

## 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 as set out in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. 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 has reached 18 years of age and that 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 PWD application with a self-report in which she described her disability as hands, heart and lungs. She wrote that she didn't have part of the assessor's report filled out because it seemed senseless to get someone who doesn't even know her to fill it out. She referred to the hospitals where she had many visits for additional records, including files about her hands.
2. Physician's Report (PR) and Assessor's Report (AR) both completed on September 17, 2011 by the same physician who indicated that the Appellant has been a patient for 2 years and he had seen the Appellant 2-10 times in the preceding 12 months.
3. Appellant's request for reconsideration with a self-report.

In the PR the doctor described the Appellant's diagnoses as chronic obstructive pulmonary disease (COPD), chronic liver disease (hepatitis C) and musculoskeletal osteoarthritis of the hands. The doctor wrote that the Appellant has shortness of breath due to COPD, low energy due to hepatitis C and difficulty with hand usage due to severe osteoarthritis. The combined effects of all the ailments make it difficult for her to perform her daily living activities. For functional skills, the doctor indicated that the Appellant can walk unaided on a flat surface for 2-4 blocks, can climb 5+ stairs unaided, can lift 5-15lbs, and can remain seated for 1-2 hours. The doctor also indicated no significant deficits with cognitive and emotional functioning.

The same doctor reported in the AR that the Appellant is independent walking indoors and outdoors, and standing. She needs periodic assistance with climbing stairs, lifting, and carrying and holding needing "help with longer distances or heavier loads". The doctor did not fill in the section for impacts on cognitive and emotional functioning or the sections regarding social functioning. For other daily living activities the doctor indicated that the Appellant is independent in all aspects of personal care, but dressing, grooming, bathing and feeding take significantly longer. She is also independent in all aspects of paying rent and bills, medications and transportation. The doctor noted that the Appellant needs periodic assistance with laundry and basic housekeeping which take significantly longer and he added she needs help with "heavier tasks". The Appellant is also independent in all aspects of shopping (reading prices and labels, making appropriate choices, paying for purchases). She needs periodic assistance and takes significantly longer with carrying purchases home and with going to and from stores. For meals the Appellant is independent with meal planning and safe storage of food. The doctor indicated that the Appellant needs periodic assistance with food preparation and cooking which both take significantly longer. He added that she needs help with knife movements and chopping. For help required the doctor wrote home worker for 1-2 days a week but he provided no information about the use of any assistive devices or assistance by an assistance animal. The doctor added comments at the end of the report which the Panel was unable to decipher. Also the doctor indicated that this report was based on an office interview with the Appellant, medical files, hospital records and his files.

In her request for reconsideration the Appellant wrote that she has arthritis that usually only very elderly people have. It took her many days to write this report because of her hands. In the last year she has been hospitalized for COPD and extremely high blood pressure. She also has heart problems. With the COPD she finds it hard to breath and even walking up a flight of stairs she is short of breath and weak.

The Appellant submitted a form completed on January 16, 2012 by the same doctor who completed the PR and the AR. In that form the doctor checked off the Appellant's medical conditions as COPD (experiences shortness of breath daily limiting her ability to complete daily living activities), chronic liver disease (experiences pain in her abdominal area and fatigue throughout the day; takes naps up to 2 hours a day), musculoskeletal disease –OA hands (experiences soreness, chronic pain, very limited strength, limited mobility of her hands), anxiety (experiences tension, frustration and mood swings), high blood pressure (experiences dizziness when bending over or standing up quickly) and hepatitis C (dehydrated, lack of energy and motivation in addition to fatigue). The doctor also checked off a section in the form that stated the Appellant is directly and significantly restricted in her ability to perform her daily living activities continuously as a result of the conditions noted.

