

## PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development dated 07 June 2012 denying the appellant person with disabilities (PWD) designation. The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2(2) and (3). Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts the person's ability to perform daily living activities either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions, the person requires help to perform those activities.

The ministry did determine that the Appellant satisfied the other 2 criteria: she has reached 18 years of age; and her impairment in the opinion of a medical practitioner is likely to continue for at least 2 years.

## 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 reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 12 April 2012. The Application included a Self Report (SR) written by the appellant, and a Physician Report (PR) and Assessor Report (PR) prepared by the appellant's General Practitioner (GP) who has known the appellant for 8 years and who has seen her 2 – 10 times in the past year. (see below)
2. A letter from the appellant's GP dated 04 April 2011 advising that the appellant had applied for EI as she had to resign her job due to stress.
3. A consultation letter from a specialist in rheumatology and osteoporosis dated 05 July 2011 to the GP. (see below)
4. A letter dated 25 July 2011 from the GP advising that the appellant had terminated her recent employment due to severe arthritis and chronic pain. The letter states she will need a less demanding job.
5. A letter dated 16 August 2011 from the GP along the same lines as #4 above.
6. A letter from the locum GP dated 13 March 2012 stating that the appellant has symptoms that fit fibromyalgia. The GP states that her treatment regime includes daily exercise and targeted prescription analgesics. She understands that there aren't pharmacological agents that will completely correct her pain and that she needs to persevere through exercise in order to maximize her best long-term functional outcome.
7. An undated letter from a friend of the appellant. The friend writes that, after hearing the appellant describing her pain to her, she recommended that the appellant be tested for fibromyalgia. The appellant used to help her out by mowing her lawn and helping around her home. She no longer mows her lawn in one session, for she can barely move around the next day. The friend believes the appellant's chronic pain is real, because she's seen it with their own eyes and has also experienced the same pain.
8. A letter dated 01 June 2012 from her case manager with the Work BC Employment Services in support of the appellant's PWD application. She writes that after many counseling sessions, she has become increasingly aware of the degree of limitations the appellant experiences on a daily basis. She requires assistance with filling out forms and requires frequent breaks from sitting during their sessions. She must take the elevator to and from their appointment, as stairs proved to be too challenging.
9. A letter from the GP dated 29 May 2012 in support of the appellant's Request for Reconsideration. (See below).
10. A ministry telephone log dated 05 June summarizing the ministry record of a conversation between the reconsideration officer seeking clarification of the contents of the above letter and the GP. (see below)
11. The appellant's Request for Reconsideration, dated 31 May 2012, (see below)

In the PR, the GP diagnoses the appellant with osteoarthritis and fibromyalgia, with onset 2010. Under Health History, indicating the severity of the appellant's medical conditions, the GP writes: "moderate osteoarthritis impairs functions of ADL and patient requires more time to do ADL." The GP reports that no medications or treatments have been prescribed that would interfere with the ability to perform daily living activities (DLAs). No prostheses or aids are required. The GP reports that the appellant's impairment is likely to continue for two years or more. As to functional skills, the appellant can walk 4+ blocks, climb 5+ stairs, lift 15 to 35 lbs and remain seated for 1 to 2 hours. No difficulties with communication are noted. The GP reports no significant deficits with respect to cognitive and emotional function. Under DLAs, the GP reports that none is actively restricted. Under

additional comments, the GP notes that the appellant has trialed amitriptyline, T3, gabapentin, all with no improvement.

In the AR, the GP indicates that the appellant lives with family/friends. She reports that the appellant's impairment that impacts the appellant's ability to manage DLAs is "pain in lower back and hands and feet limited ability to do activities." Under ability to communicate, the GP reports speaking, reading, writing, and hearing are good. As to mobility and physical ability, the appellant is assessed as independent for walking indoors, walking outdoors, climbing stairs, standing, lifting, and carrying and holding. Under cognitive and emotional functioning, no impacts on daily functioning are reported. With respect to DLAs, the GP assesses the appellant independent in all aspects of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications, and transportation. Regarding social functioning, the GP assesses the appellant independent in all listed aspects, reporting good functioning for both immediate and extended social network. As to assistance provided for appellant, none is reported. Under additional information, the GP writes: "Impairment from osteoarthritis causes pain and patient takes longer to do routine activities."

