

## PART C – Decision under Appeal

The decision being appealed is the Ministry's January 31, 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 the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods: and,
- (ii) as a result of those restrictions she requires help to perform those activities.

The Ministry did determine that the Appellant satisfied the other criteria, that: she has reached 18 years of age; 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

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's November 7, 2011 PWD application in which she described her disability as limited use of her hands due to arthritis. She also wrote that she suffers continuously and more so when she uses her hands.
2. Physician's Report (PR) and Assessor's Report (AR) both completed on November 7, 2011 by the same doctor who indicated the Appellant has been his patient since 2004 and he has seen her 2-10 times in the 12 months preceding the reports.
3. Appellant's request for reconsideration in which she wrote that her arthritis is progressing rapidly. She now has trouble with her knees and shoulders.

In the PR the doctor described the Appellant's diagnoses as osteoarthritis and he described the severity as marked osteoarthritis of both hands, chronic pain, swelling and decreased range of motion and function. He also wrote that the Appellant has increased pain with the use of her hands and requires an inordinate amount of rest time to settle the symptoms to baseline. X-rays show severe osteoarthritis of her right hand (dominant hand). The doctor also wrote that this is a permanent disorder, with progressive decline expected with increased pain and loss of function. He indicated that the Appellant does not require prostheses or aids for her impairment. For functional skills the doctor indicated that the Appellant can walk less than 1 block unaided on a flat surface, can climb 5+ steps unaided, can lift 2-7 kg., and can remain seated for 2-3 hours. He also indicated significant deficits with cognitive and emotional function only in emotional disturbance, and he added "depression disorder on long term treatment with medication".

In the AR the doctor reported that the Appellant is independent in the following aspects of mobility and physical ability: walking indoors and outdoors, climbing stairs and standing. She requires periodic assistance with lifting, carrying and holding. The doctor added these are limited to 2-7 kg and "repetitive activity exacerbates pain". The doctor noted no impairment to the Appellant's cognitive and emotional functioning. 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, paying rent and bills, medications and transportation. For basic housekeeping, he indicated that she is independent with laundry, but requires periodic assistance with basic housekeeping adding "at times needs assistance due to pain".

The doctor also reported that the Appellant is independent in most aspects of shopping (going to and from stores, reading prices and details, making appropriate choices, paying for purchases) but she needs periodic assistance with carrying purchases home. He added that the Appellant is not able to carry more than 2-7 kg. The Appellant is independent in 3 aspects of meal preparation (meal planning, food preparation, safe storage of food) but she needs periodic assistance with cooking. The doctor added "difficulty peeling potatoes, lifting heavy dishes and pots". He provided no information about impacts to social functioning, indicating this section of the report is "n/a" or not applicable. As for any help the Appellant gets the doctor indicated that she receives help from family and friends, but he provided no details. He wrote "n/a" regarding any assistance the Appellant needs and regarding any assistive devices used by the Appellant. The doctor also noted that the Appellant does not use an assistance animal. The doctor did add that the Appellant also has osteoarthritis of her lower back making carrying and lifting difficult.

For this appeal, the Appellant submitted a letter dated March 5, 2012 from the same doctor. He wrote that the Appellant suffers from osteoarthritis and because of her diabetes and hypertension she is unable to use certain drugs for pain relief and symptom control. He wrote that she has used Tylenol arthritis at maximal doses with only minimal improvement of her symptoms. The doctor also stated that the Appellant's pain is aggravated with repetitive activities especially with her hands and back. The Ministry did not object to the admissibility of this letter.

The Panel finds that the information in this letter is related to information about the Appellant's impairments which the Ministry had when it made its reconsideration decision. Therefore the Panel admits it as being in support of the information that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the Appellant' friend, who also acted as her representative, described how she has watched the Appellant's pain and physical conditions progressively get worse, especially in the last 2 years. The friend, who has known the Appellant for more than 12 years, stated that the Appellant now has difficulty with most activities such as vacuuming, washing dishes, dusting, walking, climbing stairs, meal preparation, filling out forms and driving. Also, the Appellant has started to use a cane. She has trouble going up and down stairs so she now sleeps on a couch on the main floor of her house. The friend also said that about 2-3 times a week she visits the Appellant to clean, dust, wash dishes, clean the bathroom, make up the bed and make dinner. She even helps the Appellant bathe. About once a week the friend prepares frozen meals and about twice a month she takes the Appellant shopping. The Appellant's friend also stated that the Appellant has days when these chores are no problem.

The Appellant said her conditions have become much worse since the doctor completed his reports in November 2011. As an example she described a visit to the hospital in February 2012 because her hip gave out when she was walking and she has started using a cane. The Appellant also said she cannot take certain medications and so she is in pain 24/7. The Appellant stated that she is swollen and disabled, and she never has a good day.