The form also had a section for cognitive and emotional functioning and the doctor indicated major impact to motivation and moderate impact to emotion, insight and judgment, attention and concentration, executive and memory. The doctor did not make any notations for bodily function, consciousness, impulse control, motor activity, language, psychotic symptoms, other neuropsychological problems or other emotional or mental health problems. Part of this form had a section for specific daily living activities and boxes for the doctor to indicate if there are restrictions, if an assistive device is used and if the Appellant needs continuous assistance or periodic assistance. The type of restriction for each activity was already indicated on the form. The doctor checked the following sections of the form:

- Basic mobility – restricted to less than ten minutes; reports her legs give out and has frequent falls.
- Standing – restricted to less than ten minutes; legs give out frequently.
- Lifting, carrying and holding including shopping purchases – restricted from carrying more than 2 lbs; restricted by osteoarthritis in her hands.
- Basic housework – restricted from sweeping, vacuuming, mopping and doing dishes.
- Laundry – restricted from carrying items; lives in the garage and washer/dryer is nearby; periodic assistance and added "2-3 times a week, for 2 hours a day".
- Shopping, including making appropriate choices and paying for purchases – restricted from completing because restricted from carrying, lifting or grasping items.
- Meals including planning, preparation, cooking and safe storage of food – restricted from grabbing items off the stove, chopping, cutting and peeling, restricted from opening cans or lifting pots and pans.
- Filling/refilling prescriptions, taking medications as directed and safe handling and storage of medications – restricted from standing for more than 10 minutes. If there are line ups the Appellant leaves and returns later to complete.
- Using public transit and understanding transit schedules – Appellant reports afraid to use the bus, has phobia, restricted from holding on to the bars due to osteoarthritis in her hands.

Except for assistance with laundry the doctor indicated no periodic or continuous assistance for any of the other activities listed above. The doctor also did not indicate what this more recent information was based on.

In the written argument titled for reconsideration the Appellant's advocate referred to the PWD legislation, the medical evidence of the Appellant's impairment and the *Hudson* decision. The advocate submitted that the Ministry should broadly interpret the applicable legislation and use its

discretion to determine that the Appellant meets the PWD requirements.

For this appeal the Appellant submitted a written statement on March 8, 2012 about her circumstances, a written argument from her advocate and generic pharmacy information about the medications she takes. In her statement the Appellant wrote that the doctor left an important part of her medical history out and she feels it is one of the major parts of her disability. She wrote that over the years she has been taken to the hospital for anxiety attacks and she was diagnosed with a bad heart at 24. She was told her heart was aging at the rate of 25 years and her heart is about 30 years older than her age.

The Appellant wrote that in February 2011 she was taken to a hospital for her heart and after many tests she was put on medications. She enclosed pharmacy information about those medications. The Appellant also wrote that at that time she was diagnosed with COPD and her lungs are putting more stress on her heart. Also her hand condition is stressful on her heart. She went from being a very hyper individual to not being able to use her thumbs anymore. She wrote that people don't realize how important these fingers are in every hand movement, and adapting to this has been very hard physically and mentally. The Appellant indicated that this stress is very hard on her heart and she keeps having minor heart attacks when she's too stressed. This is a serious health issue for her.

The Appellant also stated that her financial future is very stressful, going from being able to go get a job to knowing that she will never work again. All this anxiety is very overwhelming and her health is weakening because she just can't cope with all these issues. She wrote that the health issues with her hands and not being able to use them is very, very physically and emotionally draining. When she does little things she gets dizzy and can barely breathe. She wrote that her current doctor has x-rays of her hands and there are hospital records of going by ambulance for her heart. She indicated that she takes her medication in the morning and it makes her very tired for the whole day. The Appellant wrote that these medications were not prescribed by her doctor and if there are problems she will have to go to the hospital. She stated that her body is much older than her age and she wishes she could work but she cannot physically work. Her conditions are not going to improve over time and everyday they get a little worse. She may have help with her mental issues, but for the physical things there is no cure.

The Appellant wrote that the questions in the PWD application do not refer to things she can't do with her hands. The physician was going by the standard questions in the form but the form does not list activities that she is unable to do. She wrote that she cannot use her thumbs and every time she uses her hands it is very painful. It is like sticking a big pin in her hand and the pain goes up her arms and they just don't work. She wrote that there is just no strength. Turning the key in a lock, doing the zippers on her jeans and on her hooded coats, and doing buttons up is hard. She cannot do anymore cooking, lifting pots and sweeping the floor. She also can't dial the numbers on her cell phone with her thumbs or first fingers, and has difficulty with holding a brush. She wrote that it is emotionally very hard to leave her financial future in the hands of people who don't know her, have never seen her and to try to explain how she was a very active hard working individual and now is never going to work again. Her disabilities are not curable.

