

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 2, 2012 which found that the appellant did not meet two 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 meets the age requirement, and has severe physical and mental impairments that, in the opinion of a medical practitioner, are likely to continue for at least two years. The ministry was not, however, 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. The ministry found that there was insufficient evidence to establish that the appellant, in the opinion of a prescribed professional, requires help to perform DLAs.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), s. 2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), s. 2

PART E – Summary of Facts

The evidence before the minister included the following:

- The appellant's PWD application dated October 28, 2011;
- A Physician Report completed by the appellant's general practitioner Dr. K;
- An Assessor Report, also completed by Dr. K;
- A Persons with Disability Decision Summary dated December 12, 2011; and
- A five-page self-assessment from the appellant consisting primarily of a checklist of functional aspects of DLAs.

In her PWD application the appellant described her disabilities as severe depression with anxiety disorder, major headaches, gout, high blood pressure, diabetes, enlarged uterus, fibrous tumors, pain throughout her body, and dyslexia. Her depression and anxiety make it extremely hard to get out of bed or to think clearly. She is not able to clean the house or to take care of personal hygiene. Her medication makes it hard to be around people, and she has headaches every day which require her to be alone in a quiet dark room until medicine helps with sensitivity. Joint pain from gout makes it difficult to hold a cup, fork, knife or to brush her teeth. She cannot do chores such as housework without help from someone else. She is weak and tired, and because of dyslexia needs help from others to read, understand, and complete forms and documents. She struggles daily to communicate with others and daily bathing, dressing, and eating are difficult. Sometimes concern for her three children is all that keeps her going. Lifting five pounds is her limit before becoming tired, and she is exhausted and in pain after walking a couple of blocks. She gets help for planning, paying bills, and budgeting because she cannot concentrate. Interruption in plans and routines causes her anxiety and she gives up. The appellant indicated that she needed help from her family support worker to complete the application.

In the Physician Report Dr. K diagnosed severe major depression, migraines, diabetes, and fibromyalgia. He also indicated the appellant has periodic pain and gout, that she can walk 2 to 4 blocks unaided on a flat surface, can climb 2 to 5 steps, can lift 5 to 15 pounds, that he didn't know how long the appellant can remain seated, and that there are no difficulties with communication. At the time of the Physician Report the appellant had been Dr. K's patient for over 2 years and he had seen the appellant 11 or more times over the preceding 12 months. Dr. K observed that despite medication and psychotherapy, the appellant is managing her activities with considerable difficulty and they are affecting her social and domestic life. He also indicated that the appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform DLAs.

In the Assessor Report, Dr. K indicated that the appellant's ability to communicate is satisfactory in all respects. All six categories of mobility and physical ability (walking indoors and outdoors, climbing stairs, standing, lifting and carrying/holding) were described as taking more than twice as long as typical because of the appellant's fibromyalgia. Dr. K indicated the appellant's disabilities have no impact on 10 of 14 categories of cognitive and emotional functioning, minimal impact on attention/concentration and insight/judgement, and major impact on emotion and executive (planning, organizing, problem-solving) functions. If impacts are episodic or vary over time, the physician is requested to explain further in the comment section. In the comment section Dr. K wrote that "She is having severe major depression, with low mood, decreased interest, decreased concentration, poor sleep etc."

The appellant is described as independent in 6 of 8 personal care functions. In the 2 remaining personal care functions (transfers in/out of bed, and transfers on/off the chair) Dr. K observed that the appellant takes significantly longer (twice typical) to do these things.

The two basic housekeeping functions take twice as long to perform.

The appellant is described as independent in 3 of 5 shopping categories: reading prices and labels, making appropriate choices, and paying for purchases. She takes twice as long as typical to go to and from stores and carrying purchases home.

Dr. K indicated the appellant is independent with respect to paying rent and bills, medications, and transportation. With respect to meals, she is independent in meal planning, but takes twice as long as typical in food preparation, cooking and safe storage of food.

Regarding social functioning, Dr. K reported the appellant as requiring periodic support/supervision with respect to all 5 categories: appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to deal appropriately with unexpected demands, and able to secure assistance from others. He described the appellant as functioning marginally with both her immediate social network and extended social network.

When asked to describe the support/supervision the appellant requires which would help to maintain her in the community, Dr. K wrote that "She needs financial assistance to take care of herself and her children." Dr. K indicated "N/A" [not applicable] with respect to assistance provided by other people, assistance provided through the use of assistive devices, and assistance provided by assistance animals. Under Additional Information, Dr. K indicated that the appellant takes periodically longer to carry out her DLAs, and that she also has diabetes with diet control, pelvic pain and gout.

In her self-assessment, the appellant says she receives help from friends and family for carrying items over 10 lbs., reminders for appointments, vacuuming and sweeping, reading letters, and taking down information over the phone. She advises she requires frequent rest periods during and between tasks for 10-15 minute periods, and more frequently during vacuuming and sweeping. In the self-assessment check list the appellant indicates the following restrictions on DLAs:

- Managing money and paying bills – restricted in understanding bills and budgeting.
- Shopping – restricted in loading/unloading the shopping cart and carrying groceries into the house.
- Transportation – restricted in understanding bus schedules, recognizing her stop, riding without becoming scared, anxious or overwhelmed.
- Housework – restrictions cleaning the bathtub, making beds, washing dishes, vacuuming or sweeping floors, washing floors, carrying laundry, and remembering or having the energy/motivation to keep the house clean. Standing for long periods or bending over cause back and neck pain.
- Moving around in the home – restricted in going up or down stairs, getting in and out of chairs, getting into bed and out of bed, bending to pick things off the floor, kneeling and getting up from kneeling position. Often pain in joints.

