

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 8, 2012 which found that the appellant did not meet four 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. However, the ministry was not satisfied that the evidence establishes that her impairment is likely, in the opinion of a medical practitioner, to continue for at least two years, or 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 January 12, 2012, physician report dated January 3, 2011(sic), and assessor report dated December 31, 2011;
- 2) Letter from the ministry to the appellant dated February 7, 2012 denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 3) Request for Reconsideration- Reasons.

At the hearing, the appellant's representative provided an additional document, namely a Medical Report-Employability dated November 15, 2011 and completed by the appellant's family physician. The Report states in part that the appellant's primary medical condition is cardiomyopathy with date of onset unknown and a secondary medical condition as left ventricular (?) dysfunction with date of onset as unknown. The medical condition is described as "severe" as opposed to moderate or mild, and for the prognosis the physician has written "...unknown at this stage, further cardiac investigation pending." The restrictions are described as "(illegible) ...fatigue with mild physical activity."

The ministry did not object to the admissibility of this document. The panel reviewed the document and admitted the Report as being a further description of the appellant's diagnosed impairment and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

In her Notice of Appeal, the appellant states that she is unable to work due to the side effects of her meds, and also how tired she gets from minimal activity. The appellant states that she is awaiting the results of tests to know if she is able to have a heart transplant or surgery prior to transplant. In her Request for Reconsideration, the appellant states that she has her youngest in child care for 5 hours a day, for 5 days and she needs assistance with daily chores. The appellant states that her medication has the same side effects as chemo except that she gets to keep her hair. The appellant states that if she could, she would be working, but she is waiting to find out if she is able to go through a heart transplant.

The appellant's representative explained that the appellant was feeling too ill to attend at the hearing, she has been dizzy and falling and wished her representative to speak on her behalf, and a completed Release of Information was provided. The representative stated that while full capacity of heart functioning is 60%, the appellant's heart function was down to 43% and it has gone down further to 33% in January 2012. The representative stated that the main valve of the appellant's heart is not pumping properly and her medications have been doubled. The representative explained that she sees the appellant every day, that she lives across the street, and the pills the appellant is taking are like chemo pills, with many side effects. The representative stated that the appellant gets migraine headaches, she is very dizzy and sometimes vomits. The representative stated that the appellant needs help with doing her laundry, with any lifting, and sometimes with getting out of bed because she is so dizzy. The representative stated that she was with the appellant and talked with the cardiologist who requested an MRI of the appellant's heart and that it would be determined whether she was a candidate to go on the transplant list. The representative stated that the appellant's day-to-day activity is getting harder since she is going downhill very fast with her medications being doubled. The representative stated that she also has very little energy most of the time, but sometimes she can walk for up to a block unaided. The representative stated that before they knew what was wrong, when she met the appellant at the bus, the appellant fell into her arms she was so weak. The representative stated that the appellant cannot lift much weight at all, that one dish would be OK, and her legs swell when she stands for any length of time. The representative stated that the PWD application was completed when the appellant was doing better and that now she is much worse.

The physician who completed the physician report is a specialist in cardiology and has confirmed that the appellant has been his patient for 2+ months and that he has seen the appellant once in that period. In the

physician report, the physician confirms a diagnosis of dilated cardiomyopathy. The physician adds comments that a cardiac MRI is pending and, in response to the question whether the impairment is likely to continue for two years or more, has answered "not certain." The physician report indicates that the appellant has been prescribed medication that interfere with her ability to perform DLA, but she does not require an aid for her impairment. The physician reports that the appellant can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, she can lift 5 to 15 lbs., and has no limitation with remaining seated. The physician reports that the appellant has no difficulties with communication. The physician also indicates that there are no significant deficits with cognitive and emotional function. In response to the question whether the impairment directly restricts the appellant's ability to perform daily living activities (DLA), the physician checks off "no", and did not complete the balance of the section. The physician also notes that the appellant "...needs to be on meds more than 6 months, needs cardiac MRI, cannot make full determination whether this is permanent or reversible at this time; dizziness and shortness of breath increase with light activity."

