

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated May 3, 2012 which found that the appellant did not meet three 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 and that 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 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 30, 2012, physician report dated February 13, 2012, and assessor report dated January 30, 2012;
- 2) Letter dated March 8, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 3) Request for Reconsideration.

In her Notice of Appeal, the appellant states that she is tired of being constantly denied and \$40 per month does not pay her medical bills. In her Request for Reconsideration, the appellant states that she has been diagnosed as having osteoarthritis of her spine and has to go to the chiropractor every week to have her back worked on. The appellant also states that she has bronchial asthma.

In her self-report included in the PWD application, the appellant explains that she had surgery on her left ankle in 1989 which left her with bad nerves and pain in wet weather conditions. The appellant states that she has lower back pain due to arthritis, which she also has in both hands. The appellant states that she has severe nerve damage in her left arm, which she is unable to use, and also chronic asthma/ stress/ depression/ anxiety and lack of sleep due to pain. The appellant states that shooting pain is at '10' and she has to rest for about 45 minutes to 1 hour. The appellant states that for personal care, she is shaky getting in and out of the shower and equipment is needed for balance and reaching. The appellant states that she needs help from others for lifting boxes and she needs assistance with shopping due to pain. The appellant states that it is too painful to do house cleaning and for moving indoors and outdoors, she has poor balance. The appellant states that for moving outdoors she has a fear of falling due to no feeling in her left leg and, for transportation, she cannot walk to the bus stop and has to rely on others to drive her around. The appellant states that she experiences anxiety, agitation, stress, and asthma attacks due to pain and that she is socially isolated. The appellant states that the assistive devices she needs are a cane, crutches, braces, reacher, electric scooter, walker, and grip rails for the shower.

The physician who completed the physician report has confirmed that the appellant has been her patient for 4 months and that she has seen the appellant 2 to 10 times in that period. In the physician report, the physician confirms a diagnosis of left ankle pain and swelling. The physician adds comments that the appellant "...fractured left ankle in 1979 falling off a horse, had reconstructive surgery 1997, ongoing pain in left ankle and swelling when stands, impairs her mobility and standing... patient also has depression and difficulty concentrating." The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA and that she does require an aid for her impairment as she "...uses a cane occasionally for balance." The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, and she has no limitation with lifting or with remaining seated. The physician reports that the appellant has no difficulties with communication. The physician indicates that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration. The physician reports, in Part E, that the appellant is restricted periodically in the area of basic housework with the note that she "...needs help with housework occasionally- 2 times a week", and is restricted continuously in the area of mobility outside the home, with the note that she "...can walk half a block, can stand 5 minutes at a time." The physician reports that the appellant is not restricted in the areas of personal self care, meal preparation, management of medications, daily shopping, mobility inside the home, use of transportation, management of finances, and social functioning.

The assessor report was completed by a social worker as the prescribed professional who indicates that this was her first contact with the appellant and that she met with her for two office interviews over the period of 10 days. The assessor indicates that the appellant has a number of mental and physical impairments, including chronic asthma, COPD, a "broken ankle (age 15), fell out of tree", which healed crooked and she had surgery in "1989 to correct", degenerative lumbar disc, damage to left elbow with nerve damage, osteoarthritis with chronic pain especially when cold/wet, anxiety/depression with panic attacks, and migraine headaches 3 times

per month. The assessor reports that the appellant's ability to communicate is satisfactory in all areas except when she is anxious, depressed, suffering migraine or arthritic pain, then she is unable to effectively communicate with others and withdraws socially. The assessor indicates that the appellant is independent with walking indoors ("wall walks, uses furniture") and walking outdoors ("half block on good day, requires cane") as well as with climbing stairs ("3 stairs max") and standing ("5 minutes max"), although she takes significantly longer than typical. The assessor reports the appellant requires continuous assistance from another person with lifting and carrying and holding ("can't manage due to left arm damage, gets help"). The assessor 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 of chair, but takes significantly longer than typical ("4-5 times longer than before"). The assessor reports that the appellant both takes significantly longer than typical and requires continuous assistance from another person with doing laundry and with basic housekeeping, with the note that she "...does what she can but gets help 2 times a week"). The assessor indicates that the appellant both takes significantly longer than typical and requires continuous assistance from another person with all tasks of shopping, with comments that "...friend takes her shopping" and "...friend takes her home, helps with food." Further, the assessor does not evaluate the appellant's ability with meal preparation but notes "...fast and easy food, cannot stand for longer than 5 minutes." The assessor indicates that the appellant requires continuous assistance from another person with banking ("direct deposit") but is independent with the tasks of budgeting and paying rent and bills ("handles herself"), while taking significantly longer than typical. The assessor reports that the appellant is independent with all tasks of managing medications (filling-refilling prescriptions, taking as directed, safe handling and storage) and transportation (getting in and out of a vehicle, using public transit, and using transit schedules and arranging transportation), while taking significantly longer than typical with all tasks.