The Panel finds that the testimony from the Appellant and her friend relate to information about her impairments which the Ministry had when it made its reconsideration decision. Therefore the Panel admits that testimony as being in support of the information that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the Ministry submitted that it made its reconsideration decision on the basis of the information it had at that time. The Ministry specifically noted that the information from the doctor about the Appellant's ability to manage daily living activities and her need for help did not satisfy the legislative criteria for PWD designation which require a prescribed professional's opinion.

## 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: she does not have a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and, 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 2 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.

### *Severe Impairments*

In its reconsideration decision the Ministry indicated that it reviewed the Appellant's self-report and the doctor's reports. The Ministry noted the Appellant's description of her limited use of her hands and suffering continuously due to arthritis, and also the doctor's description of the Appellant's functional skills and mobility. The Ministry determined that the Appellant is able to perform all aspects of mobility independently and there was no information about the frequency and duration of the periodic assistance needed with lifting, and carrying and holding. Therefore the Ministry determined that the information provided did not indicate a severe physical impairment.

The Appellant's position is that her physical impairments are getting progressively worse, even from November 2011 to March 2012. She is in pain 24/7. She has started to use a cane because of difficulty with walking. She also has difficulty with stairs and needs help with most daily activities.

The Panel finds that the Ministry did consider both the Appellant's self-report and the doctor's reports about the severity of the Appellant's physical impairment, including restrictions in some functional skills and the need for periodic assistance with 2 out of 6 aspects of mobility and physical ability. The doctor also described the Appellant's disorder as a progressive decline expected with increased pain and loss of function which is consistent with the Appellant's evidence. However, the doctor also indicated that the Appellant is independent in all aspects of mobility, that she does not require an aid for her impairment and only added that repetitive activity exacerbates pain. Therefore the Panel finds that based on the evidence the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

In its reconsideration decision the Ministry noted that the doctor did not diagnose a mental condition and he did not note any impacts affecting her emotional and cognitive functioning. He did indicate she had a significant deficit to emotional disturbance and he also wrote that the Appellant is on long term treatment for depression disorder. Based on the information provided the Ministry determined that a severe mental impairment was not established.

The Appellant provided no evidence of and made no submissions about any mental impairment.

The Panel finds that there is no evidence of a mental impairment, except for the doctor's indication of a deficit in emotional disturbance and treatment for depression with no other details about these conditions. Therefore the Panel finds that based on the evidence the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

#### *Restrictions to Daily Living Activities*

The Ministry referred to the doctor's report that the Appellant requires periodic assistance with basic housekeeping, carrying purchases home and cooking, and that the Appellant can lift up to 15 lbs, but the doctor did not define the frequency and duration of such periodic assistance. The Ministry also noted that the Appellant can perform 25/28 daily living activities independently. Therefore the Ministry determined that, because the Appellant can perform the majority of her daily living activities independently with no assistance from another person or assistive device, her impairments do not directly and significantly restrict her ability to perform her daily living activities either continuously or periodically for extended periods of time.

The Appellant submitted evidence about the difficulties she has with mobility, with housekeeping, with personal care and preparing meals, and about the help she receives about 2-3 times a week. The Appellant also provided evidence from her doctor that her pain is aggravated with repetitive activities especially with her hands and back.

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 prescribed professional is the Appellant's doctor who completed the PR and the AR. The Panel finds that the Ministry did consider the evidence from this doctor who reported that the Appellant is periodically restricted in 3 aspects of daily living,

but the doctor did not provide any details about the extent or frequency of those restrictions. The doctor also reported that the Appellant is independent in all other aspects of daily living. Therefore the Panel finds that based on the doctor's evidence the Ministry reasonably determined that in the opinion of a prescribed professional the Appellant's impairments do not directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods.

*Assistance with Daily Living Activities*

In its reconsideration decision the Ministry noted that in the AR the doctor wrote "n/a" in the section where the assessor is asked to describe what assistance would be necessary. The Ministry determined that the Appellant did not meet this legislative requirement.

The Appellant provided evidence about the help she needs and the help she receives from her friend. She also has started to use a cane.

The opinion of the doctor is also required to meet this requirement for PWD designation. In the AR the doctor indicated that the Appellant has help with her daily living activities from family and friends, but he provided no details about the type or extent of help the Appellant receives. He also wrote "n/a" for the help she requires, and indicated that she is not using an assistive device or an assistance animal. Therefore based on the doctor's evidence the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements in section 2(2)(b)(ii) of the EAPWDA cited above.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments. Therefore the Panel confirms that decision.