

### PART C – Decision under Appeal

The decision being appealed is the Ministry's February 6, 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 section 2(2) of the Employment and Assistance for Persons with Disabilities Act. 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 impairment; and, in the opinion of a medical practitioner her severe 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 3, 2011 PWD application with a self-report.
2. Physician's Report (PR) and Assessor's Report (AR) both completed on October 26, 2011 by the same doctor who indicated the Appellant has been her patient for over 1 year and the Appellant had seen this doctor or her locum more than 11 times in the 12 months preceding the reports.
3. Appellant's request for reconsideration with statement from her dated January 25, 2012 and a letter from the same doctor dated January 6, 2012.

In her PWD application the Appellant described her disability as fibromyalgia, depression, and spinal stenosis with bulging discs at L4 and L5. She also described how these conditions have worsened and because of pain all the time, depression has set in. She stays home a lot now because the pain is constant and all she wants to do is lay down on her couch for relief because lying down is more comfortable than sitting. The Appellant stated that every morning it is difficult to get out of bed, she can barely walk and her body is sore. She can't function, can't think, can't focus and can't concentrate. She wrote that she used to shower every morning. Now she showers once a week to wash her hair. The rest of the week she has baths. The Appellant indicated that she doesn't sleep well. The pain in her legs and lower back wake her up. If she's lying on the couch in the afternoon she falls asleep for about an hour. She tries to sit as much as she can, but she usually ends up lying down. The Appellant also wrote that every day she is in constant pain because of the fibromyalgia and her back and leg pains. She has trouble climbing stairs now, has difficulty getting back up from bended knee, has shortness of breath, drops things, can't carry things anymore, can't sit for very long, can't stand for very long and can't walk for very long.

The Appellant wrote that when she can't get her leg pain under control she has to have a bath with hot water and she doesn't feel the hot water. She indicated that winter is extremely harsh on her aches and pains and for most of the winter she feels like she has the flu. Her legs feel weak at times, like they will buckle under her. Everyday her reflexes are slow, her brain is slow to react, and her memory is slow to remember things or people which can be embarrassing. She described her walk as becoming wobbly, her posture has slumped and sometimes she feels like she's walking like a duck. She gets shin splints for no reason, her knees go out, her hips go out and she finds herself limping. The Appellant wrote that her driving is limited because within an hour she begins to feel uncomfortable and her neck and shoulders become sore and achy. She indicated she also gets blackouts if she gets up too quickly from the couch and sometimes she falls if she's not near something she can grab onto.

In the PR the doctor described the Appellant's diagnoses as fibromyalgia, depression and spinal stenosis L4/L5. The doctor wrote that the Appellant's conditions manifest themselves as burning pain down her legs, worse on the right. She often feels weak in her legs and is very limited in her ability to walk, stand or sit for long periods of time. Also the fibromyalgia limits the Appellant's functioning significantly. The doctor added that the Appellant "is significantly affected in her ability to function on a daily basis because of her combined diagnoses". For functional skills the doctor indicated that the Appellant can walk unaided on a flat surface for 1-2 blocks, climb 2-5 steps unaided, lift 5-15 lbs and remain seated for less than 1 hour. The doctor also reported significant deficits in emotional disturbance and attention or sustained concentration, adding "pain causes decreased concentration, poor memory and depression."

In the AR the doctor wrote that "constant pain limits standing, sitting, walking. Chronic depression impairs memory and concentration." The doctor reported that the Appellant is independent walking indoors, standing and lifting. The Appellant takes significantly longer walking outdoors, climbing stairs with "pain and weakness in the legs – spinal stenosis". She also takes significantly longer carrying and holding. The doctor added "limited to less than 10lbs due to pain" for lifting, carrying and holding. With respect to the Appellant's ability to manage daily living activities the doctor reported that the Appellant is independent in all aspects of meals, paying rent and bills, medications, social functioning and transportation, except the doctor wrote "n/a" for using transport and transit schedules. The Appellant has good functioning with her immediate and extended social network.

The doctor also indicated that the Appellant is independent in all aspects of personal care (grooming, bathing, toileting, feeding herself, regulating her diet and transfers on/off of chair), but she takes significantly longer with dressing adding "pain and weakness". The Appellant also takes significantly longer with transfers in/out of bed and with all aspects of basic housekeeping. The doctor indicated that the Appellant is independent in all aspects of shopping (going to and from stores, reading prices and labels, making appropriate choices, and paying for purchases); except that she requires periodic assistance with carrying purchases home for which the doctor added "friends/family help or she must take multiple trips into her home". As for assistance provided for the Appellant, the doctor noted that friends and family help her with daily living activities and added "yard work, carrying groceries, etc." The doctor indicated no use of an assistive animal and did not complete the section for assistance from the use of an assistive device.

