

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 7, 2012 which found that the appellant did not meet three 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 met the age requirement and that her impairment is likely to continue for at least two years. However, the ministry was not satisfied that the evidence establishes that she has a severe physical or mental impairment. The ministry was also 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 periods. As the ministry found that the appellant is not significantly restricted with DLA, it could not be determined that she requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal 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 time of the reconsideration decision consisted of:

- 1) Person With Disabilities (PWD) Application: applicant information dated December 12, 2011, physician report dated December 13, 2011, and assessor report dated December 8, 2011;
- 2) Letter dated December 21, 2011 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary;
- 3) Information Sheet for Splint Wear and Care which states in part that the purpose of the splint is to increase functional use of hand; and,
- 4) Request for Reconsideration- Reasons.

Neither the ministry nor the appellant attended the hearing. After confirming that the ministry and the appellant were both notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In her Notice of Appeal, the appellant states that as hard as it is to admit, she is highly dependent on another person on a daily basis even just to maintain the most basic of an existence. The appellant states that she recently became self-aware of her reality with respect to both her physical and mental functioning. The appellant states that she is a substance abuser and only recently got sober due to a long hospital stay. The appellant states that she realizes she needs help and she is willing to work hard to help herself. In her Request for Reconsideration, the appellant states that in the summer of 2010 she contracted flesh eating disease in her left shoulder, that she had 2 operations and 6 days in a coma. The appellant states that she was lucky not to lose her whole arm, they had to remove almost all of her shoulder muscle and tissue down to her elbow and she spent 2 months in hospital. The appellant states that in the last two years she has been plagued by several life threatening infections, been hospitalized 4 times for approximately 2 months each time, undergone 2 skin grafts, and 7 surgeries. The appellant states that as a result of all this, she was losing the use of her left hand as 3 of her fingers are paralyzed. The appellant states that this impairment is continuous and will not improve and will get worse over time. The appellant states that her left arm is essentially useless and she has to wear a splint periodically to keep the hand from being permanently closed and the fingers curled and seizing in that position.

In her self-report, the appellant adds that she suffers from partial paralysis in her left hand, 3 fingers do not work at all and the others are weak, as are her wrist and arm. The appellant states that this causes her great difficulty with simple things like tying shoes or doing up buttons. The appellant states that her job skills required that she run a computer and she can no longer type at 60 words per minute like she used to. The appellant states her disability has had a negative impact in all areas of her life, both business and personal. The appellant states that due to the impairment in her left hand, her left arm gets less use and it has weakened and is visually half the size of her right arm.

The physician who completed the physician report confirms that she has been his patient for 3 weeks and he has seen the appellant 2 to 10 times within that period. The physician diagnoses the appellant with left hand paralysis digits 3-5 secondary to C6/7 discitis, MRSA sepsis with C1, C6/7 discitis, chronic Hepatitis C and chronic neuropathic pain secondary to C6/7 radiculopathy. The physician adds a note that "...nerve regeneration is likely, max regeneration is 1 mm/day so may be 3 years before she recovers." The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, it is unknown how much weight she can lift, and she has no limitation with remaining seated. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are significant deficits with cognitive and emotional function in the areas of executive and impulse control. The physician does not respond to the question whether the impairment directly restricts the appellant's ability to perform daily living activities (DLA), but indicates that the appellant is restricted in the area of daily shopping, without providing an assessment as to whether this restriction is on a continuous or a periodic basis. The physician reports that it is unknown whether the appellant is restricted in the areas of management of medications, use of transportation, management of finances, or social functioning. The physician reports that the appellant is not restricted with personal self care, meal preparation, basic housework, mobility inside the

home or mobility outside the home. The physician notes that he has only seen the appellant in hospital.

The social worker who completed the assessor report confirms that he has known the appellant one month and has seen her 2 to 10 times in that period. The assessor reports that the appellant's ability to communicate is good in all areas. The assessor indicates that the appellant is independent with walking indoors and walking outdoors, climbing stairs and standing ("cannot stand for prolonged time"). The assessor indicates that the appellant requires continuous assistance with lifting and carrying and holding, with an explanation that the appellant "...cannot use her left arm for lifting." The assessor indicates that the appellant requires periodic assistance from another person with one task of personal care (dressing- "a little bit of assistance") while being independent in the remaining tasks, including grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. The assessor indicates that the appellant is independent with laundry and basic housekeeping. The assessor reports that the appellant is independent with most of the tasks of shopping while requiring periodic assistance from another person with carrying purchases home, with the note that assistance is needed for larger purchases. Further, the assessor reports that the appellant is independent with all tasks of managing meals, including meal planning, food preparation, cooking, and safe storage of food. The assessor indicates that the appellant is also independent with all tasks of paying rent and bills and managing medications, while requiring continuous assistance from another person with one task of managing transportation (using public transit- "...not able to use public transportation while carrying large purchases such as groceries, etc.").