In her SR the appellant states that her disability is that she suffers from fibromyalgia and severe osteoarthritis, which causes her not to be as physical as she used to be. She writes that she has constant pain all through her back every day and sitting for any length of time is really hard, always shifting to alleviate the pain. She describes the pains she gets in which makes it painful to walk and her leg gives out occasionally. She also describes how her hands get sore and swollen, with pain in the fingers and thumbs. She also gets sharp pains under her ribs, and when she has an attack she cannot move at all. The severe pain totally disables her. She has problems sleeping at night due to the chronic pain. She also suffers from anxiety to the point that she gets shaky and feels lightheaded. She describes how it takes her much longer to do anything now, even vacuuming, washing floors, dishes. She writes that she also drops things now and cutting vegetables is hard for her to do and she has little strength in her hands. She understands there is nothing much you can do that she will always have pain. She is now on medication and is trying to walk every day and do slow stretching and has quit smoking.

The specialist in rheumatology and osteoporosis reported agreement with the GP's diagnosis of osteoarthritis. He wrote that it is not atypical to have it at her age and there are no atypical features in her story or exam. Therefore he recommends she be treated routinely for osteoarthritis. The specialist reports that the appellant was diffusely tender to touch. She was one tender point short of a diagnosis of fibromyalgia today but this is really the area in which she fits best. The specialist discussed management options for fibromyalgia with the appellant, including different medications. The specialist indicated that the mainstay treatment is to increase aerobic activity, such that one is exercising briskly for at least 45 min., at least four times per week, although one hour daily would be best, gentle stretching exercises can also be helpful. The specialist recommends the GP try fibromyalgia therapy to see if it alleviates her diffuse pain.

In support of the appellant's Request for Reconsideration, the GP writes that the appellant suffers from severe osteoarthritis and fibromyalgia. This causes her to be severely limited in her activities. She has chronic lower back pain that causes her to have limited mobility and difficulty with standing or sitting for extended periods of time. She has chronic stiffness and pain in her hands that limit her activities of daily living, despite her daily medications.

The reconsideration officer summarized her conversation with the GP regarding the above letter as follows:

- “severely limited in her activities” is based on what the [appellant] told the GP.
- The appellant told the GP at some time she wakes up with stiffness in her hands. Based on this the GP feels that the appellant may need periodic assistance with laundry, basic housework, cooking and getting in/out of vehicle. No changes were needed for the functional skills [walking, climbing stairs, etc] of the PR.
- The physician does not think the appellant is severely restricted.
- There is no physical evidence based on the GPs examination.
- Nothing is showing on her x-rays or work.

In her Request for Reconsideration, the appellant writes that she is no longer able to move freely and cannot get back up from a sitting position without assistance. It takes her at least three times longer to do anything and she have to rest frequently. She states that she is in constant pain and has to use a heating bag daily. Moving around causes her extreme pain and her hands are starting to deform, with major swelling and knuckles that ache. She cannot hold onto things and is dropping stuff from her hands. Her back and hips hurt when walking and she is no longer able to walk for long, some days not at all. Her mother is living with her and helps her out greatly with preparing meals and daily chores. The appellant lists the medications she is taking, commenting that she does not want to take opiates due to dependency side effects.

In her Notice of Appeal, the appellant writes:

“Because I am in need of assistance, I have my 75-year-old mother with bath aids here, and someone to help me prepare meals. I am unable to get in/out of vehicle. My hands, back, legs are in constant pain, and I am getting depressed. No medications are helping – I can barely walk or write now.”

