

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the Ministry) dated July 10, 2012, which found that the Appellant did not meet three of five statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement and that in the opinion of a medical practitioner her impairment is likely to continue for at least two years. However, the Ministry was not satisfied that the evidence establishes 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 help as defined in section 2(3)(b) of the EAPWDA.

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 Ministry was not in attendance at the hearing. After confirming that the Ministry was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The following evidence was before the Ministry at the time of Reconciliation:

A Persons With Disability (PWD) application relating to the Appellant.

Section One was completed by the Appellant and included the following information:

- When asked to describe her disability, the Appellant noted that she is in pain all of the time which affects her mood negatively. Pain pills help but inhibit her ability to function with everyday living. She stated that if she cleans her house the subsequent pain lasts two days and makes moving about very difficult. She can't carry shopping bags. Pain in her right arm makes it difficult to perform personal hygiene.

Section Two was completed by the Appellant's physician, Dr M.

- Dr M diagnosed spinal stenosis in the Appellant's cervical spine and a small cardio-vascular accident (CVA) in 2003. He reported chronic neck pain, weakness in her arms as well as lower back pain. While the Appellant takes medication, Dr M stated it did not interfere with her ability to perform DLA, nor does she require prostheses or aids for her impairment. Dr M stated hers is a progressive disease.
- In terms of functional skills, Dr M reported an ability to walk unaided one to two blocks, climb two to five stairs, lift less than five lbs and sit less than one hour. He reported no difficulty with her ability to communicate nor with cognitive and emotional functions.
- With respect to DLA, Dr M found the Appellant continuously restricted in four areas:
 - Basic Housework
 - Daily Shopping
 - Mobility Inside the Home, and
 - Mobility Outside the Home

He noted that she was unable to do lifting/cleaning, bend over, pick up heavy objects or do repetitive tasks. She needs assistance cleaning her house.

- In his comments he notes a "high suspicion of rheumatoid arthritis," and states that he has seen her for two years and 11 or more times in the past 12 months.

Section Three was also completed by Dr M, acting as the Appellant's assessor. He noted the following:

- She lives alone.
- She has no difficulty communicating.
- Regarding Mobility and Physical Ability she is independent with walking indoors, requires periodic assistance when walking outdoors or standing, and continuous assistance climbing stairs, lifting, carrying and holding.
- Dr M completed the assessment for a person with an identified mental impairment or brain injury.
- With respect to the DLA of Personal Care, Dr M found her independent with dressing,

grooming, bathing and toileting. She requires periodic assistance with feeding/diet and transfers in/out of bed or chairs.

- Regarding Basic Housekeeping he found her requiring periodic assistance with laundry and continuous assistance with basic housekeeping.
- For the DLA of Shopping for Personal Needs, Dr M found her independent reading prices and labels, making appropriate choices and paying for purchases. She requires periodic assistance with going to and from stores and continuous assistance carrying purchases home.
- Dr M noted that she "needs help with lifting and repetitive movements."
- Regarding Meal Preparation she is independent with meal planning and safe storage of food but requires periodic assistance with food preparation and cooking.
- She is independent with all aspects of Paying Rent and Bills, as well as Medications. Likewise, she is independent with Transportation, with the exception of requiring periodic assistance when getting in and out of a vehicle.
- The Appellant is independent with all aspects of social functioning, although she has marginal functions when it comes to dealing with extended social networks.
- She requires assistance for her DLA from friends and family, particularly groceries and house cleaning. She needs a cane to assist her.

Subsequent to the reconsideration decision but prior to the hearing, the Appellant submitted medical imaging reports.

- Regarding her lumbar spine, Dr J, radiologist, opined: "There is a multilevel disease, incompletely characterized. An MRI is recommended for further evaluation of the discs." In a separate report Dr J notes a 5-mm anterolisthesis of L4 on L5 with multilevel disc space narrowing present. A loss of disc space at L1-2 and L2-3 was found. Dr J opined that a degenerative condition is likely the cause but didn't exclude infection. No abnormality was seen at T12-L1.
- Regarding her cervical spine, he diagnosed "Cervical spondylosis, most pronounced at C4-5 and C5-6."
- With respect to her right shoulder, Dr M, radiologist, found a possible impingement syndrome and some calcium. He recommended a rotator cuff ultrasound assessment.

At the hearing the Appellant presented the following evidence:

- She has applied for CPP disability.
- Her basic living skills have been compromised but her big difficulty is outside the home. At home she can recover by lying on a couch which she can't do at a workplace.
- The stronger pain pills she sometimes takes make her "a zombie" so she can't work.
- At home she can take Tylenol and lie down when necessary.
- Regarding cooking and food preparation her daughter helps her with cutting and more difficult activities. She prefers easy-to-consume foods like fruit.
- When shopping she can buy and carry three small items, so her daughter must help shopping for larger things. Similarly, while she can do basic housework, her children come over once a month to do vacuuming and heavier cleaning. She can do laundry by herself.
- She is concerned about taking showers alone as she experiences vertigo and loses her balance. However, despite the difficulties with her right arm, she can use her left hand to wash and clean herself.

- While she can drive for an hour, if she must travel further she takes public transit which permits her to stand or sit as needed.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision. The Ministry did not submit a challenge to the Appellant's introduction nor the content of this evidence.

