

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated August 24, 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* (EAPWDA) for designation as a person with disabilities. 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 the appellant 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. The ministry also found that the appellant does not require the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA as a result of significant restrictions.

### 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 June 7, 2012;
- 2) Physician report dated June 19, 2012;
- 3) Assessor report dated June 20, 2012;
- 4) Persons with Disabilities Designation Decision Summary dated August 9, 2012;
- 5) A note from the appellant's physician dated August 15, 2012;
- 6) Request for Reconsideration dated August 16, 2012.

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

In her Notice of Appeal, the appellant provided a copy of a note from her physician dated September 5, 2012. The panel accepted the document as being in support of the information before the ministry at the time of the reconsideration under Section 22(4) of the *Employment and Assistance Act (EAA)* and therefore, admitted the physician's note into evidence.

In her self-report included with the PWD application, the appellant states that she is obsessed about everything. She is not compulsive too much because she hesitates first. The appellant states that she tried to commit suicide in 2001 and cannot deal with the harm being done to women and children. She further states that she was diagnosed with Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD) in 2001, but she has come to see that she has always been this way through her whole life. She is worried about her economics and world economics. The appellant states that she is completely disillusioned and wants to escape from the world. She states that she lives every day 6 times over and over.

The physician who completed the physician report confirms that the appellant has been her patient since June 2008 and that she has seen the appellant 11 or more times in the past 12 months. In the physician report, the physician confirms a diagnosis of OCD, PTSD and right hip osteoarthritis (arthroplasty). The physician adds comments regarding the severity of the medical conditions relevant to the appellant's impairment. The physician stated:

- 1- Obsessive Compulsive Disorder – "lives each day over and over, is obsessive over daughter, worry about things that aren't even going to happen worry about health ... about job". "Still obsess over a job that was over 1 year ago. Compulsive – over smoking and drinking coffee. Have to shower/wash 4x, shower (soap and rinse) 4x, wash dishes 4x, close fridge doors 4x".
- 2- Post-Traumatic Stress Disorder – related to two children's death, a friend's child and a stranger occurred 1995 and 1996. Thinks about how the children died over and over again.
- 3- Right hip severe osteoarthritis. Had arthroplasty.

The physician indicates that the appellant has not been prescribed any medications that interfere with her ability to perform DLA, and she does not require any prostheses or aids for her impairment. The physician reports that the appellant's impairment will likely continue for two years or more and explains that for OCD and PTSD she will be referred to psychiatrist. The physician reports that the appellant can walk unaided on a flat surface 4 + blocks, she can climb steps 5 +, her limitation in lifting is 2 to 7 kg, and she has no limitation to remain seated. The physician indicates that there are no difficulties with communication. The physician reports that there are significant deficits with Emotional disturbance in the areas of motivation, and motor activity.

In response to the question whether the appellant's impairment directly restricts her ability to perform daily living activities (DLA), the physician has indicated that daily shopping is the only activity that is restricted and the restriction is continuous. The physician indicated that the appellant has no restriction in social functioning, (daily decision making and interacting).

Under the additional comments, the physician reports that the appellant has severe obsessive compulsive disorder that severely impacts on her life. She is unable to work at this time. She is planned for a psychiatric assessment at a hospital.

The assessor report was completed by the same physician who completed the physician report. The physician (assessor) indicates that the appellant's impairments that impact her ability to manage DLA are OCD, PTSD and right hip osteoarthritis. The assessor reports that the appellant is independent in walking indoors and outdoors, needs periodic assistance with climbing stairs (has to use handrail), lifting, carrying and holding because of right hip arthroplasty. Page B of the report has some changes to the initial report, initialed by the physician and the appellant has added a few notes on the comments section.

As to cognitive and emotional functioning, the assessor has not reported any major impacts. The assessor report indicates minimal impacts on executive and moderate impacts on bodily functions, impulse control, emotion, and motivation.