The Appellant also wrote that her deterioration is progressing rapidly and the stress of these proceedings is very hard on her heart. She stated that she has a growth on her liver which is not

hepatitis C. The Appellant wrote that if she did not reside where she did she was not sure she could make it on her own. The people there shop for her, cook for her, drive her to places when they can, have been there when she needed an ambulance and help her with things she can't do with her hands anymore. She doesn't have to clean. An acquaintance drives her to appointments. She wrote that she needs these people to help her with her everyday living.

In the written argument for this appeal, the Appellant's advocate submitted that when all of the information and the *Hudson* decision are considered all the PWD criteria have been met by the Appellant. The advocate stated that additional information indicated that the Appellant is restricted in her basic mobility, her ability to stand, carry and lift items, and her ability to sweep, vacuum, mop and wash dishes. The advocate also referred to the physician's statement in the January 2012 report that the Appellant requires assistance 2-3 days a week for 2 hours a day and that she requires assistance to perform her daily living activities. Also, the advocate submitted that in the original PWD application the doctor confirmed that the Appellant needs assistance with climbing stairs, lifting, carrying and holding, laundry, housekeeping, going to and from the store, carrying purchases home, food preparation and cooking. The advocate also argued that the tribunal's role is to consider the evidence consistent with natural justice and fairness and the medical practitioner's opinion is that the Appellant does have significant restrictions and as a result requires continuous assistance. The advocate also asked that the tribunal interpret the definitions of "severity" and "significant" in a broad manner consistent with the purpose of social welfare legislation and that such legislation be liberally construed to advance the benevolent purpose of that legislation.

The Panel notes that in its reconsideration decision the Ministry did not refer to any written submissions from the advocate or the additional report from the doctor dated January 16, 2012. In that decision the Ministry noted that the Appellant received an extension to submit additional information but as of January 31, 2012 no additional information had been forwarded to the Ministry. Copies of both of these documents were submitted to the tribunal on February 29, 2012 by the advocate with a request to include these items in the appeal record. These two documents do not appear to be in the record sent by the Ministry to the tribunal. Based on all this the Panel finds that these two documents were not received by the Ministry or reviewed by it for its reconsideration decision.

The Panel also notes that on March 21, 2012 the Ministry advised the tribunal that its reconsideration decision would be its submission for this appeal. The Ministry did not refer to either of the advocate's written submissions, the additional doctor's report of January 2012 or the Appellant's written statement for this appeal. It made no objections to the admissibility of these documents and offered no comments about any of the additional information submitted by the Appellant. Therefore the Panel considered the information in the doctor's January 16, 2012 report and the information in the written statement sent March 8, 2012 from the Appellant as new documents submitted for this appeal. The Panel finds that the information in these documents is related to and in support of evidence about the Appellant's impairments and their effects on her daily living activities that was before the Ministry at the time of its reconsideration decision, and that information is admissible under section 22(4) of the Employment and Assistance Act. As for the advocate's written submissions the Panel finds these are written arguments and accepts them as such.

## 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 of 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 significant help to perform those activities.

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) 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 Impairment*

In its reconsideration decision the Ministry indicated that it reviewed the PR and the AR as well as the Appellant's self-report in her PWD application and her self-report in her request for reconsideration. Based on these reports the Ministry was not satisfied that a severe impairment was established. The Ministry noted that the physician noted that the Appellant is able to independently manage walking indoors and outdoors, and standing and that she requires periodic assistance with climbing stairs, lifting and carrying and holding. However, the doctor also indicated in the functional assessment that the Appellant can independently climb stairs and can lift 5-15 lbs. Although the doctor noted that the Appellant needs help with longer distances or carrying heavier objects the Ministry concluded that these restrictions are not evidence of a severe physical impairment. The Ministry also noted the doctor's reports about the Appellant's shortness of breath, low energy and difficulties with her hands, but the doctor did not indicate that the Appellant used aids for her impairments. The Ministry recognized that the Appellant's impairments affect her ability to manage her physical and mobility functions, but it found that the functional skill limitations described are more in keeping with a moderate level of impairment and do not demonstrate an extraordinary functional limitation. Therefore the Ministry concluded that the evidence did not establish a severe impairment.

