

PART C – Decision under Appeal

In a reconsideration decision dated 24 January 2012, the Ministry denied the Appellant a Person with Disabilities (PWD) designation because it concluded she did not meet 3 of the 5 statutory requirements for designation as a PWD as found in the Employment and Assistance for Persons with Disabilities Act, Section 2 and Employment and Assistance for Persons with Disabilities Regulation, Section 2. The Ministry found that the Appellant met the age requirement and met the requirement that her impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because it determined the information submitted did not establish that the Appellant had a severe mental or physical impairment, that the impairment in the opinion of a prescribed professional did not directly and significantly restrict her ability to perform daily living activities (dla) either continuously or periodically for extended periods and that she did not require an assistive device or significant help or supervision of another person to perform her 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 included a PWD designation application and a letter dated January 10, 2012 from the Appellant. In the Appellant's Notice of Appeal, the Appellant states she has a mental impairment that is major depression and she has problems doing certain things around the house that she calls on family and friends to do. The Panel finds the evidence within the Notice of Appeal supports the medical evidence within the PWD application and admits it under the Employment and Assistance Act, Section 22(4).

In her letter of January 10, 2012 the Appellant states a doctor has diagnosed her with major depression disorder and chronic back pain due to degenerative disc disease (DDD) and arthritis. She states her impairments affect her social and occupational functioning. She says her back pain affects her walking, standing for any length of time, lifting and sitting. She states this is a contributing factor for not being able to work. She states she requires help from other people to perform some daily living activities (dla) like lifting, gardening and writing this statement. In conclusion she says she would like to get some help in cleaning walls and windows and moving heavy furniture and appliances. Currently she says that she is on a strict budget and can't afford any help.

The physician's section of the PWD application is completed by the Appellant's general practitioner (GP). In it, the Appellant is diagnosed with major depression onset in 2004, DDD onset in 2005, and left lateral epicondylitis onset in October, 2010. In the health history, the GP states the Appellant has longstanding depression, that she feels low, , tired, has decreased interest, and poor sleep decreases her concentration most of the time every day. She doesn't feel like doing anything and it's affecting her social and occupational functioning. She takes medication and is getting psychotherapy with sub optimal results. He continues that she also has chronic back pain and DDD that affects her walking, standing for any period and length, bending and lifting. He concludes that her left lateral epicondylitis has affected the Appellant for 1 year and local steroid injections and physiotherapy have not improved the condition.

The GP confirms the Appellant's impairment will continue for more than 2 years and explains she is not improving with standard treatment. Under functional skills, the GP states the Appellant can walk 2 – 4 blocks unaided climb 5+ steps, lift 2-7 kilograms and remain seated 1-2 hours. The GP states there are no significant deficits with cognitive and emotional function then notes emotional disturbances and motivation as features of depression.

Under dla, basic housework is checked as restricted and noted it takes longer. All other dla are checked as not restricted. The GP additionally comments that the Appellant has mental and physical impairments that affect her functioning. Because of her persistent features of depression, the Appellant likes to stay isolated, does not like to go out, does not have the motivation and energy to look for and maintain a job. He continues that her chronic back pain also limits her mobility and affects her functioning. Her left forearm tendinitis also causes difficulty in lifting and moving her wrist repeatedly.

The assessor's section of the PWD application is completed by the same GP. In it, the GP states the Appellant lives alone and notes her depression and DDD affect her dla. He states she has good ability in speaking and hearing and satisfactory ability in reading and writing.

Under mobility and physical ability the GP assesses the Appellant takes twice as long to complete walking outdoors, climbing stairs, standing and the pain from her left forearm causes lifting , carrying

and holding to take significantly longer.

Under cognitive and emotional functioning, the GP assesses no impact in all aspects other than a major impact under emotion due to depression and moderate impact under motivation. He notes the Appellant daily feels depressed, has decreased interest, poor sleep and tiredness, she likes isolation, has a poor appetite and decreased libido. He concludes it affects her social and occupational functions and she feels it is hard to acquire and maintain a job.

Under dla, the GP assesses the Appellant as independent in all aspects of personal care. Under basic housekeeping, he assesses the Appellant takes significantly or twice as long. He states going to and from stores and carrying purchases home also takes significantly longer. He assesses the Appellant as independent in all aspects of meals, paying rent and bills, and medication. Under transportation he assesses the Appellant takes significantly longer getting in and out of a vehicle. The GP assesses the Appellant as independent in all aspects of social functioning and good functioning in her immediate and extended social networks.

The GP notes "n/a" under assistance provided by other people and assistance provided through the use of assistance devices. Under additional information, the GP reiterates the Appellant's diagnosis of major depressive disorder and notes despite "appropriate treatment she is not showing much improvement". He notes her DDD and constant back pain affects her mobility and her daily functioning and using her "left arm is painful".

At the hearing the Appellant stated it is hard for her to walk and stand for any length of time. She says her daily life is a struggle, she takes prescription painkillers every morning and night and often just sits and cries because of her pain and depression. She says her friends and family help her by offering moral support because of her depression and a bit of physical help with her daily chores. Her friend, acting as a witness, confirmed that the Appellant spends a lot of time over at the friend's home and she cries there often because of her depression and back pain. The Panel finds both the Appellant's and the witness's oral evidence support the medical evidence within the PWD application and admits it under the Employment and Assistance Act, Section 22(4).