With respect to the assistance required to manage DLA, the assessor reports that the appellant is independent in managing her personal care, basic housekeeping and shopping, indicating that the appellant uses an assistive device to carry purchases home due to the right hip osteoarthritis. The assessor further reports that the appellant is independent in planning and cooking meals, paying her bills and rent, taking medications, getting in and out of a vehicle and using public transit. Furthermore, the assessor reports that the appellant is independent in social functioning and that the appellant asks family and friends to assist her.

The physician in a note dated August 15, 2012 states "the appellant is mentally and emotionally impaired which affects her physical activities as it inhibits her from doing what she needs to do". The physician states that the appellant suffers from anxiety and sleep disorder, PTSD and depression. She needs regular counselling sessions and needs physical help with grocery shopping. She needs to have company occasionally to check on her conditions.

The appellant in the request for reconsideration makes the following points regarding her impairment:

- She has mental and emotional impairment;
- Her impairment significantly restricts her ability to perform daily living activities;
- She is waiting to see a psychiatrist;
- Her main impairments are mental/emotional and physical;
- Has chemical imbalance and lack of motivation;
- She is limited in walking, climbing and lifting;
- She cannot carry more than 2-5 lbs.;
- She requires assistive device to climb up the stairs, shower and use toilets and getting in and out of bed;
- She needs assistance with lifting, carrying, holding and can't even carry a purse;
- She does not like to being touched and interacts only when it is necessary;

- She cannot sleep and has trouble with doing housekeeping and taking transit.

The appellant also provided some hand-written comments on the PWD decision summary. In addition, she attached the physician and assessor reports with amended entries showing her physical abilities were more restricted and that she requires more help for managing DLA than originally indicated.

The physician in a note dated September 5, 2012 stated "the above person has severe OCD and PTSD disorders. She also has severe osteoarthritis of the hips. She needs help from a licensed health care aid for her daily activities".

The appellant in the Notice of Appeal makes the following points regarding her impairment:

- That she did not understand some of the questions in the application and corrected them in her request for reconsideration;
- That she has 5 mental health issues, OCD, PTSP, depression, anxiety and sleeplessness;
- That her impairments severely affects her emotionally and physically;
- That she has no emotional or physical motivation or motor activity;
- That the ministry is unjust and unfair and her mental health issues alone qualify her for a designation of PWD;
- That she has severe and continuous physical impairment;
- That she can only carry 2-5 lbs. for a maximum of 2 blocks;
- That she can do a maximum of 5 stairs;
- That she cannot lift, carry, bath, do stairs, shop, barely carry a jug of milk, walk, stand, vacuum, clean, laundry, etc.;
- That she has psychiatric assistance.

At the hearing the appellant stated that the reconsideration decision is unreasonable because it ignores the facts provided by her physician in the reports. The appellant stated that the ministry contradicted itself by stating that her physician reported that she is mentally and emotionally impaired and that her impairment affects her physical activities and on the next page of the decision stated that "therefore based on the information provided by Dr....., the ministry finds there is not enough evidence to establish a severe physical impairment". The appellant further stated that the physician in her report stated that she needs periodic assistance with climbing stairs, standing, lifting and carrying and holding and that she has to use a handrail.

The appellant said that she misunderstood some of the questions when she was completing the physician and assessor reports with her physician. Furthermore, the appellant said that when she told her physician she was able to walk 4 blocks or climb the stairs, she meant with the help of her daughter she was able to do those activities. The appellant stated that her daughter who used to assist her 4 days a week is no longer available and as such, she can't walk more than two blocks without taking a break. The appellant said that she is able to move around in her suite as the place is small and she can hold on to furniture when moving around her apartment. The appellant further said that she can lift 10 to 15 lbs. but is unable to carry it and has not been able to do grocery shopping since she has lost her daughter's assistance. The appellant said that she is able to take transit as long as seats are available. The appellant stated that her physical impairment severely affects her ability to do her daily living activities.