The appellant's family physician has completed the assessor report and indicates that the appellant is independent with walking indoors and requires periodic assistance from another person with walking outdoors as well as with climbing stairs and lifting and carrying and holding, with no further comments or explanation. The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off chair. The physician reports that the appellant requires periodic assistance from another person with doing laundry and with basic housekeeping, with no further explanation or description provided. The physician indicates that the appellant is independent with most of the tasks of shopping, including reading prices and labels, making appropriate choices, and paying for purchases, while requiring periodic assistance from another person with going to and from stores and with carrying purchases home, with no further comments. Further, the assessor reports that the appellant is independent with most of the tasks of managing meals, including meal planning, food preparation, and safe storage of food, but requires periodic assistance from another person with cooking, with no further comment provided. The physician indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting), managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage) and transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation). In the assessor report, the physician has also indicated that the section of the report relating to impact to areas of daily cognitive and emotional functioning is "N/A" or not applicable, and that the appellant is independent in all areas of social functioning, with good functioning in both immediate and extended social networks.

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 that is likely, in the opinion of a medical practitioner, to continue for at least two years, 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's impairment is likely, in the opinion of a medical practitioner, to continue for at least 2 years. The appellant's representative acknowledges that the prognosis is uncertain until the results of the cardiac MRI are reviewed, but argues that the appellant has a serious condition that will likely require a heart transplant. The cardiologist has indicated in the physician report, in response to the question whether the impairment is likely to continue for two years or more, that he is "not certain" and in the additional document provided, the Medical Report dated November 15, 2011, the appellant's family physician indicates the prognosis is "...unknown at this stage, further cardiac investigations pending." The panel finds that the ministry reasonably determined that a medical practitioner has not confirmed that the appellant's impairment is likely to continue for 2 or more years.

The ministry argues that the evidence does not show that the appellant has a severe physical impairment. The ministry points to the physician report where it is indicated that the appellant is able to walk 2 to 4 blocks unaided, to climb 5 or more steps unaided, to lift 5 to 15lbs., and has no limitation with remaining seated. The ministry argues that although periodic help is required to walk outdoors, to climb stairs and to lift/carry/hold, there is no information on the frequency or duration of periodic help and the physician notes "...less than ordinary activity results in fatigue, dyspnea (NYHA III)." The ministry points out that no assistive devices are routinely used to help compensate for impairment. The ministry argues that the functional skill limitations described are more in keeping with a moderate degree of impairment. The appellant's representative argues that the evidence establishes that the appellant suffers from a severe physical impairment as a result of dilated cardiomyopathy. The representative points out that while full capacity of heart functioning is 60%, the appellant's heart function has gone down to 33% in January 2012. The representative argues that the appellant's medications have been doubled in dosage and she is in much worse condition than at the time of

the reports submitted with the PWD application. The representative argues that the appellant has very little energy most of the time, but sometimes she can walk for up to a block unaided. The representative argues that the appellant cannot lift much weight at all, maybe one dish but not more, and her legs swell when she stands for any length of time.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of dilated cardiomyopathy. In the additional Medical Report dated November 11, 2011, the appellant's family physician described the appellant's medical condition as "severe" as opposed to moderate or mild, and the restrictions are described as "(illegible) fatigue with mild physical activity." The cardiologist indicates in the physician report that the appellant does not require an aid for her impairment and that she can walk 2 to 4 blocks unaided on a flat surface, she can climb 5 or more stairs unaided, lift 5 to 15 lbs. and has no limitation with remaining seated. The appellant's representative states that the appellant's condition has deteriorated since the time of the PWD application and she now cannot walk more than 1 block unaided as a result of her lack of energy and she can only lift a light weight, such as one dish. However, the cardiologist notes in the physician report that the appellant "...needs to be on meds more than 6 months, needs cardiac MRI, cannot make full determination whether this is permanent or reversible at this time; dizziness and shortness of breath increase with light activity." The panel finds that without further evidence from a medical practitioner it is difficult to determine whether the worsening in the appellant's condition is a temporary impact of the increased medications which may resolve, or a result of a deterioration in the condition of her heart. In the assessor report, the appellant's family physician indicates that the appellant requires periodic assistance from another person for walking outdoors, with climbing stairs and with lifting and carrying and holding. The physician does not provide any explanation or description of the frequency or the duration of the assistance required. Overall, the panel finds that the evidence demonstrates that the appellant has been diagnosed with a serious health condition but, nevertheless, is independent with her mobility and physician functioning and requires some assistance, which indicates a moderate degree of impairment. 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 argues that there is no mental health diagnosis, no deficits to cognitive and emotional functioning, and no impacts to daily functioning associated with a mental impairment or brain injury. The appellant does not argue that the evidence establishes that she suffers from a severe mental impairment. The panel finds that the evidence of a medical practitioner does not confirm a diagnosis of a mental disorder. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are no significant deficits with cognitive and emotional function. In the assessor report, the physician has also indicated that the section of the report detailing impacts to each area of daily cognitive and emotional functioning is not applicable. The appellant has been assessed as independent in all areas of social functioning, with good functioning in both immediate and extended social networks. Therefore, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

