

## PART C – Decision under Appeal

The decision being appealed is the Ministry's March 5, 2012 reconsideration decision denying the Appellant Persons with Disabilities (PWD) designation. The Ministry determined that the Appellant had not met 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 was not satisfied that the Appellant has 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 was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2.

## PART E – Summary of Facts

For its reconsideration the Ministry had the following evidence:

1. Appellant's December 16, 2011 PWD application with a self-report.
2. Physician's Report (PR) and Assessor's Report (AR) both completed on December 16, 2011 by the same physician who indicated that the Appellant has been his patient for 2 months and he had seen her between 2-10 times in the 12 months preceding the reports.
3. Appellant's February 7, 2012 request for reconsideration with a self- report and a letter dated February 8, 2012 from her doctor who completed the PR and AR, and described below.

In her PWD application self-report the Appellant wrote that she had a heart attack and that she has a genetic condition. She stated that all of her main arteries from her heart are clogged and she has secondary by-passes. She also wrote that she has a lot of limitations and she tires out very easily. She has to carry nitro spray at all times. The Appellant stated that she was also diagnosed with type 2 diabetes about 1 year after her heart attack and so far it is controlled by medication. She has chronic shortness of breath from any excessive exercise or stress. She indicated that her medication was just doubled by her doctor and her daily medication intake is as follows: 20mg. rampbil for extreme high blood pressure; 100 mg. metoprolol for heart and blood pressure; 80 mg. Lipitor for cholesterol just doubled from 40 mg.; 50 mg. tevahydrochloroh a fluid pill; and 1000 mg. apo-metformin - a diabetes medication. She indicated that she recently was told to take a low dose of aspirin and a daily dose of niacin.

She also wrote that she has to limit even her household duties such as cleaning, laundry, and shopping. Vacuuming is quite hard and her partner helps her with these chores. She wrote that for the most part she knows her limits and stays within them. She has no desire to have another heart attack because she knows that the next one could be fatal. She stated that her life is quiet because it needs to be. Her friends and children know that stress, even normal stress, can take her down. Having people and demands on her on a daily level really upsets her and she often uses her nitro-spray to stop the chest pain. She has no other financial means and she is unemployable. Also, she wrote that she cannot lift or carry anything over 4 kgs.

In the PR the doctor described the Appellant's diagnoses as ischemic cardiomyopathy, MI [Myocardial Infraction] heart attack and diabetes. He wrote that the Appellant has severe impaired exercise tolerance since her heart attack. She has shortness of breath when walking short distances and her diabetes is controlled on medication. She does not require any prosthesis. The doctor indicated the Appellant's impairment is permanent. As for the Appellant's functional skills, the doctor noted that the Appellant can walk unaided on a flat surface for 1-2 blocks, climb 5+ steps unaided, can lift 2-7 kgs and has no limitations remaining seated. He added: "as long as slow & not exerted". The doctor also indicated that the Appellant has no significant deficits with cognitive and emotional functions. The doctor noted that the Appellant's impairment directly restricts daily shopping periodically and her mobility outside the home, but he did not indicate the extent of that restriction. He also noted that she is not restricted in her personal self care, meal preparation, management of medication, basic housework, mobility inside the home, use of transportation, management of finances and social functioning. The doctor added that the Appellant: "needs help to carry groceries, shortness of breath with walking" and for degree of restriction he wrote: "exercise intolerance".

In the AR the doctor described the Appellant's impairment as "no exercise tolerance, gets short of breath with minimal activity." He also indicated that she is independent in all aspects of mobility and physical ability; that is, walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding. The doctor added: "as long as slow and not exerted". The doctor did not complete the rest of the AR, and specifically provided no information about the Appellant's restrictions regarding the daily living activities listed in the AR form.