The appellant stated that she wrote the information in the comments part of the original assessor report and that the physician signed the documents after.

The appellant referred to the changes in the physician and assessor reports as follows:

- Page C of the report, section 1, she changed the 4+ blocks to 2-4 blocks and made notes that "difficulty walking to....";
- Section 3, the appellant changed the physician's note from 2 to 7 kg as limitation in lifting to under 2 kg;
- Section 6, the physician did not say yes or no to "are there any significant deficits with cognitive and emotional functions"? and identified emotional disturbance, motivation and motor activity as areas where the deficits are evident. The appellant put "x" as yes to the question and added "x" for consciousness with a not stating vertigo;
- The appellant also changed section 6, daily living activities and added yes to the question "does the impairment directly restrict the person's ability to perform DLA. The appellant further changed the no as is activity restricted to yes on meal preparation, basic housework, and mobility outside the home. The appellant said that the only reason she told her physician she was able to do these activities was because at the time, she had her daughter assisting her with these activities and she misunderstood the questions;
- In section B of the assessor report, the appellant made the following changes:
  - a- Consciousness, from no impact to moderate impact
  - b- Motor activity, from no impact to moderate impact;
  - c- Other emotional or mental problems, from no impact to moderate impact;
- In section C of the assessor report, the appellant made the following changes:
  - a- Bathing, from independent to continuous assistance from another person or unable;
  - b- Toileting, from independent to continuous assistance from another person or unable;
  - c- Transfer (in/out of bed), from independent to periodic assistance from another person. The appellant noted "I must brace myself";
  - d- Transfer (on/off of chair), from independent to periodic assistance from another person;
  - e- Laundry, from independent to periodic assistance from another person. The appellant noted "only light loads not heavy";
  - f- Basic housekeeping, from independent to periodic assistance from another person. The appellant added "2-5 lbs. weight periodically only";
  - g- Going to and from stores, from independent to periodic assistance from another person. The appellant noted "2-4 blocks ..... only";

The appellant said when the ministry denied her application; she realized that she had misunderstood the meaning of "independent", thinking that she had been independent because of her daughter's help. With her daughter no longer available, she saw her situation in a new light, and revised the entries in the physician and the assessor reports to reflect her changed circumstances. She said that she reviewed these changes with her physician. The appellant agreed that her physician did not initial the documents or confirmed in writing that she agrees with the changes. The appellant argued that the physician's September 5, 2012 note indicated her agreement with the changes.

With respect to the above changes, the panel finds that as the physician has not confirmed the changes made to the physician and assessor reports, the revisions cannot be considered as being in the opinion of a medical practitioner with respect to the severity of the appellant's impairments or in the opinion of a prescribed professional as required under Section 2(2) of the EAPWDA.

With respect to a mental impairment, the panel's findings of fact are:

- The appellant's physician reported emotional disturbance, motivation, and motor activity as significant deficits with cognitive and emotional function.
- .The physician reported that the appellant's bodily function, emotion, impulse control and motivation are moderately impacted by her impairment.
- The physician noted severe obsessive compulsive disorder that severely impacts on the appellant's life.

With respect to the appellant's DLA restrictions, the panel's findings of fact are:

- The Appellant's physician, acting as assessor, reported that the appellant requires periodic assistance with climbing stairs, standing, lifting and carrying and holding. The physician made a note that the appellant has to use handrail for climbing stairs.

With respect to the appellant's requirement for help to perform DLA's, the panel's findings of fact are:

- The physician reports that the appellant is independent in personal care and basic housekeeping.
- The physician reported that the appellant uses assistive device and takes significantly longer to carry her purchases home. The physician reported that the appellant receives help from family and friends.
- The physician acting as assessor reported that the appellant is independent in walking indoors, walking outdoors, and needs periodic assistance from other persons in climbing stairs (have to use handrail), standing, lifting, carrying and holding. The physician noted "because of right hip arthroplasty".