At the hearing the Ministry acknowledged that the GP indicated the Appellant takes twice as long to complete the majority of her mobility and physical functions, but stated the Appellant is still able to complete them in a reasonable amount of time. The Ministry also pointed out that the GP did not indicate the Appellant required assistance from another person to complete any of the dla. The Ministry also noted that the application does not indicate that the Appellant's cognitive and emotional functioning is significantly impaired because the GP indicates she can independently manage all social functioning and has a good functioning immediate and extended social network, therefore that a severe mental impairment has not been established. It concludes that the GP has not indicated throughout the application that the Appellant's impairments significantly restrict her ability to perform her dla.

From the information presented, the Panel finds:

- the Appellant is a recipient of income assistance,
- the Appellant lives alone,
- the Appellant is diagnosed by a medical practitioner with an impairment that will continue for more than 2 years,

- the Appellant is diagnosed by a GP with major depression, degenerative disc disease, and left lateral epicondylitis.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant a Person with Disabilities (PWD) designation because it concluded she did not meet 3 of the 5 statutory requirements for designation as a PWD as found in the Employment and Assistance for Persons with Disabilities Act, Section 2 and Employment and Assistance for Persons with Disabilities Regulation, Section 2. The Ministry found that the Appellant met the age requirement and met the requirement that her impairment is likely to continue for at least 2 years. The Ministry found the Appellant did not meet the balance of the requirements because it determined the information submitted did not establish that the Appellant had a severe mental or physical impairment, that the impairment in the opinion of a prescribed professional did not directly and significantly restrict her ability to perform daily living activities (dla) either continuously or periodically for extended periods and that she did not require an assistive device or significant help or supervision of another person to perform her dla. The criteria for PWD designation is set out in EAPWDA, Section 2 as follows:

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;

"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.*

(4) The minister may rescind a designation under subsection (2)

The definition of daily living activities is set out in ERAPWDR, Section 2 as follows:

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.*

*(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 Minister argues a severe physical impairment has not been established because the Appellant's functional skill limitations as described by the GP do not indicate a severe physical impairment.

The Appellant argues she has chronic back pain, it takes her twice as long to do many dla and she has problems doing certain things around the house.

Given the opinion from the GP that the Appellant can walk 2-4 blocks unaided, climb 5+ steps, lift 2-7 kilograms and remain seated 1 -2 hours, plus in the physicians section of the PWD application all dla are checked as unrestricted other than basic housework with the note it takes longer, the Panel finds the Ministry made a reasonable determination that a severe physical impairment has not been established under EAPWDA, Section 2(2).

The Ministry argues a severe mental impairment has not been established because the GP indicates that the Appellant's impairments have a moderate, minimal or no impact on the majority of her cognitive and emotional functions and the GP indicates she can independently manage all of her social functioning and the majority of her dla.

The Appellant argues a doctor has diagnosed her with major depression disorder, she lacks motivation and concentration and she sits and cries alot.

The GP reports the Appellant's persistent features of depression impacts the Appellant's motivation and energy to look for and maintain a job, however he assesses no impact in all aspects of cognitive and emotional functioning other than major impact under emotion due to depression and moderate impact under motivation. Because he further assesses the Appellant as independent in all aspects of social functioning and good functioning in both immediate and extended social networks, the Panel finds the Ministry made a reasonable determination that a severe mental impairment has not been established by the information supplied by the GP under EAPWDA, Section 2(2).

The Ministry argues the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities because the information from the GP in the assessor's section reports the Appellant is not restricted in her ability to manage the majority of her dla.

The Appellant argues she has problems doing certain things around the house and she would like to get some help in cleaning walls and windows and moving heavy furniture.

In the assessor's section of the PWD application, the GP states the Appellant is independent in 29 of 33 aspects of dla. The GP reports the Appellant takes significantly longer and notes twice as long in managing basic housekeeping, going to and from stores, carrying purchases home and getting in and out of a vehicle. Given the degree of independence described by the prescribed professional, and that those aspects affected are still managed by the Appellant, although taking longer, the Panel finds the Ministry made a reasonable determination that the impairment does not directly and significantly restrict the Appellant's ability to perform daily living activities and that EAPWDA, Section 2(2)(b)(i)

was not met.

The Ministry argues the Appellant does not require significant help to perform dla because it has not been established that the dla are significantly restricted.

The Appellant argues has problems doing certain things around the house and she would like to get some help in cleaning walls and windows and moving heavy furniture.

Because the GP indicates that no assistance is required for the Appellant and notes "n/a" when asked to specify if help is required and there is none available, the Panel finds the Ministry made a reasonable determination that the Appellant does not require significant help of another person to perform her dla. The Panel finds the Ministry made a reasonable determination that EAPWDA, Section 2(2)(b)(ii) was not met.

The Panel finds the Ministry made a reasonable decision to deny the Appellant a PWD designation because the Appellant did not meet all the legislated requirements in EAPWDA, Section 2 for designation as a PWD. The Panel finds the Ministry's decision was a reasonable application of the applicable legislation and confirms the decision.