

## PART C – Decision under Appeal

The decision being appealed is the Ministry's February 1, 2012 reconsideration decision denying the Appellant Persons with Disabilities (PWD) designation. The Ministry determined that the Appellant did not meet all of the required criteria for PWD designation set out in EAPWDA section 2(2). Specifically the Ministry determined that in the opinion of a prescribed professional:

1. The Appellant's severe impairment does not directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods; and,
2. As a result of those restrictions the Appellant does not require help to perform those activities.

The Ministry did determine that the Appellant satisfied the other criteria; that is, she has reached 18 years of age, she has a severe mental impairment, and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2.

## PART E – Summary of Facts

Because the Ministry determined that the Appellant met 3 of the required criteria for PWD designation the Panel will review only the facts applicable to the 2 other criteria which the Ministry decided were not met; that is,

1. In the opinion of a prescribed professional the Appellant's severe impairment does not directly and significantly restrict her ability to perform daily living activities continuously or periodically for extended periods; and,
2. In the opinion of a prescribed professional, as result of those restrictions, the Appellant does not need help to perform those activities.

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's September 30, 2011 PWD application in which she described the medical conditions which affect her daily life. She wrote that she has not gotten better at being in public and always worries about what people are thinking or if people are staring at her.
2. Physician's Report (PR) and Assessor's Report (AR) both dated November 8, 2011 and both completed by the same doctor who has known the Appellant for 8-9 years and has seen the Appellant 11 or more times in the 12 months preceding the date of the reports.
3. Appellant's request for reconsideration, including a statement from her.

In the PR the doctor described the Appellant's diagnoses as gender identity disorder, depression, anxiety disorder and long standing substance abuse. The doctor reported no restrictions to daily living activities as a result of the Appellant's impairments.

In the AR the doctor noted impacts to the following aspects of cognitive and emotional functioning: major impact to emotion and to insight and judgment; moderate impact to attention/concentration, to executive and to motivation; and minimal impact to bodily function, to consciousness, to impulse control, and to memory. The doctor added that the Appellant suffers from depressed mood and diminished interest or pleasure in all or almost all activities most of the day nearly every day.

With respect to the Appellant's ability to manage daily living activities the doctor reported that the Appellant is independent in all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. He wrote that when the Appellant is under the influence of drugs there is a safety issue. The doctor provided no information about the Appellant's need for assistance with aspects of social functioning. For assistance provided by others the doctor indicated that friends help the Appellant and he wrote that she is receiving very little support from her family. The doctor also indicated no assistance is provided by assistive devices or assistance animals.

In her request for reconsideration the Appellant wrote that she feels the doctor did not quite understand her problems because there is not enough time to talk and she has trouble expressing herself in the way she really feels. She thought that if she could have been in the right mind set the information would be different. The Appellant indicated that she is still in rapid detox from different drugs and her mind is not stable. She is unable to relate to communicate with or interact with others effectively. She still has trouble making the right decisions. The Appellant also wrote that her depression can cause her not to even care about personal hygiene for days. At times she can't even

walk down the street. The Appellant stated that sometimes for 6-7 months she is impacted by mental illness, suicide is often on her mind and she needs time for therapy. The Appellant also provided other information about her mental health conditions and wrote that she worries about living on the streets because of lack of funds.

At the hearing the Appellant described her life from about the age of 15, her past addictions and how her life is starting to improve. She said that she is feeling slightly better now after changing medications and doing self-treatment over the past 3 years. She is renting a place in a rural area and she is now trying to do her own housekeeping and laundry, and sometimes she offers to do those tasks for her landlord. She said she can now go out of the house, is starting to feel better about herself and is taking care of personal hygiene. In the past she would not shower or bathe, clean her teeth or change her clothes for weeks, and she would not answer the phone and or go out of the house. The Appellant also said that she wants and needs more time to get better. However, doing daily living activities is still very cumbersome and some days she can't get off the chair. She stated that her new drugs are taking a long time to become effective and the side effects are devastating.

The Panel finds that the Appellant's testimony is related to the information about how the Appellant's impairments restrict her ability to perform daily living activities which the Ministry had when it made its reconsideration decision. Therefore the Panel admits the testimony as being in support of the evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the Ministry indicated that its reconsideration decision was based on the information it had about the Appellant's ability to manage daily living activities and the help she needed with them.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is ineligible for PWD designation because she did not meet all the requirements in section 2(2) of the EAPWDA, and specifically that in the opinion of a prescribed professional her severe impairment does not directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods; and, also that in the opinion of a prescribed professional, as a result of the restrictions, she does not require help to perform those activities. The Ministry determined that she met the other criteria in EAPWDA section 2(2) as set out below.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:

2(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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the following sections of the EAPWDR:

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 Panel will consider each party's position regarding the reasonableness of the Ministry's reconsideration decision under the applicable PWD criteria at issue in this appeal.

### *Restrictions to Daily Living Activities*

In its reconsideration decision the Ministry referred to the doctor's reports and noted that the doctor indicated that the Appellant is able to independently complete all of her daily living activities without assistance from another person. The doctor wrote that when the Appellant is under the influence of drugs there is a safety issue; however, the Ministry noted that the doctor did not describe the frequency and duration of the Appellant's drug use or its accompanying safety issues. Therefore based on the evidence, the Ministry determined that the Appellant's impairment does not directly and significantly restrict her ability to perform daily living activities.

The Appellant submitted that she still finds daily living activities to be cumbersome, sometimes she is even unable to get off the chair. She did acknowledge that she is starting to try to do housework, laundry and to take care of her personal hygiene. The Appellant also submitted that the doctor did not quite understand her problems because there was not enough time to express herself and she has trouble expressing herself the way she really feels.

The Panel notes that section 2(2)(b) of the EAPWDA requires the opinion of a prescribed professional to meet the requirements in section 2(2)(b)(i) and (ii). In this case the Ministry did consider the evidence from the prescribed professional, the Appellant's doctor. As the Ministry noted, the doctor reported that the Appellant is independent in all daily living activities and the only comment from the doctor was about safety risks when the Appellant is under the influence of drugs, but the doctor provided no details about the frequency or severity of such risks. Therefore the Panel finds that, based on the evidence, the Ministry reasonably determined that the Appellant's severe impairment does not directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods.

#### *Assistance with Daily Living Activities*

The Ministry noted that the doctor indicated that the Appellant does not require any prostheses or aids, or the services of an assistance animal. Also because the Ministry concluded that the Appellant's daily living activities are not significantly restricted by a severe physical or mental impairment it determined that the Appellant did not require significant help from other persons.

The Appellant provided no information about any help she receives or needs with daily living activities.

The Panel finds that the Ministry did review the doctor's reports which indicated no need for any assistive aids or an assistance animal. Although the doctor reported that the Appellant receives help from friends and that she receives little assistance from her family, the doctor did not describe the type or extent of any help the Appellant receives. Also the Ministry reasonably concluded that the Appellant did not require significant help from other persons because her daily living activities are not significantly restricted by a severe impairment. Therefore, the Panel finds that, based on the evidence, the Ministry reasonably determined that the Appellant did not meet the requirements of section 2(2)(a)(ii) of the EAPWDA.

The Panel finds that, based on the whole of the evidence, the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore the Panel confirms that decision.