

## PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated June 7, 2012, in which the Ministry denied her application for a Persons with Disabilities (PWD) designation because it determined that she did not meet all five of the criteria for a PWD designation set out in sections 2(2) and 2(3) of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*. The Ministry found that the appellant met the age requirement and has a physical impairment that in the opinion of a medical practitioner is likely to continue for two years or more (the first two criteria). However, the Ministry determined that it was not satisfied that the appellant's impairment was severe. The Ministry also determined that it was not satisfied, that, in the opinion of a prescribed professional, the appellant's impairment directly and significantly restricts her daily living activities (DLA) and that, as a result of restrictions, the appellant requires significant help from other persons 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

A ministry observer attended the hearing. The appellant did not object to the observer's attendance.

At the reconsideration, the Ministry had the following information:

- The application for PWD designation, which includes
  - The appellant's self report (section 1) dated January 4, 2012;
  - The physician's report (section 2), completed by the appellant's family doctor and dated January 4, 2012; and
  - The assessor's report (section 3) also completed by the appellant's family doctor and dated January 4, 2012.
- 3 letters from a physician who is a specialist in rheumatology and internal medicine regarding the appellant, dated August 4, 2009, August 16, 2008, and June 27, 2003;
- A copy of a report from a medical laboratory dated July 19, 2002; and
- The 3-page written submission of the appellant on reconsideration dated February 13, 2012.

In the physician's report, the appellant's physician, who has treated the appellant for 10 years and who indicated that he has seen her 2-10 times in the previous year, confirmed that she suffers from the conditions of ankylosing spondylitis starting in 2002, hypothyroidism starting in 2004, anxiety starting in 2010, and fibromyalgia starting in 2008. The appellant told the panel that she had recently had an MRI of her liver, which revealed nodules in her liver, and she is awaiting a biopsy. The appellant did not provide any additional medical records or confirmation of the MRI or its results to the panel. In the physician's report, the appellant's physician stated that the appellant is "quite incapacitated by chronic pain, mainly in back and all four quadrants of body; fatigue and stiffness." The appellant's physician indicated that her impairment is likely to continue for two years or more from the date of the report, noting "stiffness and pain, joint pain, reduced mobility." The appellant told the panel that her condition "comes and goes," that she has good days and bad days, but that when her condition flares up, she is in a great deal of pain and unable to function. The appellant disagreed with many aspects of the physician's report, which are noted. The appellant's physician indicated in the report that she could walk 4+ blocks unaided on a flat surface, but the appellant disagrees, telling the panel that she could only walk 2-4 blocks, and less on her bad days. The appellant also told the panel that on some days she cannot climb any stairs, although the physician's report indicates she can climb 5+ steps unaided. The appellant didn't disagree with the physician's report that she is "depressed and anxious about her limitations" (the physician checked the box for "emotional disturbance" in the list below the question "Are there any significant deficits with cognitive and emotional function?"). The appellant's physician indicated that the appellant had not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities. The appellant told the panel that if she "doubles up" her anti-inflammatory medication, then she cannot perform her daily living activities.

In the assessor's report, the appellant's physician did not write anything in response to the question "What are the applicant's mental or physical impairments that impact her ability to manage daily living activities?" The appellant's physician indicated "good" for the appellant's ability to communicate in the four listed areas (speaking, reading, writing, and hearing), and the appellant did not disagree with this. The appellant's physician indicated that the appellant is independent walking indoors and walking outdoors. With respect to climbing stairs, the appellant's physician checked both "independent" and "takes significantly longer than typical" writing "has to sit after 20 mins." The appellant's physician indicated that the appellant takes significantly longer than typical in lifting and carrying and holding, writing her limit is 15 pounds, and "fatigue, no endurance." The appellant's physician did not check any boxes for periodic assistance or continuous assistance in this category of mobility and physical ability on the form. The appellant's physician indicated that her impairments cause moderate impact on her emotion, attention and concentration, and have a major impact on her motivation, but all other items on the list were no or minimal impact. The appellant told the panel that her impairments have caused an impact on her bodily functions, and that she now suffers from irritable bowel syndrome.

In completing the required portion of the assessor's report concerning daily living activities, the appellant's physician indicated that the appellant was "independent" regarding the following daily living activities: Personal Care – dressing, grooming, bathing, toileting, feeding self, and regulating diet; Shopping – making appropriate choices, and paying for purchases; Meals – meal planning, food preparation, and safe storage of food; Pay Rent and Bills – banking, budgeting and pay rent and bills; Medications – filling/refilling prescriptions, taking as directed, safe handling and storage; Transportation – getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation; Social Functioning – appropriate social decisions, able to develop and maintain relationships, interacts appropriately with others, able to deal with unexpected demands; and able to secure assistance from others. In respect to the following daily living activities, the appellant's physician indicated that she "takes significantly longer than typical" with the comments noted: transfers in and out of bed and transfers on and off a chair "occasionally"; laundry and basic housekeeping "no endurance has to rest every 10 mins"; going to and from stores, reading prices and labels and carrying purchases home "can't stand for more than 20 mins, difficult to carry anything above 15 lbs"; cooking "just warms up soup for herself or other small meal." The appellant's physician did not check any daily living activities which would require periodic assistance or continuous assistance from other persons, or that the appellant uses an assistive device. In the section where the assistance provided by other people is noted, the appellant's physician noted that friends and family assist her, that her daughters and friends help with housekeeping.