The ministry argues that the evidence does not establish that the appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry points out that the physician indicates that the appellant performs many activities independently, i.e. 23 out of 28, including social functioning, with periodic help required with laundry, basic housekeeping, going to and from stores, carrying purchases home, and cooking. However, the ministry points out that there is no indication of the frequency or duration of periodic assistance. The representative argues that the appellant's condition has deteriorated since the time of the PWD application and that she now requires assistance with many DLA. The representative argues that the appellant gets migraine headaches, she is very dizzy and sometimes vomits and needs help with doing her laundry, with any lifting, and sometimes with getting out of bed because she is so dizzy.

The panel finds that the legislation requires that the opinion of a prescribed professional confirms that the appellant's ability to perform DLA is directly and significantly restricted either continuously or periodically for

extended periods. In response to the question whether the impairment directly restricts the appellant's ability to perform daily living activities (DLA), the cardiologist checked off "no" and did not complete the balance of the section detailing restrictions to DLA. In the assessor report, the physician confirms that, in terms of preparing her own meals, the appellant is independent with most tasks, including meal planning, food preparation, and safe storage of food, while requiring periodic assistance with cooking but no further explanation provided. For managing personal finances, the physician indicates in the assessor report that the appellant is independent with all tasks of banking, budgeting and paying rent and bills. In terms of shopping for her personal needs, the physician indicates that the appellant is independent with most of the tasks of shopping, including reading prices and labels, making appropriate choices, and paying for purchases, but requires periodic assistance from another person with going to and from stores and with carrying purchases home. Again, the physician has not provided further description or explanation of the nature of the assistance required.

For use of public or personal transportation facilities, the physician indicates that the appellant is independent with all tasks, including getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician has reported that the appellant requires periodic assistance from another person with both basic housekeeping and with laundry, without providing information about the duration of the assistance required. For moving about indoors and outdoors, the physician has indicated that the appellant requires periodic assistance with mobility outside the home, with no detail of the extent of the assistance required. The physician also indicates that the appellant does not use an assistive device and is independent with walking indoors. Regarding performing personal hygiene and self care, the physician indicates in the assessor report that the appellant is independent with all tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off a chair. With respect to managing her personal medications, the physician again indicates that the appellant is independent with all tasks including filling/refilling prescriptions, taking as directed and safe handling and storage.

Looking at the evidence as a whole, the panel finds that the prescribed professional has reported that the appellant requires periodic assistance with mobility outside the home, with basic housekeeping, 2 out of 5 tasks of shopping and 1 out of 4 tasks of meal preparation, but has not provided information to establish that the assistance is required for extended periods of time. The panel finds that the evidence of the prescribed professional establishes that the appellant is independent in all remaining areas and tasks of DLA. 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 and the appellant that she lives family/friends/caregiver, receives assistance from family and friends, 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.

Overall, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the Employment and Assistance Act.