation.

In determining the relative weight to be given to the conflicting evidence, the panel considered the evidence of the physician together with the other evidence provided. The panel is mindful that the legislation specifically requires that a direct and significant restriction to DLAs be in the opinion of a prescribed professional. The panel has considered the evidence of the appellant and the evidence of the staff of the community residence in assessing the relative weight to be given to the contradictory evidence regarding DLA. The panel finds that the evidence of the appellant and the staff of the community agency are consistent with the evidence provided in the Physician Report and in the subsequent physician's letter. Therefore, the panel has placed a greater weight and reliance upon the evidence in the Physician Report and the most recent update by the appellant's physician dated December 6, 2011. The Panel finds that the evidence of a prescribed professional (corroborated by others) does, indeed, establish that the appellant experiences direct, continuous, and significant restrictions with more than two DLAs.

Therefore, the panel finds that the ministry did not reasonably conclude that the evidence provided does not establish a direct, significant and continuous restriction of the appellant's ability to perform DLA pursuant to Section 2(2) (b) (i) of the EAPWDA.

With respect to the need for help with DLA, the panel finds that:

- The physician in the Physician Report stated that the appellant requires assistance in organizing her medications, with what to buy and how to cook and with prioritizing and the appellant receives assistance from her friends, family and staff of a community service agency.
- The same physician in the Assessor Report stated that the appellant requires assistance in budgeting and managing her money.
- The physician in the letter dated December 6, 2011 stated that the appellant needs help with the lack of motivation. This is consistent with the information provided by the life skill instructor.
- Due to phobia of groups, the appellant has difficulty committing to many activities, requires extra external motivation to participate in community events and requires support with taking care of her meals.
- The life skill instructor evidence is also consistent with the physician Report and the appellant's

submission that the appellant's depression does affect her daily living.

- When the appellant's depression is active, the appellant eats very little, has difficulty leaving her room, attending group meetings and taking care of her hygiene.
- The information that the appellant lives in a highly supportive community residence was before the ministry at the reconsideration hearing.
- The appellant resides and receives daily assistance from the staff, instructors and the Chaplain of the community residence.

Based on all the information provided, the panel finds that the ministry did not reasonably determine that the evidence does not establish that, in the opinion of a prescribed professional, the significant help or supervision of another person is required to perform DLA as required under Section 2 (2) (b) (ii). The ministry relies on the physician report stating that the physician indicated that the appellant requires continuous assistance with budgeting and paying rent and bills and periodic assistance with carrying purchases home. The ministry stated the same physician stated the appellant is independent in managing person self-care, basic housekeeping, shopping, meals, banking and medications.

The panel finds that the ministry did not rely on the physician report that answered yes to "does the impairment directly restrict the person's ability to perform daily living activities?" The physician further stated that the impairments restrict the appellant in performing personal self-care, meal preparation, basic housework and daily shopping continuously. Furthermore, the ministry did not consider the fact that the appellant lives in a highly supportive residence and is being supervised 24/7. The ministry also did not take into consideration that meals are provided to the appellant. Based on the information provided by the staff of the community residence, the appellant needs support and supervision in keeping tracks of her food tickets. Furthermore the ministry did not take into consideration that the appellant's medications are organized daily by her pharmacist.

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the ministry's reconsideration decision is overturned in favour of the appellant.