In her statement submitted with her request for reconsideration, the Appellant described the same medical conditions, the pain and fatigue she experiences and the same restrictions to her movements as she described in her PWD application. She wrote that she was considering getting a cane to help her walk because of the pain in her right leg. She indicated that she lives alone and used to vacuum and dust every day. Now she uses the swiffer and dust buster, but after a few minutes she feels pain in her back and legs. The Appellant also wrote about other medical problems which she experiences, such as fatigue, heartburn, depression, diarrhea and weak bladder.

The Appellant also submitted a letter dated January 9, 2012 from the doctor who completed the PR and AR. In that letter the doctor described the Appellant's chronic pain and progression of her medical conditions and wrote that the Appellant is motivated to be independent. The doctor indicated that the Appellant is often weak in her legs and is intermittently unable to walk, stand, climb stairs or sit for even short periods of time (20 minutes). The doctor also wrote that the Appellant's depression can be moderate to severe. She often copes with constant, debilitating pain which affects her mood, and also her concentration and memory. She can be homebound for days and she often relies on family and friends for carrying groceries and heavy housework, etc. However the doctor also wrote that the Appellant "is independent in her ADL's [*activities of daily living*]."

The Appellant also submitted medical reports from her doctor indicating observation dates of January 10, 2012 and February 15, 2011. The January report includes references to colon and rectum tests and indicates that an early mild collagenous colitis cannot be ruled out. The February report has information about the Appellant's spine and disc bulge.

With her notice of appeal the Appellant submitted a self-report dated February 17, 2012 in which she wrote that her doctor gave her a referral form for a cane because she is finding it more and more difficult to walk without support. That referral is attached to the Appellant's statement. She also stated that she asked her son for help and he helps with laundry on Tuesdays, and with housework and shopping as needed. In this statement the Appellant also described her medications, how the pain affects her ability to move and impacts her sleep, and how her motivation and memory are affected. The Appellant also included a copy of a referral letter dated October 5, 2011 from her doctor to a specialist requesting an assessment and a review of the Appellant's options.

The Appellant's son provided a written statement dated February 17, 2012 stating that he has seen his mother struggle somewhat with some things she used to do with ease. He does everything when she asks because of her pain. The pain causes her to be stuck on the couch. This is absolutely heartbreaking for him and so he has taken on the responsibility of being his mother's helper whenever she needs him.

For the hearing the Appellant submitted a letter from the same family physician dated April 12, 2012. The letter was unsigned and sent by email to the Appellant. In that letter the doctor wrote that as a follow-up to her January 9, 2012 letter, the Appellant continues to have moderate spinal stenosis secondary to a bulging disc at L4 L-5, fibromyalgia that significantly limits her functioning and moderate to severe depression. The doctor indicated that since the PWD application was completed and since the January 2012 letter was written the Appellant's condition has progressed significantly and there have been some changes in the Appellant's general functioning as follows:

- She now requires a cane which she uses both inside and outside her home as her L4-5 radiculopathy has progressed to the point that she is often weak in her lower limbs. She is waiting for a surgical consult;
- When the initial form was filled out she was not disabled in stepping and lifting; now she is limited by pain and weakening and she takes significantly longer than a typical person would take in both standing and lifting;
- She has had a decline in mental functioning; she is often confused, has difficulty with memory and motivation. These are at a moderate to severe level;
- She is having significant issues with transfers in and out of chairs and takes significantly longer than a normal uninjured person would take; she also requires a cane for her balance;
- She is having issues with feeding, meal preparation, and food preparation specifically because she lacks motivation to prepare any meals;
- She also forgets to take medications specifically because of lacking motivation;
- She is taking significantly longer to transfer in and out of vehicles because of pain and weakness in her legs; and
- She has been socially isolating and is not interacting well in the community or participating in activities due to depression and pain in her legs restricting her from leaving her home.

The doctor also wrote that the Appellant suffers on a daily basis from constant pain and weakness in her legs as well as often debilitating depression which stems from her pain condition. The Appellant has now been diagnosed with microscopic colitis and has significant difficulties with going out in public due to diarrhea which complicates her ongoing pain and depression issues.

The Ministry did not object to this letter being admitted into evidence, but did point out that the doctor did not include a diagnosis of microscopic colitis in the PR, the AR or the January 9, 2012 letter.