- Moving around outside the home – restrictions in walking very far, going up or down stairs or ramps, going out without being anxious or scared.
- Personal hygiene – restricted from getting in and out of bath tub (needs a grab bar), reaching out to wash body all over, brushing hair, remembering or having the energy/motivation to bathe every day, remembering or having the energy/motivation to brush teeth and hair every day. Needs a reason to get out of bed/not able to control bladder.
- Taking medications – restrictions in taking right amount, remembering to take them, remembering to fill prescriptions, and in getting prescriptions filled.
- Mental and emotional skills – restrictions in 11 of 12 categories except “controlling irrational (unreasonable) impulses. The appellant reports “have pain in head always”.
- Social skills – restricted in 6 of 6 categories.
- Communication – restricted in 7 of 7 categories. The appellant reports “over all have people understand me”.

At the hearing before this panel, the appellant advised that she has a hard time expressing herself and that she hasn't felt well for the last seven years. She has been getting informal help from her sister but decided she needs more so she went to Dr. K. The appellant receives help with DLAs from her three children, but still she struggles every day and is depressed. She has become increasingly depressed over the past five years and that was a major factor in the recent breakdown of her marriage. The depression interrupts her daily chores, and she often wakes up crying in the night. Her headaches make it difficult to be around people, walking makes her short of breath, and she has extreme pains in her stomach.

On questioning by the panel as to whether she had explained to Dr. K how long her restrictions to DLAs last and who helps her during those times, the appellant responded that she did explain those things to Dr. K and to other doctors as well, but she has a hard time getting them to understand. She added that she was scheduled for a hysterectomy in 2006, but she had to attend her father's funeral instead so the surgery was postponed. The appellant is seeing a specialist now for the pains in her abdomen and has an appointment for an examination in April.

The appellant's son attended as her representative and observed that the appellant often has trouble holding onto things because of her gout. He feels that without him she wouldn't have the mental strength to keep going.

In response to a question from the panel as to examples of help that she receives for cooking, she explained that she will get pain in her hands and have to stop chopping vegetables. If her son is home he can finish for her, or if he's not there it just doesn't get done. In response to a question regarding help that she gets for moving around inside the house, the appellant explained that she has a hard time getting up from the floor. Her son or her daughter help her up, or she leans on a table. Sometimes she struggles to get into the bathtub because of pain in her back or hip. It is hard to bend over and the pain in her stomach is constant.

The panel assessed the oral evidence of the appellant and her son and admitted it as being in support of the information and records that were before the minister when the decision being appealed was made, in accordance with section 22(4) of the *Employment and Assistance Act*.

The ministry representative substantially reiterated the findings of the ministry's reconsideration

APPEAL #

decision.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's decision to refuse to designate the appellant as a person with disabilities, thereby denying disability benefits. The ministry was not satisfied that the appellant's DLAs are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods, and also found that there was insufficient evidence to establish that the appellant, in the opinion of a prescribed professional, requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLAs.

The relevant legislation is as follows:

Section 2 of the EAPWDA:

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.*

Section 2 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.*

With respect to restrictions in DLAs, the ministry found that the principal evidence of restrictions in DLAs in the PR and AR is that certain activities take twice as long to perform, and held that taking two times longer to complete these activities does not constitute significant restrictions. The ministry also found that the frequency and duration of periodic impacts on social functioning were undefined. In the ministry's view the physician's observations of marginal functioning with immediate and extended social networks didn't constitute a direct or significant restriction.

The evidence of Dr. K is that the appellant is independent in most DLAs while others are impacted only in taking up to twice the typical time to perform them. He has indicated minimal or no impact on 12 of 14 categories of cognitive and emotional functioning, with major impacts to emotion and motivation. The panel understands the appellant's evidence that her ability to perform DLAs is

frequently impacted by pain and by her depression, but the legislation requires the minister to be satisfied on the basis of the opinion of a prescribed professional. Based on the evidence of Dr. K, the panel finds that the ministry's conclusion that the legislative criterion with respect to direct and significant restrictions on DLAs either continuously or for extended periods not being satisfied was reasonable.

With respect to the legislative criterion regarding a prescribed professional's opinion on the requirement for help in performing DLAs, the ministry's only expressed rationale for finding that this criterion was not satisfied was that in the section of the AR where the prescribed professional is asked to describe the support/supervision required by the appellant, Dr. K has indicated that she needs financial assistance. The ministry stated that the PWD application is not intended to assess financial status.

The appellant's evidence from her self-assessment is that she receives help from friends and family for carrying items over 10 lbs., reminders for appointments, vacuuming and sweeping, reading letters, and taking down information over the phone. She advises she requires frequent rest periods during and between tasks for 10-15 minute periods, and more frequently during vacuuming and sweeping. She indicated in her oral testimony that she periodically needs help with meal preparation and with getting up from the floor.

In the Social Functioning section of the AR, Dr. K has indicated that the appellant requires periodic support/supervision, but though space is provided for the prescribed professional to explain or describe the degree and duration of support/supervision required, there is no supporting information.

Based on the legislative requirement for this criterion to be supported by the opinion of a prescribed professional, and the lack of supporting evidence of the need for "significant help or supervision" provided in the PR and AR, the panel finds that the ministry's decision that the appellant does not require help as defined in the legislation is reasonable.

In accordance with section 24 of the *Employment and Assistance Act*, the panel confirms the ministry's decision as being reasonably supported by the evidence.