The Appellant submitted that all of the information in her self-reports and in the doctor's reports establish that she does have a severe impairment. She pointed to the restrictions with dressing, holding and carrying items caused by her hand conditions, and her mobility restrictions and fatigue caused by COPD and her liver condition, and her other medical conditions restricting meal activities and housekeeping. The Appellant argued that her doctor confirmed these restrictions in the PR, the AR and in the January 2012 letter. The Appellant also submitted that the PWD legislation should be liberally construed and the combination of these restrictions establish that she has a severe impairment.

The Panel finds that the Ministry did consider the information in the AR and the PR as well as the Appellant's self-reports about her medical conditions and their effects on her functioning. The information in those reports indicated some restrictions with aspects of mobility, carrying, personal care, meal preparation and housekeeping. However, in those reports the doctor also noted that the Appellant is independent in mobility and personal care, and for those tasks for which the Appellant needs periodic assistance the doctor indicated only for heavier loads, longer distances or chopping. For those aspects that the doctor indicated take significantly longer, he did not explain how much longer. The Appellant also described various impairments including restrictions with using her hands, and shortness of breath and fatigue which affect some activities. She described a heart condition, but this was not confirmed by the doctor and she also acknowledged that the doctor addressed the questions in the PR and the AR about activities which are restricted.

The Panel notes that in the January 2012 report the doctor checked boxes which indicated restrictions to physical functions similar to those he noted in the PR and AR; namely, basic mobility, standing, lifting/carrying/holding, basic housework, laundry and aspects of meal preparation. Although there is a typed statement in the form that the doctor confirms that the Appellant is directly and significantly restricted in her ability to perform daily living activities continuously as a result of the conditions noted, the Panel finds that this statement is not supported by any explanation from the

doctor or by the information in the boxes he checked off. In the AR the doctor indicated what he based his report on, including an interview and medical files. In the January 2012 report the doctor provided no information about what he based this report on; for example, there is no evidence of additional interviews or assessments of the Appellant by this doctor. Therefore the Panel gives little weight to this January 2012 report and considers the information in that report only as confirmation of what the doctor reported in the PR and AR regarding the severity of the Appellant's impairment. The Panel finds, therefore, that the Ministry reasonably determined that based on the evidence the Appellant does not have a severe physical impairment.

In terms of a mental impairment the Ministry noted that in the PR and AR the doctor indicated that the Appellant does not have any significant deficits with her cognitive and emotional functioning. Therefore the Ministry concluded there was no evidence to establish a severe mental impairment.

The Appellant argues that she suffers from anxiety and stress. She also submitted that in the January 2012 report the doctor indicated that she suffers from anxiety, experiences tension, frustration and mood swings and that he checked off restrictions in motivation (major impact) and moderate impacts in emotion, insight and judgment, attention and concentration, executive and memory. In her self-reports she also described how anxiety and stress affect her daily functioning.

The Panel notes that the doctor in the PR and AR described no mental health conditions and noted no significant deficits with cognitive and emotional function or any restrictions to daily living activities from any mental health conditions. In her self-reports the Appellant describes the stress she experiences because of her health conditions and that she has had anxiety attacks. In the January 2012 report the doctor checked boxes for anxiety and for some impacts on cognitive and emotional functions. However, the doctor provided no explanation for why there was a change in his assessment, provided no information about what these assessments were based on and also did not indicate or explain how the noted deficits impair or restrict the Appellant's daily functioning, except for a phobia about using the bus. Therefore the Panel gives the information about the Appellant's mental impairment in the January 2012 report little weight. 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*