The Panel finds that the information about the Appellant's medical conditions and their effects on her daily life in her written statement, in the written statement from her son and in the doctor's April 12, 2012 letter is related to information which the Ministry had when it made its reconsideration decision. Therefore the Panel admits all of these 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 Appellant described her medical conditions and how her daily living is restricted in the same way she described her circumstances in her previous self-reports and her written appeal submission. Now, however, because of the colitis she stated that she has to push herself to go out in public and worries about having to find washrooms. She said that it takes her longer to go up stairs and she pauses after each step. She has severe constant pain in her right leg and lower back, and when she walks her leg gives out. The Appellant said her son does the laundry, cleaning and dishes. The Appellant also described how the pain impacts her sleep, causes severe depression and because every day is a constant struggle she has no motivation, including no motivation to cook or take her medications. She said she finds it difficult to concentrate and has memory problems. The Appellant stated that she takes more than 24 pills a day, some for pain and some for depression. The Appellant also indicated that the diagnosis of colitis was made after the PWD application was completed and she is now taking medication for that.

The Panel finds that the Appellant's oral testimony is related to information which the Ministry had at the time of reconsideration and therefore admits that 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 it recognized that the Appellant has medical conditions which impact her situation. It reviewed the evidence from the doctor, especially the reports about impacts to the Appellant's daily living activities in the AR. Based on the information it had at the time of the reconsideration decision the Ministry was not satisfied that the Appellant met the PWD criteria.

## 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.

### *Restrictions to Daily Living Activities*

In its reconsideration decision the Ministry referred to the information provided by the doctor in the AR and specifically that the doctor indicated that the Appellant could perform 27/28 of the listed activities independently. The Ministry noted that although dressing, transfers in and out of bed, laundry and basic housekeeping were reported as taking significantly longer to perform, the Appellant did not require assistance from another person or an assistive device. Also the Ministry noted that the doctor did not define the extra time needed to perform these activities but did indicate that the Appellant requires periodic assistance from friends/family to carry purchases home or takes multiple trips into the house. In terms of social function the Ministry found that the doctor reported that the Appellant can independently perform all aspects of cognitive and emotional daily living activities, and she has good functioning in her immediate and extended social networks. The Ministry also noted that in the January 2012 letter the doctor wrote that the Appellant is independent in her daily living activities.

Based on the information provided the Ministry concluded that the Appellant is not directly and significantly restricted in her ability to perform her daily living activities continuously or periodically for extended periods of time.

The Appellant submitted that her medical conditions severely restrict her ability to function every day and she has gotten progressively worse since the doctor completed the PR and the AR. Specifically the Appellant pointed to how the pain in her legs impacts her ability to stand, walk, sit, sleep and bend down. She now uses a cane to walk and her son helps with laundry and cleaning. The Appellant also submitted that she experiences depression, lack of motivation and difficulties with memory and concentration all of which affect her daily activities such as meal preparation, feeding herself, cooking, taking medications and getting out of the house. The Appellant argued that her doctor confirmed all of these restrictions and the worsening of her conditions in the April 12, 2012 letter.

Section 2(2) 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 evidence from a prescribed professional, the doctor, as found in the PR, the AR and the January 2012 letter. In the AR the doctor reported that the Appellant, although taking significantly longer with certain activities, was nevertheless independent in all daily activities except for needing periodic assistance with carrying purchases home. The frequency and duration of that help or any help was not described. In January 2012 that doctor also specifically wrote that the Appellant is independent in all daily living activities. Then in the April 12, 2012 letter the doctor indicated that the Appellant now requires a cane both inside and outside her home for her balance, which the Appellant also described. This is the only assistive device used by the Appellant and only for standing or walking. In April 2012 the doctor also wrote that the Appellant takes significantly longer in stepping and lifting, with transfers in and out of chairs, with transfers in and out of vehicles and she has issues with feeding, meal preparation and taking medications due to lack of motivation. However, the Panel notes that although the doctor described increasing restrictions with the daily living activities described in the letter, the doctor did not indicate whether these restrictions are continuous or periodic for extended periods. The same is true regarding restrictions to the Appellant's social functioning. Therefore the Panel finds that based on the evidence 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*

Because the Ministry concluded that the Appellant's daily living activities are not significantly restricted by a severe impairment, it determined that the Appellant did not require significant help from other persons.

The Appellant argued that the doctor reported that friends and family help with carrying purchases home. Her son now helps with laundry, cleaning and other tasks. In addition the Appellant explained that she now uses a cane which her doctor confirmed.

The Panel finds that in the AR the doctor reported that the Appellant had periodic help with only one aspect of shopping; that is, carrying purchases home. Also in the January 2012 letter the doctor reported that the Appellant is independent in all daily living activities. Although the Appellant

provided evidence that her son helps with certain daily living activities this was not confirmed by a prescribed professional. The Panel notes that the doctor confirmed that the Appellant now uses a cane but this is only for one aspect of daily living and even in the April 2012 letter the doctor did not provide information indicating that the Appellant needs the significant help or supervision of another person. The Ministry also reasonably concluded that because the Appellant's daily living activities are not significantly restricted by a severe impairment that the Appellant did not require significant help from other persons. 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)(2)(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.