The Appellant in her request for reconsideration wrote that she does need assistance with her everyday living, such as shopping and housework. She cannot go for walks or do stairs; she has to use elevators or she gets chest pains. The Appellant stated that her medication has been moved up to two times a day instead of one. She cannot carry or lift more than 5 kgs. of anything. She also wrote that she has to live near a hospital. Her heart attack was 8 years ago and her heart is getting worse. She indicated that she gets tired very easily and stress is a real danger for her. Her doctor has stated that she cannot work and even if she could no one is going to hire someone with this risk factor. She wrote that she also has to have nitro spray with her at all times and she has used it. She is also asking her doctor to submit another letter. The Appellant wrote that she is not as independent as the Ministry perceives. She depends on her partner who helps her with all her chores and he is a consistent help. The Appellant also stated that her limitations include not being able to go camping in the summer because she has to be near a hospital, not being able to lock a bathroom door for bathing because she cannot be left alone for long periods of time, and she has to have a phone near her at all times.

In the February 8, 2012 letter the doctor wrote that the Appellant has ischemic heart disease. In 2008 she had a heart attack with resulting ischemic cardiomyopathy and was offered a coronary artery bypass. He wrote that she did not feel up to surgery so conservative management was started, but this was not done successfully. The doctor indicated that the Appellant's diabetes is not well controlled and she smokes – which is a major contributing factor to her condition. He also wrote that her disease is not stable due to her existing positive risk factors and those issues are being addressed. A specialist cardiology opinion is pending.

The Appellant provided additional information about her conditions. In her notice of appeal the Appellant wrote that she now has severe depression because of trauma in her life and "the stress of all of this is almost unbearable. I am alone now and very co-dependent on my daughter because of my physical and mental health".

At the hearing the Appellant read the following statements from two different doctors:

1. Statement dated June 21, 2012 from her new family doctor who she first saw about 2 months ago. He confirmed that the Appellant is in his care, that she has the heart conditions described above and that she was recently referred to a heart specialist for further work up and tests. This doctor will be following up with the specialist.
2. Statement dated June 15, 2012 from a heart specialist confirming that the Appellant attended his office that day, that she will need tests and follow-up, and that she will be under his care.

The Appellant said that she has a stress test on July 20, 2010 and she also recently had blood work done which she will be reviewing with her new family doctor shortly. She also said she was in the hospital about 5 days ago because of an angina attack, although she thought she was having another

heart attack. She was given another medication to take. The Appellant described her conditions as diabetes, high blood pressure, heart condition and massive stress. She said she gets anxious being around people, especially in crowds. She used to be a social person, but doesn't get out and about much now. The Appellant stated that she needs help with a lot of things, such as carrying and vacuuming. If she is on her feet too long she gets tired out and by the end of the day she is so exhausted she feels like she's in a coma. Also she can only drive for about an hour because she gets so tired. The Appellant said the financial stress is great and her conditions have taken "a lot of me away." She indicated that she does not use a walker or other assistive device, but she needs to have her nitro with her at all times.

The Appellant said her original doctor hardly knew her, didn't go over the PWD application with her, and got things wrong. Her new doctor has not seen the original PR or AR. The Appellant also provided information that she has been attending mental health counseling. The advocate also said that the Appellant missed appointments with her due to her anxiety.

The Panel finds that the testimony from the Appellant and from the advocate, the Appellant's statement in the notice of appeal and the statements from the two doctors all relate to the information about the Appellant's medical conditions which was before the Ministry at the time of reconsideration. Therefore the Panel admits the testimony and statements as evidence in support of the evidence the Ministry had when it made its reconsideration decision pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing, the Ministry reviewed the information it had for its reconsideration decision and it reaffirmed that decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant is ineligible for PWD designation because she did not meet all the requirements in section 2(2) of the EAPWDA, and specifically that: she does not have a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and, 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 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 section 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 decision under the applicable PWD criteria at issue in this appeal.

### *Severe Impairment*

In its reconsideration decision the Ministry reviewed the information from the doctor regarding the Appellant’s diagnoses and the Appellant’s physical functioning abilities. The Ministry noted that the doctor indicated that the Appellant is independently able to do all aspects of mobility and physical abilities “as long as slow and not exerted” and no assistive devices are routinely used. The Ministry determined that the information from the doctor is in keeping with a moderate degree of impairment. The Ministry also referred to the Appellant’s self-report in her request for reconsideration and reviewed all of the information she provided as well as the February 8, 2012 letter from her doctor. The Ministry wrote that that information was considered in conjunction with that presented with the original application; however, it determined that the information does not demonstrate either a severe

physical impairment or significant restriction in her ability to perform daily living activities.