At the hearing, the appellant submitted a statement in which she stated that she is always in chronic pain. Her hands are swollen and she can't move her thumbs. She has bumps on her pointer finger now, and gets sharp shooting pain from her thumbs up to her wrists. Her back hurts all the time, with burning and spasms. She also gets dull aching pain in her knees and right shoulder. She can't lift her arms above shoulder height. Her feet get pain due to bunions. She gets pain under her right ribs, so she can't move at all, the pain is so intense. This happens at least once a month, sometimes more. She has had many ultrasounds, but they all indicate her gallbladder isn't damaged. It is hard to sit or stand in one position for long. She drops things from her hands, can't open jars, and has limited use of her hands as she can't close them anymore as she has no strength. She went on to describe previous medical difficulties and injuries, and related how she used to work in hard physical labour. She listed the medications she currently takes. She states that these are not helping with her pain and cause her to be tired all the time. She is very stressed out, depressed and having anxiety attacks over this and by not being able to do things she used to be able to do.

The appellant also submitted a letter from her elderly mother, with whom she now lives. After relating that her daughter lived with her, and helped around the house until 5 years ago, the mother states that her daughter moved back 16 months ago complaining about pain in her back, hands and feet. The mother writes that she sees the swelling in the appellant's hands and the pain she is in. She can no longer peel vegetables or stand for long - she has to take breaks. She has difficulty in holding things and often drops them. She cannot open jars and comes to her for help. Her daughter now

depends on her to help her physically and financially. She is on medication but finds that that does not help with the pain and she is tired all the time. She has seen a huge difference in her daughter. She is gone from being independent to dependent on her and she has withdrawn and depressed.

In answer to a question, the appellant stated she has good days and bad days. She said she is able to walk a few blocks, but only on good days, and after that she is in so much pain she is unable to walk at all for a few days. In answer to a question as to what she can and cannot do, she stated that she could not hold onto vegetables to cut or peel them, and she could not do heavy housekeeping like vacuum-cleaning.

The appellant also submitted a podiatrist's prescription for custom made shoes and a cost estimate for these shoes.

The ministry stood by its position at reconsideration.

The panel finds that the appellant's statement and her mother's letter at the hearing are in support of the information and records that were before the ministry at the time of reconsideration. The panel therefore admits this new information as evidence pursuant to section 22(4) of the Employment and Assistance Act. The panel finds the new information regarding foot orthotics not admissible, as this relates to a medical condition not diagnosed by the GP nor mentioned elsewhere in the evidence before the ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because she did not meet all the requirements in section 2(2) of the EAPWDA. Specifically the Ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

- (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,
- (ii) as a result of those restrictions she requires help to perform those activities.

The Ministry did determine that she met the 2 other criteria in EAPWDA section 2(2) set out below.

The following section of the EAPWDA applies to this appeal:

**2 (2)** The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
  - (i) directly and significantly restricts the person's ability to perform daily living activities either
    - (A) continuously, or
    - (B) periodically for extended periods, and
  - (ii) as a result of those restrictions, the person requires help to perform those activities.
- (3) For the purposes of subsection (2),
  - (a) a person who has a severe mental impairment includes a person with a mental disorder, and
  - (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
    - (i) an assistive device,
    - (ii) the significant help or supervision of another person, or
    - (iii) the services of an assistance animal.

The following section of the EAPWDR applies to this appeal:

**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.

## Severity of impairment

In terms of mental impairment, the ministry notes that the GP reports no significant deficits with cognitive or emotional functions and therefore the ministry was not satisfied that a severe mental impairment had been established. As the GP did not provide any diagnosis of a mental disorder, the panel therefore finds that the ministry reasonably determined that a severe mental impairment had not been established.

With respect to whether a severe physical impairment had been established, the ministry reviewed all the evidence before it at reconsideration. The ministry noted that in the PR the GP reports no restrictions with mobility and physical abilities. The ministry referred to the telephone conversation with the GP in which she stated that the reported chronic low back pain causing limited mobility and difficulties with standing or sitting, and the chronic stiffness and pain in the hands were based on the appellant's comments and not the GP's observations. The ministry also noted that the GP stood by her initial assessment of functional skills and took from this conversation that based on her examination and x-rays and blood work she could not confirm in her opinion that the appellant has a severe impairment. Based on this evidence, the ministry concluded that the information provided does not establish a severe physical impairment.