The panel made the following findings of fact:

- The appellant is over 18 and suffers from ankylosing spondylitis, hypothyroidism, anxiety and fibromyalgia.
- In the opinion of a prescribed professional, the appellant's physician, the appellant's impairments will last for 2 years or more.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's decision to deny the appellant's application for PWD designation on the basis that the Ministry was not satisfied that her impairment is severe, and that, in the opinion of a prescribed professional, her impairment significantly restricts her ability to perform DLA, either continuously or periodically for extended periods, and that, as a result of restrictions, she requires significant help from other persons to perform DLA.

### Legislation

#### *EAPWDA s. 2*

#### *Persons with disabilities*

2(1) In this section: ...

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(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 assistive animal.

#### *EAPWDR s. 2*

#### *Daily living activities*

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.

(2) For the purposes of the Act, "prescribed professional" means a person who is authorized under an enactment to practice the profession of

(a) medical practitioner,

.....

The appellant's position is that the Ministry's denial of her application for PWD designation is not reasonable. The appellant repeated that her impairments, in particular, her ankylosing spondylitis, cause her chronic pain

which is sometimes very difficult for her to manage and she feels that she is significantly restricted in the performance of her daily living activities, that her physician did not accurately report the nature of her condition(s), and that the Ministry should "put themselves in her shoes."

At the hearing, the Ministry repeated the issues as set out in the reconsideration decision. In the reconsideration decision, the Ministry found that "the information provided with the PWD application and [the appellant's] Request for Reconsideration does not establish a severe physical or mental impairment ... the ministry finds that the degree of impairment and restriction reported by medical professionals does not establish a severe physical or mental impairment." With respect to the third criteria, that the severe impairment significantly restricts daily living activities, the Ministry's reconsideration states, "The medical information attached to the PWD application does not establish that your daily living activities are significantly restricted by a severe physical or mental impairment. No additional information is provided from a prescribed professional ... No severe impairment has been established. In addition, the information provided does not establish significant daily living activity restrictions. Daily living activities are primarily reported to be performed independently with some restrictions in duration and weight." The reconsideration also stated that, because it has not been established that daily living activities are significantly restricted (as required), the Ministry could not determine that significant help is required from other persons.

Subsection 2(2) of the *EAPWDA* requires that, to be designated a person with disabilities, the Ministry must be satisfied that the appellant has a **severe** mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years (subs. 2(2)(a)) **and** that a prescribed professional (the appellant's physician) is of the opinion that the appellant's impairment directly and significantly restricts her ability to perform DLA, either continuously or periodically for extended periods (subs. 2(2)(b)(i)) and, as a result of the restrictions, the appellant requires help to perform those activities (subs. 2(2)(b)(ii)). According to subsection 2(3)(b)(ii) of the *EAPWDA*, the help required under subs. 2(2)(b)(ii) must be the "significant help or supervision of another person".

In the physician's report portion of the PWD application, the appellant's physician indicated that regarding her functional skills, she can walk unaided on flat surfaces (the appellant said she could walk 2-4 blocks unaided, as opposed to the 4+ indicated, but sometimes less), can climb stairs unaided (although she said on bad days, this can take longer), can lift (although limited to under 15 pounds, the appellant said less) and can stand unassisted. This was repeated in the assessor's report portion of the PWD application, where her physician indicated that the appellant takes significantly longer to climb stairs, lift and carry and hold (but did not check that assistance was required for any). The appellant's physician also indicated in the assessor's report that her mental impairment (anxiety) moderately impacted her emotion and attention/concentration, and had a major impact on her motivation, but had no impact on the other 8 listed categories. The appellant told the panel her impairments caused her bad days, but also that she had good days. Based on the evidence, the panel finds that the Ministry's determination that the appellant did not meet the criteria of "severe mental or physical impairment" is reasonable.

In the assessor's report portion, although he indicated that the appellant takes significantly longer for some activities (climbing stairs, lifting, carrying & holding, transfers in/out of bed and on/off chair, laundry and housekeeping, going to and from stores, reading labels and prices, and carrying purchases) the appellant's physician did not indicate that her impairments significantly restrict her ability to perform any of the listed DLA, either continuously or periodically for extended periods, as contemplated by subs. 2(2)(b)(i) of the *EAPWDA*. The appellant told the panel that on her bad days, she seeks assistance from friends and family for things she can't do herself, although on her good days she can perform DLA, it may take a bit longer. The panel finds that the Ministry's determination that the appellant's physician did not provide an opinion that her impairments significantly restrict her ability to perform DLA, either continuously or periodically for extended periods under subs. 2(2)(b)(i), is reasonable based on the evidence.

As above, the panel notes that in the assessor's report, the appellant's physician did not indicate that the

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appellant requires periodic assistance or continuous assistance from another person for any listed DLA. Further, no assistive device or services of an assistive animal are required. The appellant told the panel that, on her bad days, she seeks help from friends and family to perform DLA, but that sometimes she can't get someone to help her so she doesn't perform the DLA. On her good days, the appellant can perform her DLA. The panel finds the Ministry's determination reasonable that the appellant's physician did not provide an opinion that, as a result of direct and significant restrictions to her DLA, the appellant requires the significant help or supervision of another person to perform DLA.

The panel therefore confirms the Ministry's reconsideration decision denying the appellant's application for PWD designation.