The Appellant's position is that she does have a severe physical impairment. In her PWD application and request for reconsideration she described how she gets chronic shortness of breath, how she tires very easily and cannot go for walks, and how she has to limit her household chores such as carrying things, cleaning, laundry and vacuuming. She is always worried about having another heart attack so she carries nitro with her everywhere. The Appellant also submitted that the doctor who completed the PR and the AR did not really know her. He did not spend any time with her to go over the PWD application and the information he provided is not right.

The Panel notes that the Ministry did consider the information from the Appellant and her doctor. For example, it reviewed the Appellant's description of her physical limitations carrying things, going for walks and doing stairs. It also considered the doctor's evidence about her physical functioning abilities (being able to walk unaided for 1-2 blocks, climbing 5+ stairs, carrying 2-7 kgs. and remaining seated with no limits) and that the Appellant is independently able to do all aspects of mobility and physical ability as long as it is slow and not exerted. The Panel finds that the Ministry reasonably determined that this information demonstrated a moderate degree of impairment. Therefore based on all of the evidence the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe physical impairment.

In terms of a mental impairment, the Ministry noted that no mental health diagnosis was provided. Also, there are no deficits to cognitive and emotional functioning and no impacts on daily functioning from any mental health conditions. The Ministry determined that the information did not establish a severe mental impairment. The Appellant submitted that she suffers from severe anxiety and severe depression, and that she has attended mental health counseling sessions. Also, her anxiety prevents her from going out, especially in crowds and the fear of another heart attack causes severe stress.

The Panel notes that although the Appellant provided evidence of anxiety and depression, there was no medical evidence from any of the doctors confirming any mental health conditions or deficits to cognitive and emotional function. Therefore the Panel finds that the Ministry reasonably determined that with no mental health diagnosis provided and with no deficits to cognitive and emotional functioning indicated by the doctor, the Appellant does not have a severe mental impairment.

#### *Restrictions to Daily Living Activities*

The Ministry noted that the doctor did not complete the AR regarding restrictions to daily living activities or any help needed with those activities, but it considered the information he did provide in the PR. The Ministry referred to that report of no restrictions to 8 of 10 daily living activities. It also noted that periodic restriction was reported to daily shopping (needs help to carry groceries) and that mobility outside the home is also restricted. The Ministry determined that as the majority of daily living activities are unrestricted or require little help from two tasks, the information from the Appellant's prescribed professional does not establish that her impairment significantly restricts daily living activities either continuously or periodically for extended periods.

The Appellant submitted that her daily living activities are restricted by her impairments. She specifically argued that she gets short of breath from any physical activities, she needs to limit her household chores (laundry, shopping, vacuuming) and carrying items, and she does not socialize

because she is afraid of another heart attack. The Appellant also submitted that the doctor who completed the PR and AR did not ask her any questions about her restrictions and the information he provided is incorrect.

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 Appellant's first family doctor is the prescribed professional. The Panel notes that the Ministry did consider the doctor's reports in its reconsideration decision and it found that in only one report did the doctor indicate any restrictions to daily living activities. Those were only periodic restrictions to daily shopping (needs help to carry groceries) and shortness of breath with walking. Therefore based on all of the evidence the Panel finds that the Ministry reasonably determined that, in the opinion of a prescribed professional, the Appellant's impairments do not directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods.

#### *Help with Daily Living Activities*

The Ministry decided that because it determined that the Appellant's daily living activities are not significantly restricted by a severe impairment, it could not determine that significant help is required from other persons. It also noted that no assistive devices are required.

The Appellant's position is that she does need help with daily chores such as housekeeping, shopping and carrying items. At one time her partner was a consistent help and she also referred to help from her daughter. The Appellant acknowledged she does not use a walker or other assistive device, but she does have nitro with her at all times.

The Panel notes that Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional. In this case the doctor indicated only that the Appellant needs help to carry groceries. Therefore based on all of the evidence and the applicable enactments, and given the Panel's finding above that the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted was reasonable, the Panel further finds that the Ministry's determination that the Appellant does not meet the requirements of section 2(2)(b)(ii) of the EAPWDA was also reasonable.

The Panel finds that 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.