The position of the appellant is that, as her GP reported in his letter in support of her Request for Reconsideration, she has been diagnosed with severe osteoarthritis and fibromyalgia, causing her to be severely limited in her activities. Her chronic lower back pain causes her to have limited mobility and difficulty with standing or sitting for extended periods of time. She has chronic stiffness and pain in her hands that limit her activities of daily living. It is her submission that all this constitutes a severe physical impairment.

The panel notes that there is a significant disparity between the GP's assessment of the appellant's functional skills and restrictions with mobility and physical activities, and that described by the appellant and her mother and friends. For instance, the GP reports that the appellant can walk 4+ blocks unaided, while the appellant states she may be able to walk that distance, but only on good days, and if she does she cannot repeat such a distance the next day and sometimes she cannot walk at all. Similarly, the GP states in the PR that the appellant's "moderate osteoarthritis impairs functions of ADL and patient requires more time to do ADL." (In her subsequent letter, the GP assesses the osteoarthritis as severe). The appellant on the other hand states that many manual tasks (prepping vegetables, opening jars, etc) are simply not possible. Indeed, much of the appellant's evidence relates to her difficulties with her manual strength and dexterity due to her osteoarthritis, but the GP provides no description of how and to what extent this condition is manifested, leaving the impression that this condition does not contribute to a severe impairment.

The panel notes that the determination of the severity of impairment is at the discretion of the minister, taking into account all the evidence, both from medical sources and from the appellant and non-medical family/friends. In the present case, however, when there is a disparity in assessment of severity between the two sets of evidence, the panel finds it reasonable that the ministry relies on the unbiased and professional opinion of the GP. Considering that the GP stood by her assessment of the appellant's functional skills and the physician's statement to the ministry that she does not think the appellant is severely restricted, the panel finds that the ministry was reasonable in determining that a severe physical impairment had not been established.

### Whether DLAs are directly and significantly restricted

With regard to whether it has been established that in the opinion of a prescribed professional DLAs are directly and significantly restricted, either continuously or periodically for an extended period, the ministry notes that in the AR, the GP reports that the appellant can perform all DLAs independently and there was no indication that she takes significantly longer to perform them. The ministry did note that in the conversation with the GP, she said that the appellant may need periodic assistance with laundry, basic housekeeping, cooking and getting in/out of a vehicle. The position of the ministry was that it was not satisfied that a severe impairment had been established that in the opinion in of a prescribed professional significantly restricts her ability to perform DLAs as set out in the legislative criterion.

The position of the appellant is that, as mentioned by her GP in her conversation with the ministry, her impairment – the pain resulting from her osteoarthritis and fibromyalgia – directly and significantly restricts her ability to perform such activities as laundry, basic housekeeping, cooking and getting in/out of a vehicle: either she needs help with these activities or it takes her significantly longer to do them.

The panel notes that, according to the legislation, the direct and significant restriction in the ability to perform DLAs must be a result of a severe impairment, not established in this appeal, and be in the opinion of a prescribed professional. The GP, a prescribed professional, did not report any such restrictions in the PR or AR and in the conversation with the ministry only went so far as saying “may need some help with laundry, etc...” Based on these considerations and the evidence, the panel finds that the ministry was reasonable in determining that this criterion had not been met.

### Whether help is required for DLAs

As to whether the information establishes that in the opinion of a prescribed professional the appellant requires help in the form of an assistive device, the significant help of another person or the services of an assistance animal, the position of the ministry is that, as it has not been established that DLAs are significantly restricted (see above), it cannot be determined that significant help is required.

The appellant points to her need for assistance from her mother in cooking – peeling and cutting vegetables and opening jars – and her need for grab-bars in the bathroom as examples of her need for help in performing DLAs due to restrictions caused by her impairment.

The panel acknowledges that the appellant benefits from the help of her mother in performing some routine household tasks. However, the panel is guided by the legislation that requires, first of all, that a severe impairment be established. The opinion of a prescribed professional that DLAs are directly and significantly restricted by the severe impairment is then required before this need for help criterion can be considered. Taking into account the panel's findings above on the other 2 criteria, the panel finds that the ministry reasonably determined that this criterion had not been met.

Accordingly, the panel finds that the ministry determination that the appellant was not eligible for PWD designation was reasonably supported by the evidence. The panel therefore confirms the ministry decision.