## 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, the appellant does not require the significant help or supervision of another person, the use of an assistive device, or the services of an assistance animal to perform DLA as a result of significant restrictions.

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.

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. As the ministry did not attend the hearing, the panel considers that its position to be that set out in the reconsideration decision.

***Severity of physical impairment***

The ministry in the reconsideration decision stated that the evidence does not show that the appellant has a severe physical impairment. The ministry points to the physician report, where the physician indicates that the appellant can independently walk, climb stairs and lift 5-15 lbs. The ministry notes that the physician acting as an assessor did not indicate that the appellant requires any equipment or devices to help compensate for her impairment. The ministry further finds that the appellant, based on the physician report is able to physically manage the majority of DLAs independently. Therefore the ministry found that there was not enough evidence to establish a severe physical impairment.

The position of the appellant is that she has severe physical and mental impairment as a result PTSD, OCD, and right hip osteoarthritis. The appellant further states that she has osteoporosis and has trouble walking and climbing and suffers from anxiety and sleep disorder. The appellant stated that she has great difficulty bending and picking up something from the floor or standing for long, she is not able to walk fast or only about 2 to 3 blocks and she needs to sit before walking back home

The panel notes that in the assessor report, the physician who has known the appellant since 2008 and has seen the appellant 11 or more times in the last year, diagnoses the appellant with OCD and PTSD and hip osteoarthritis. The physician states that the appellant has severe osteoarthritis and had arthroplasty.

The physician indicates that the appellant has not been prescribed any medications that interfere with her ability to perform DLA, and that she does not require any prostheses or aids for her impairment. The physician reports that the appellant can walk 4+ blocks and climb 5+ stairs. The report indicates



that the appellant can lift 2 to 7 kg and has no limitation remain seated. The physician further states that the appellant has no restriction performing her DLA with the exception of daily shopping.

The physician, acting as an assessor indicates that the appellant is independent walking indoors, outdoors and climbing stairs. The assessor reports that the appellant periodically need assistance with climbing stairs, standing, lifting, and carrying and holding because of her right hip osteoarthritis.

The panel notes that the physician in a note dated August 15, 2012 states that the appellant needs physical help with grocery shopping and to have company occasionally to check on her condition. The same physician in a note dated September 5, 2012 states that "she also has severe osteoarthritis of the hips. She needs help from a licensed health care aid for her daily activities. The panel notes that physician does not indicate what kind of assistance, in performing which of the daily activities or for how long.

Therefore, based on all the evidence provided by the physician that indicates that the appellant is not unduly restricted in her physical ability to function independently or effectively, the panel finds that the ministry's determination that the evidence does not establish a severe physical impairment was reasonable.

### ***Severity of mental impairment***

The ministry, in the reconsideration decision stated that the evidence does not show that the appellant has a severe mental impairment. The ministry stated that the appellant's physician in a note dated August 15, 2012 indicates that the appellant is mentally and emotionally impaired which affects her physical activities. The ministry points out that the appellant's physician indicates that she has significant deficits in her cognitive and emotional functioning in the areas of emotional disturbance, motivation and motor activity; however, the physician in the assessor report states that the appellant's impairments have no impact on the majority of her cognitive and emotional functioning and have a moderate impact in the areas of bodily functions, emotions, impulse control, attention and motivation.

The appellant argues that she has severe physical and mental impairment as a result PTSD, OCD, and right hip osteoarthritis. The appellant further states that she has osteoporosis and has trouble walking and climbing and suffers from anxiety and sleep disorder. The appellant argues that she has great difficulty bending and picking up something from the floor or standing for long, she is not able to walk fast or only about 2 to 3 blocks and she needs to sit before walking back home. The appellant further argues that many people on PWD do not require help to perform their DLA.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of OCD, PTSD, anxiety, depression and sleep disorder. The physician noted severe obsessive compulsive disorder that severely impacts on the appellant's life and that the appellant is planned for a psychiatric assessment at a hospital. The physician adds a comment regarding the severity of the medical condition relevant to the appellant's impairment "... lives each day over and over, obsessive over daughter, worry about things that aren't even going to happen".