PART F – Reasons for Panel Decision

This is an appeal of the Ministry's reconsideration decision dated July 10, 2012, which held that the Appellant did not meet 3 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The Panel must determine whether this decision is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The Ministry found that the Appellant met the age requirement and that her impairment is likely to continue for at least 2 years. However, the Ministry was not satisfied that the Appellant has a severe physical or mental impairment nor that her 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 also found that as the Appellant is not significantly restricted from DLA, it could not be determined that she requires the significant help or supervision of another person and that no assistive devices are required.

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 applicant 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. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions, in the opinion of the prescribed professional, the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if 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:

- preparing own meals,
- managing personal finances,
- shopping for personal needs,
- using public or personal transportation facilities,
- performing housework to keep one's residence in acceptable sanitary condition,
- moving about indoors and outdoors,
- performing personal hygiene and self care, and
- managing personal medication.

Section 2(1)(b) adds two additional DLA for a person with a severe mental impairment:

- making decisions about personal activities, care or finances, and
- relating to, communicating, or interacting with others effectively.

An "assistive device" is defined in the EAPWDA as "a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform."

The Appellant argues that:

- Her physical condition has left her no option but to apply for disability as she needs to conserve her body's physicality.
- While she can cook simple meals and handle finances she is concerned that by pushing her body she will end up in a wheelchair.
- She needs help with meal preparation.
- Her condition makes it very difficult to work a most jobs.
- She referenced the imaging reports which were submitted subsequent to the reconsideration decision.

The Ministry did not attend the hearing nor submit arguments in addition to those contained in its reconsideration decision.

At the Hearing, the Panel advised the Appellant that this decision dealt with her condition as it relates to her ability to perform DLA, not whether she can work outside the home.

There is no dispute that the Appellant is over 18 years old nor that her impairment is likely to last for at least two years.

The Act requires the physical or mental impairment to be severe. Evidence of severity can be drawn from the Appellant's ability to perform DLAs as well as medical evidence of the impairment itself.

The Ministry noted that the Appellant was not diagnosed with a mental impairment; therefore a severe mental condition is not present. This is a reasonable conclusion given that Dr M's comments on her emotional and cognitive functioning result from her chronic pain and that there is no evidence of a mental impairment.

The Appellant was diagnosed with spinal stenosis in her cervical spine and a small cardio-vascular accident in 2003. She has complained about shoulder difficulties but Dr M did not issue a diagnosis specific to this.

The Ministry also concluded there was no severe physical impairment as "the natures of your restrictions are undefined and the frequency and duration of periodic assistance is also undefined." While the Ministry recognized some limitations it determined they more in keeping with a "moderate impairment."

The Panel finds this conclusion is reasonable as the functional limitations found by Dr M are not consistent with a severe physical impairment. The Appellant can walk unaided one to two blocks, climb two to five stairs, lift less than five lbs and sit less than one hour. In her own evidence, the Appellant stated she can drive for an hour and take transit for longer trips. She can prepare light meals and perform light housekeeping including laundry. She can carry small items home from the store but needs help with larger items. She can manage her pain at home by using stronger pain pills; it is only when outside of the house, e.g. at work, that these pills are counter-productive in that they affect her ability to think clearly.

The addition of the medical imaging reports submitted subsequent to the reconsideration decision

does not serve to render the Ministry's conclusions regarding severity unreasonable. The cervical, thoracic and lumbar spines were imaged, as was her right shoulder. Her lumbar problems were "incompletely characterized" and an MRI was recommended. No new diagnosis was made regarding her cervical spine and a rotator cuff assessment was recommended for her right shoulder. The Panel does not find this changes the assessment from "moderate" to "severe."

With respect to her DLA, Dr M completed an assessment both as the Appellant's physician and her assessor.

In the physician's section Dr M found her continuously restricted in four categories: Basic Housework, Daily Shopping, Mobility Outside the Home and Use of Transportation. Under the EAPWDR these relate to the DLA:

- Shopping for Personal Needs,
- Using Public or Personal Transportation Facilities,
- Performing Housework to Keep One's Residence in Acceptable Sanitary Condition, and
- Moving About Indoors and Outdoors

With respect to Basic Housework however, Dr M, as her assessor, noted she needs periodic assistance with laundry and continuous assistance with housekeeping. The Appellant's own evidence states that she does light housekeeping but has help with heavier tasks. She states she does her own laundry.

Similarly with Daily Shopping, Dr M found her independent except for periodic assistance required when travelling to/from store and continuous assistance carrying purchases home. The Appellant clarified that she carries small purchases home but relies on her daughter for larger items.

Examining Mobility Outside the Home and Use of Transportation, Dr M found her independent while using public transit and using transit schedules and arranging transportation, but requiring periodic assistance getting in and out of a vehicle. This was confirmed by the Appellant, who stated she can drive for an hour but must take transit beyond that to enable her to move around. She is able to enter and exit her vehicle, albeit with difficulty.

Regarding her Mobility and Physical Ability, the Appellant can walk indoors but needs periodic assistance walking outdoors and while standing and continuous assistance climbing stairs, lifting, carrying and holding. Apart from difficulties lifting, carrying and holding, the Appellant did not discuss the other aspects of this DLA, nor are there details in the assessment regarding the length of the periods for which she requires assistance.

Looking at the evidence as a whole, the Ministry was reasonable to conclude that the Appellant is not directly and significantly restricted either continuously or periodically for extended periods of time with these DLA. While she is constrained by her impairment, the evidence does not indicate a level of restriction required by the EAPWDR.

The Panel finds the Ministry's decision was reasonably supported by the evidence and confirms the decision.