In terms of social functioning, the assessor has assessed the appellant as independent in all aspects, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others, with good functioning in her extended social networks. In the assessor report, the assessor has indicated that there are no major impact to cognitive and emotional functioning, a moderate impact in motivation, and minimal impacts to bodily functions, emotion, and motor activity with no impacts in the remaining 10 areas, and no other comments provided.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a person with disabilities (PWD) as she does not have a severe mental or physical impairment and that her daily living activities (DLA) are not, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods and that, as a result of those restrictions, it could not be determined that the appellant requires the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA.

The criteria for being designated as a person with disabilities (PWD) are set out in Section 2 of the EAPWDA. The minister may designate a person as a PWD when the following requirements are met. Pursuant to Section 2(2), the person must have reached the age of 18 and the minister must be satisfied that the person has a severe mental or physical impairment. Under Section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. The impairment must also, in the opinion of a prescribed professional, directly and significantly restrict the person's ability to perform DLA either continuously or periodically for extended periods, as set out in Section 2(2)(b)(i). As a result of those restrictions, the person must require help to perform DLA, pursuant to Section 2(2)(b)(ii). Section 2(3)(b) sets out that a person requires help in relation to DLA if, in order to perform it, the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as: prepare own meals, manage personal finances, shop for personal needs, use public or personal transportation facilities, perform housework to maintain the person's place of residence in acceptable sanitary condition, move about indoors and outdoors, perform personal hygiene and self care, and manage personal medication. In relation to a person who has a severe mental impairment, there are two additional activities, namely: making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively.

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry argues that in terms of physical functioning, the physician indicates the appellant is able to walk 4 or more blocks and to climb 5 or more steps unaided, and it is unknown how much the appellant can lift or how long she can remain seated. The ministry argues that the functional skill limitations described by the physician and the social worker are more in keeping with a moderate degree of impairment even though the appellant needs assistance lifting, carrying and holding, carrying purchases home and using public transportation due to her inability to use her left hand. The appellant argues that the evidence establishes that she suffers from a severe physical impairment as a result of left hand paralysis digits 3-5 secondary to C6/7 discitis, MRSA sepsis with C1, C6/7 discitis, chronic Hepatitis C and chronic neuropathic pain secondary to C6/7 radiculopathy. The appellant argues that she contracted a serious, flesh eating, disease in her left shoulder, that she was lucky not to lose her whole arm but almost all of her shoulder muscle and tissue down to her elbow was removed and she has lost the use of her left hand as 3 of her fingers are paralyzed. The appellant argues that this impairment is continuous and will not improve and will get worse over time, and that her left arm is essentially useless and she has to wear a splint periodically to keep the hand from being permanently closed and the fingers curled and seizing in that position.

The panel finds that the evidence of a medical practitioner confirms diagnoses of left hand paralysis digits 3-5 secondary to C6/7 discitis, MRSA sepsis with C1, C6/7 discitis, chronic Hepatitis C and chronic neuropathic pain secondary to C6/7 radiculopathy. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, it is unknown how much weight she can lift, and she has no limitation with remaining seated. The social worker who completed the assessor report indicates that the appellant is independent with walking indoors and walking outdoors, climbing stairs and standing ("cannot stand for prolonged time"). The assessor indicates that the appellant requires continuous

assistance with lifting and carrying and holding, with an explanation that the appellant "...cannot use her left arm for lifting." The appellant states that she contracted flesh eating disease in her left shoulder, that she was lucky not to lose her whole arm, they had to remove almost all of her shoulder muscle and tissue down to her elbow. The appellant states that as a result of all this, she has lost the use of her left hand as 3 of her fingers are paralyzed, and that this impairment is continuous and will not improve. However, the physician adds a note that "...nerve regeneration is likely, max regeneration is 1 mm/day so may be 3 years before she recovers." As well, the panel finds that the ministry reasonably concluded that the functional skill limitations described by the physician and the assessor are more in keeping with a moderate degree of impairment, as the appellant's mobility is good but her lifting is currently limited to her right arm. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician indicated that the appellant has significant deficits with cognitive and emotional functioning in the areas of executive and impulse control and the assessor indicated a moderate impact to daily functioning in motivation and minimal impacts to bodily function, emotion and motor activity, and no impact to the remaining areas. The ministry argues that these limitations indicate the appellant is independently able to make appropriate social decisions, to develop and maintain relationships and interact appropriately with others, and to make decisions about personal activities, care and finances. The appellant argues that the evidence establishes that she suffers from a severe mental impairment as a result of her substance abuse, and that she recently became self-aware of her reality with respect to both her physical and mental functioning, since getting sober due to a long hospital stay. The appellant argues that she needs help and she is willing to work hard to help herself.