The physician reports that there are significant deficits with cognitive and emotional function in three areas, specifically emotional motivation, and impulse control, with no additional comments. The

physician indicates "N/A" to the question, if social functioning is impacted. The physician states "severe obsessive compulsive disorder that severely impacts on her life. Unable to work at this time. She is planned for a psychiatric assessment". Furthermore, the physician in the August 15, 2012 notes states that the appellant is mentally and emotionally impaired which affects her physical activities as it inhibits her from doing what she needs to do. The panel accepts the physician reports; however, the panel notes that although the appellant has been diagnosed with mental health conditions and has been referred to a psychiatrist, there is insufficient evidence on how these medical conditions severely restrict her ability to function independently and effectively. The physician has identified OCD, PTSD and Osteoarthritis as the appellant's medical conditions; however, the physician reports that none of the appellant's deficits has a major impact on her daily activities. Overall, the panel finds that the ministry's decision, which concluded that the evidence does not establish a severe mental impairment, was reasonable.

Whether DLA are significantly restricted

The ministry, in the reconsideration decision states 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's ability to manage DLA is not restricted other than daily shopping. The ministry submits that the physician states the appellant uses an assistive device when carrying purchases home; however, there is no description of the device included in her application. The ministry stated that the physician said that it takes significantly longer for the appellant to carry purchases; however the physician does not say how much longer.

The appellant argues that she misunderstood the questions and answered that she was able to do her DLAs independently because she thought that meant with the assistance of her daughter.

The panel notes that the legislation requires that the ministry must be 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.

The physician reports that the appellant needs physical help with grocery shopping and to have company occasionally to check on her condition. In a note dated September 5, 2012, the physician states that the appellant needs help from a licensed health care aid for her daily activities. The panel notes that physician does not indicate what kind of assistance, in performing which of the daily activities or for how long. In terms of personal care, the physician reports that the appellant is not restricted in meal preparation, management of medications, basic housework, mobility inside the home, mobility outside the home, use of transportation and management of finances. The physician reports that as a result of arthroplasty, the appellant requires periodic assistance in lifting and carrying. The physician further reports that the appellant requires using handrail when climbing stairs.

Looking at the evidence as a whole, the panel finds that the physician who has known the appellant for some time reports that the appellant is not restricted with the majority of her DLA. The assessor reports that the appellant is independent in personal care, planning and cooking meals, pay her bills and rent, takes medications, getting in and out of a vehicle and using public transit. The panel finds that although the appellant uses handrail when climbing the stairs, the handrail is not an assistive

device as defined in the legislation. The panel also finds that the appellant is able to lift, walk, and climb stairs at the reported level. The panel finds that the appellant is able to walk unaided 4+ blocks, climbs 5+ steps and lift 2-7 kg. Furthermore, the assessor reports that the appellant is independent in social functioning and that the appellant asks family and friends to assist her.

Therefore, the panel finds that the evidence of the prescribed professional does not establish restrictions to DLA relating to the appellant's diagnosed conditions. 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.

#### Whether help to perform DLA is required

The ministry's position is that the physician indicates that the appellant does not require the use of an assistive device. The ministry stated that as it has not been established that DLAs are significantly restricted, therefore the ministry is not satisfied that the appellant requires significant help from other persons or the services of an assistance animal.

The appellant argues that she needs railings to climb the stairs and shower. The appellant further argues that her physician stated that she needs a licensed health care aid to be able to perform her 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 and that she does not regularly use an assistive device. The physician reports that the appellant is independent in personal care and basic housekeeping. As it has not been established that the ability to perform DLA is 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.