The assessor also reports that the appellant's mental impairment has a major impact on her cognitive and emotional functioning in the areas of bodily functions ("due to chronic pain, hygiene is neglected, sleep is disturbed, wakes every hour, must reposition"), emotion ("panic attacks, medicated"), attention/concentration, and motor activity. The assessor indicates that there are moderate impacts to consciousness, insight and judgment, minimal-moderate impacts to executive, memory, and motivation, and minimal or no impact to the remaining 3 areas. The assessor indicates that the appellant requires periodic support/supervision in all aspects of social functioning, including making appropriate social decisions ("socially isolated due to pain"), developing and maintaining relationships ("has contact 2 times week with long term friends"), interacting appropriately with others ("is appropriate with others"), dealing appropriately with unexpected demands, and securing assistance from others ("when necessary"). The assessor indicates that the appellant has marginal functioning in both immediate and extended social networks with no other notes or comments provided. The assessor indicates that the appellant receives help from friends and that she uses a cane and crutches and a "...power wheelchair would assist greatly."

## 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 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 as follows:

### Persons with disabilities

2 (1) In this section:

**"assistive device"** means 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;

**"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 assistance animal.

(4) The minister may rescind a designation under subsection (2).

Section 2(1)(a) of the EAPWDR defines DLA for a person who has a severe physical or mental impairment as follows:

### Definitions for Act

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.

*Severe Physical Impairment:*

The ministry argues that the evidence does not establish that the appellant has a severe physical impairment. The ministry argues that the physician has not confirmed the diagnoses as set out by the social worker in the the assessor report (chronic asthma, COPD, broken ankle, degenerative lumbar disc, nerve damage to left elbow, osteoarthritis, migraines and vertigo), nor those described by the appellant (lower back pain due to arthritis which is also in both hands, nerve damage in her left arm, asthma), and that the diagnosis by the physician is for left ankle pain and swelling. The ministry points to the physician report where it is indicated that the appellant is able to walk 4 or more blocks unaided, to climb 5 or more steps unaided, and has no limitations to lifting and to remaining seated. The ministry argues that the physician indicates that the appellant uses a cane occasionally for balance. The ministry points out that the assessor reports that the appellant needs continuous assistance with lifting and carrying and holding and that she takes significantly longer than typical with walking in and outdoors and climbing stairs and that the appellant can climb a maximum of 3 stairs and can stand for a maximum of 5 minutes. The ministry argues that the restrictions as reported by the social worker have not been corroborated by her physician. The appellant has not expressly stated a position on whether she has a severe physical impairment, though she has described a number of physical conditions from which she suffers, including left ankle trauma with pain and swelling, osteoarthritis in her lower back and both hands, degenerative lumbar disc, damage to her left elbow and nerve damage in her left arm, chronic asthma, COPD, migraine headaches, and vertigo. The appellant points out that she experiences shooting pain at '10' and she has to rest for about 45 minutes to 1 hour.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of an injury to the appellant's left ankle with ongoing pain and swelling. Although the assessor also reports that the appellant has osteoarthritis in her lower back and both hands, degenerative lumbar disc, damage to her left elbow and nerve damage in her left arm, chronic asthma, COPD, migraine headaches, and vertigo, the panel finds that these conditions have not been diagnosed by a medical practitioner and confirmed, in the opinion of a medical practitioner, that they are likely to continue for at least 2 years, as required by the legislation. The physician report indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA but that she "uses a cane occasionally for balance" as an aid for her impairment. The physician reports that the appellant can walk 4 or more blocks unaided on a flat surface, she can climb 5 or more stairs unaided, and she experiences no limitations with lifting or remaining seated. The assessor indicates that the appellant's mobility and physical ability is impacted by "vertigo and loss of balance" and that she is independent with walking indoors ("wall walks, uses furniture") and walking outdoors ("half block on good day, requires cane") as well as with climbing stairs ("3 stairs max") and standing ("5 minutes max"), however she takes significantly longer than typical with these activities. The assessor reports the appellant requires continuous assistance from another person with lifting and carrying and holding ("can't manage due to left arm damage, gets help"). The panel finds that the restriction with lifting identified by the social worker relate to a medical condition that has not been diagnosed by the physician and that the impacts to the appellant's functional skills, at least partially, relate to vertigo which has also not been identified by the physician. The panel finds that there are some inconsistencies in the assessments by the physician and the assessor, as well as in the facts regarding when and how the appellant's ankle was injured and when she underwent reconstructive surgery. As the social worker prepared the assessor report without the physician's report available to her and based solely on two office interviews with the appellant, whereas the physician has known the appellant for 4 months and focuses the assessment on the diagnosed condition, the panel places more