The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a mental disorder. The physician indicates that the appellant has no difficulties with communication and the assessor reports that the appellant's ability to communicate is good in all areas.. However, the physician does report that there are significant deficits with cognitive and emotional function in 2 out of 11 areas, namely executive and impulse control. The physician reports that it is unknown whether the appellant is restricted in social functioning and notes "...have only seen patient in hospital." The assessor indicates that the appellant is independent in all areas of social functioning, including making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others, with no further comments provided. The assessor indicates no major impacts to cognitive and emotional functioning, with a moderate impact to motivation and minimal impacts to bodily functions, emotion and motor activity and no impacts in the remaining 10 areas. The panel finds that the ministry reasonably determined that the appellant is independently able to make decisions about personal activities, care or finances, and relate to, communicate or interact with others effectively. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry's position is that the evidence does not establish that the appellant's severe impairment directly and significantly restricts her DLA continuously or periodically for extended periods. The ministry argues that the physician indicated the appellant is restricted with daily shopping with the explanation "assistance required" but he does not indicate how often the appellant needs assistance. The ministry points out that the physician reported that it is unknown if the appellant's DLA are restricted with management of medications, use of transportation, management of finances, and social functioning as he only saw the appellant in hospital and that the remaining DLA are not restricted. The ministry argues that the assessor indicated that the appellant is independent with most of her DLA and all aspects of social functioning. The appellant argues that the evidence establishes that the prescribed professional has provided sufficient evidence that the appellant's severe physical and mental impairments directly and significantly restrict her ability to perform DLA.

Regarding the appellant's ability to manage DLA, the panel has relied on the evidence of the physician

provided in the physician report and that of the social worker provided in the assessor report. In terms of preparing her own meals, the physician indicates that the appellant is not restricted in this area and the social worker assesses the appellant as independent with all tasks, including meal planning, food preparation, cooking and safe storage of food. For managing personal finances, the physician indicates that it is unknown if the appellant is restricted and the assessor indicates that the appellant is independent with all tasks. In terms of shopping for her personal needs, the physician reports that the appellant is restricted without specifying whether this is on a continuous or periodic basis, and the assessor indicates that the appellant is independent with most tasks of shopping (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases) while requiring periodic assistance from another person with carrying purchases home with the comment "...assistance needed for larger purchases." The assessor also indicated that the appellant cannot use her left arm for lifting or for carrying and holding.

For use of public or personal transportation facilities, the physician indicates that it is unknown if the appellant is restricted in this DLA, and the assessor reports that the appellant is independent with getting in and out of a vehicle and using transit schedules and arranging transportation while requiring continuous assistance from another person with using public transit with the additional comment that the appellant is "...not able to use public transportation while carrying larger purchases such as groceries, etc.". For performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician indicates that the appellant is not restricted and the assessor indicates that the appellant is independent with doing basic housekeeping and laundry. With respect to moving about indoors and outdoors, the physician indicates that the appellant is not restricted with mobility inside or outside the home and the assessor confirms that the appellant is independent with walking indoors, walking outdoors, and climbing stairs.

With respect to performing personal hygiene and self care, the physician indicates that the appellant is not restricted and the assessor reports that the appellant is independent with almost all tasks of personal care with the exception of dressing ("a little bit of assistance"). The appellant states that 3 fingers on her left hand do not work at all and the others are weak, as are her wrist and arm, and that this causes her great difficulty with simple things like tying shoes or doing up buttons. The physician reports that it is unknown if the appellant is restricted with the DLA of management of medications, and the assessor indicates that the appellant is independent with all tasks of filling/refilling prescriptions, taking medications as directed, and safe handling and storage. For making decisions about personal activities, care or finances, and relating to, communicating or interacting with others effectively, the physician indicates that it is unknown if the appellant is restricted in social functioning, but the assessor indicates the appellant as independent with making appropriate social decisions, developing and maintaining relationships, interacting appropriately with others, dealing appropriately with unexpected demands and securing assistance from others.

Looking at the evidence as a whole, the panel finds that it demonstrates that the appellant experiences restrictions in use of her left arm, particularly with lifting and carrying and holding, which impacts 1 out of 5 tasks of shopping for larger purchases, and 1 of 3 tasks of using transportation with larger purchases, and 1 of 8 tasks of personal care (dressing). The panel finds that the evidence of the prescribed professionals consistently indicates that the appellant performs most of her DLA without restriction. Therefore, the panel finds that the ministry's determination that the evidence of a prescribed professional does not establish a direct and significant restriction on the appellant's ability to perform DLA either continuously or periodically for extended periods, as required by Section 2(2)(b)(i) of the EAPWDA, was reasonable.

In determining whether the ministry reasonably concluded that the appellant does not require the significant help or supervision of another person or the use of an assistive device, the panel relies on the information from the physician that the appellant lives alone and does not use an assistive device. As it has not been established that DLA are significantly restricted, the panel finds that the ministry's conclusion that the requirement for significant help or supervision of another person, an assistive device, or the services of an assistance animal to perform DLA, under Section 2(2)(b)(ii) of the EAPWDA, has not been met was reasonable.

APPEAL #

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.