In its reconsideration decision the Ministry referred to the information provided by the doctor in the PR and the AR including the report that osteoarthritis in the Appellant's hands restricts her ability to manage daily living activities and the doctor's report that the Appellant can independently manage the majority of her daily living activities. The Ministry also noted that in the AR the Appellant is reported as taking significantly longer to complete some tasks but how much longer was not indicated. The doctor also reported that the Appellant needs periodic assistance with basic housekeeping but the frequency and duration of such help was not indicated. The Ministry recognized that the combined effects of the Appellant's ailments affect her ability to manage her daily living activities, but it found that the application as a whole did not provide evidence that her impairment directly and significantly restricted her ability to perform the daily living activities set out in legislation.

The Appellant argued that her various medical conditions directly and significantly restrict her ability to manage her daily living activities. In her self-reports she described her difficulties with any activity requiring the use of her hands, with activities requiring mobility and how stress and anxiety impact her



ability to deal with different situations. The Appellant also relied on her doctor's reports and specifically the January 2012 report to demonstrate that she meets this requirement.

Section 2(2)(b) of the EAPWDA requires the opinion of a prescribed professional to satisfy the requirements in section 2(2)(b)(i) and (ii). In this case the Ministry did consider the evidence from a prescribed professional, the doctor, who completed the PR and the AR. The Ministry noted that the doctor reported some activities took significantly longer, but did not describe how much longer. The doctor also noted that for some activities the Appellant needed periodic assistance, but the doctor did not describe the duration or frequency for such help. He wrote that a home worker could help once or twice a week but provided no other details.

As explained in the preceding section, the Panel gives little weight to the typed conclusions in the January 2012 report including the sentence that the Appellant is directly and significantly restricted in her ability to perform her daily living activities continuously as a result of the conditions noted. The doctor provided no information about what he based this new assessment on and that statement merely mirrors the legislative requirement. Also, the Panel notes that in the January 2012 report the doctor checked boxes listing restrictions for each activity. Each listed activity also had a box for continuous assistance and/or periodic assistance, but the doctor did not check any of those except for periodic assistance for laundry for which he added 2-3 times a week, 2 hours a day. Therefore the doctor's notations about any assistance required for each listed daily living activity is not consistent with that typed statement about activities being continuously restricted. Also the Panel notes that the form lists activities restricted but not the extent of the restrictions. For example for shopping, the form states "restricted from completing because restricted from carrying, lifting or grasp items." This also is comparable to restrictions noted in the AR. In fact the type of restrictions cited in the January 2012 report, such as carrying, holding, grabbing, limitations with standing and walking are similar to those cited in the AR. Therefore, based on all of the evidence the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe impairment that directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.

#### *Assistance with Daily Living Activities*

The Ministry noted that in the PR and AR the doctor indicated that the Appellant does not need any aids for her impairment, she does not routinely use an assistive device and she does not require the services of an assistance animal. Also because the Appellant's daily living activities are not significantly restricted by a severe impairment the Ministry determined that the Appellant does not require significant help from other persons.

The Appellant's position is that she does need significant help from other people. She wrote about the help she receives from the people she lives with and from an acquaintance. She also relies on the doctor's report that she needs help from a home worker and the statements in the January 2012 report indicating she requires assistance to perform the listed activities.

The Panel finds that the Ministry reviewed the doctor's PR and AR which indicated no need for any assistive aids or an assistance animal. Also, in those reports although the doctor reported the need for periodic assistance with some aspects of daily living activities and suggested a home worker, the doctor did not provide more details. As for the January 2012 report the only activity for which the

doctor specifically cited the need for help was laundry and that was for periodic assistance 2-3 times a week for 2 hours a day. Also, as discussed above the Panel gives little weight to the typed statements in the report, including the one at the bottom of each page stating that the Appellant requires assistance to perform the activities listed. In addition the Ministry reasonably concluded that because the Appellant's daily living activities are not significantly restricted by a severe impairment, she does not need significant help from other people. 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 circumstance. Therefore the Panel confirms that decision.