weight on the physician report in the areas of inconsistency. In explaining the restrictions to mobility outside the home, the physician notes that the appellant "can walk half a block" and that she occasionally uses a cane for balance. In her self-report included in the PWD application, the appellant explains that she had surgery on her left ankle in 1989 which left her with bad nerves and "pain in wet weather conditions." The panel finds that the evidence demonstrates that the appellant experiences a range of outdoor mobility from half a block, on bad days, to 4 or more blocks unaided, that the appellant's ankle injury and ongoing pain and swelling causes restrictions to her mobility but the consistent functional skills limitations as a result of this condition are minimal. Therefore, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment, was reasonable.

*Severe Mental Impairment:*

The ministry argues that the evidence does not show that the appellant has a severe mental impairment. The ministry points out that the physician reports deficits to cognitive and emotional functioning in the areas of emotional disturbance and attention or sustained concentration whereas the assessor indicates that appellant experiences major impacts to bodily functions, emotion, attention/concentration and motor activity and moderate impacts with executive, memory, and motivation, and that these restrictions have not been corroborated by the physician. The appellant has not expressly stated a position on whether she has a severe mental impairment, though it seems implicit from her evidence that her position is that she does have a severe mental impairment as a result of stress, depression, and anxiety.

The panel finds that the evidence of a medical practitioner does not set out a specific diagnosis of a mental disorder in Part A of the physician report, however the physician notes in the appellant's health history that the appellant "...also has depression and difficulty concentrating." The physician indicates that there are significant deficits with cognitive and emotional function in the areas of emotional disturbance and attention or sustained concentration. The physician reports, in Part E, that the appellant is not restricted in the area of social functioning. The assessor, on the other hand, reports that the appellant's mental impairment has a major impact on her cognitive and emotional functioning in the areas of bodily functions ("due to chronic pain, hygiene is neglected, sleep is disturbed, wakes every hour, must reposition"), emotion ("panic attacks, medicated"), attention/concentration, and motor activity, as well as moderate impacts to consciousness, insight and judgment. The assessor has noted for other emotional or mental problems that the appellant experiences "...sadness for loss of ability, possibilities in the future." The panel finds that some of the impacts identified by the assessor relate to the appellant's physical impairment (chronic pain) rather than a mental disorder and that "sadness" would be part of the impact to emotions already identified. The assessor indicates that the appellant requires periodic support/supervision in all aspects of social functioning, including making appropriate social decisions ("socially isolated due to pain"), developing and maintaining relationships ("has contact 2 times week with long term friends"), interacting appropriately with others ("is appropriate with others"), dealing appropriately with unexpected demands, and securing assistance from others ("when necessary"). The assessor indicates that the appellant has marginal functioning in both immediate and extended social networks with no other notes or comments provided. The panel finds that the assessor's notes do not consistently support the need for periodic support/supervision as the appellant "has contact 2 times week with long term friends", "is appropriate with others" and is able to secure assistance from others "when necessary", particularly when the physician has reported no restrictions to social functioning. The panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

*Direct and Significant Restriction:*

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 reports that the appellant performs all but 2 DLA with no restriction, with periodic restriction to basic housework and continuous restriction with mobility outside the home. The ministry argues that the restrictions reported by the social worker, that the appellant needs continuous assistance with laundry, housekeeping, going to/from stores, reading prices and labels,

making appropriate choices, paying for purchases, carrying purchases home and banking and periodic assistance with all areas of social functioning, have not been corroborated by the appellant's physician of 4 months. The appellant argues that her evidence seen together with that of her physician and the social worker shows that the appellant's DLA are directly and significantly restricted either continuously or periodically for extended periods.

The panel finds that the legislation requires that the ministry is satisfied 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 the physician report, the physician reports that, for preparing her own meals, the appellant is not restricted. In the assessor report, the social worker has not provided individual assessments of the need for assistance with tasks, but has noted "fast and easy foods" and "cannot stand for longer than 5 minutes." For managing personal finances, the physician indicates that the appellant is not restricted in this areas and the assessor reports that the appellant requires continuous assistance from another person or she is unable to do banking, with the note "direct deposit." The assessor indicates that the appellant is capable of budgeting and paying rent and bills ("handles herself") and the panel finds that direct deposit in and of itself does not support an assessment of a need for continuous assistance with the task of banking. In terms of shopping for her personal needs, the physician indicates that the appellant is not restricted in this area and the assessor reports that the appellant requires continuous assistance from another person with all tasks and also takes significantly longer than typical with going to and from stores ("friend takes her shopping"), reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home ("friend takes her home helps with food"). The appellant states that she needs help from others with shopping due to pain and that she has to rely on others to drive her around. Given that the physician indicates no restrictions to this DLA and that the assessor has referred to several medical conditions in the assessor report which were not diagnosed by the physician, the panel finds that it is not clear that the need for assistance with these tasks of shopping are as a result of the impacts from a diagnosed condition.

For use of public or personal transportation facilities, the physician indicates that the appellant is not restricted in this DLA and the assessor reports that the appellant can perform all tasks although it takes her significantly longer with getting in and out of a vehicle, using public transit and using transit schedules and arranging transportation. In her self-report, the appellant states that she cannot walk to the bus stop and has to rely on others to drive her around, however this is not supported by the evidence of a prescribed professional. With respect to performing housework to maintain the appellant's place of residence in an acceptable sanitary condition, the physician reports that the appellant is periodically restricted and notes that she "...needs help with housework occasionally- 2 times week." The assessor reports that the appellant requires continuous assistance from another person with laundry and basic housekeeping and notes that the appellant "...does what she can but gets help 2 times week." In her self-report, the appellant states that it is too painful to do house cleaning. The panel finds that the evidence of the prescribed professionals is consistent with periodic restrictions and assistance required as the appellant is able to perform these tasks to some extent ("does what she can"). For moving about indoors and outdoors, the physician indicates that the appellant is not restricted with mobility inside the home but is continuously restricted with mobility outside the home, with the range of mobility being from half a block to 4 or more blocks unaided with occasional use of a cane for balance. The assessor reports that the appellant does not require assistance with walking indoors and with walking outdoors ("requires a cane, half block on good day") and with climbing stairs, but takes significantly longer than typical due to vertigo and loss of balance.

Regarding performing personal hygiene and self care, the physician indicates that the appellant is not restricted with this DLA and the assessor reports that the appellant does not require assistance with any tasks of personal care, including dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and transfers on/off a chair, although she takes significantly longer than typical. The appellant states in her self-report that she is shaky getting in and out of the shower and equipment is needed for balance and for reaching. With respect to managing her personal medications, the appellant's physician again indicates that

the appellant is not restricted in this area and the assessor reports that the appellant does not require assistance with the tasks of filling/refilling prescriptions, taking medications as directed and safe handling and storage, although she takes significantly longer than typical. For making decisions about personal activities, care or finances, the physician reports that the appellant is not restricted in social functioning and the assessor reports that the appellant requires periodic support/supervision with making appropriate social decisions but is independently able to manage her finances and personal care. For relating to, communicating or interacting with others effectively, the physician reports no difficulties with communication and the assessor reports a satisfactory ability to communicate in all areas unless the appellant is anxious, depressed, suffering a migraine or arthritic pain, at which times her ability to effectively communicate with others is poor. The panel finds that there is not sufficient information provided to determine the frequency that the appellant experiences impacts to her communication from the diagnosed conditions. With respect to interacting appropriately with others, the assessor reports both that the appellant requires periodic support/supervision and also that she "...is appropriate with others" and "has contact 2 times week with long term friends." In her self-report, the appellant states that she experiences anxiety, agitation, stress, and asthma attacks due to pain and that she is socially isolated. The assessor reports that the appellant has marginal functioning in both her immediate and extended social networks.

Looking at the evidence as a whole, the panel finds that the appellant's physician, as a prescribed professional, has reported that the appellant is continuously restricted with one aspect of her mobility, with mobility outside the home, and periodically restricted in the area of basic housework. Although the appellant is also assessed by the social worker as being continuously restricted in the DLA of shopping, the panel finds that the evidence does not show that these restrictions are a result of the conditions diagnosed by a medical practitioner and included in the PWD application. As well, the panel finds that the evidence of the prescribed professionals demonstrates that the appellant is able to perform the majority of the tasks of her DLA independently and without restriction, including the areas of social functioning. 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.

*Help in Relation to DLA:*

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 alone, receives help from friends, and uses a cane occasionally as 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.

*Conclusion:*

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.