

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") August 21, 2012 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because she had not met all of the requirements for PWD designation set out in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. Specifically the Ministry was not satisfied 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 was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's August 2, 2012 PWD application consisting of: her self-report; a physician's report ("PR") completed on August 11, 2012 by a physician who indicated the Appellant had been her patient for more than 3 months and she had seen the Appellant between 2-10 months in the 12 months preceding the report; and, an assessor's report ("AR") completed by the same physician on the same date.
2. Appellant's request for reconsideration in which she wrote that she is applying for a disability benefit because she has lower back pain, often gets swollen, and has chronic upper back pain and neck pain. She wrote that she had thoracic lumbar and she has a chronic sore throat caused by ulcers. She also stated that she has terrible bone pain. She cannot go to work. The Appellant enclosed copies of all of her X-ray reports.
3. Additional documents submitted by the Appellant as follows:
 - Copies of and receipts for pain medications from 2011 to 2012; receipts for physiotherapy and acupuncture treatments from 2007 to 2012; bone density scan results; general information about back pain; X-ray results for abdomen and, left thumb and hand; medical reports for employability; October 11, 2011 optometrist receipt; mammogram results; July 2011 letter about X-ray results.
 - Copies of April 20, 2011 radiological consultation report; copies of 2007 to 2011 X-ray results; and June 27, 2008 radiological consultation report. In the PR described below, the doctor refers to the April 2011 MRI and X-ray reports in the section describing the severity of the Appellant's impairment.

The Appellant wrote, in her self-report, that her lower and upper back get irritated and get worse when she lifts her legs to wear pants. Her neck gets worse when she turns. Her upper back gets worse when she wears t-shirts. The Appellant stated that she has more pain when she has a long walk of about 2 blocks, when she lifts something up and when she carries something. She also wrote that if she sits for more than one hour she has pain and when she bends or climbs on a step she has pain. The Appellant stated that she does all chores with pain because her sister only helps her sometimes.

In the PR, the doctor described the Appellant's diagnoses as spinal stenosis (cervical), thoracic and lumbar disc degeneration, L4 vertebral compression fracture and osteoporosis. Regarding the severity of these conditions, the doctor wrote that the Appellant "has chronic neck, upper & lower neck pain radiating to her arms and legs. She has moderate cervical spine stenosis seen on MRI in April 2011. She also has thoracic and lumbar degenerated changes seen on X-rays in 2011 as well as an L4 compression fracture. She may have sciatica and is awaiting an MRI in June. She also has osteoporosis seen on a bone density scan last year. These conditions result in significant disability as she is unable to work and they affect her daily function with chronic pain and limited activities." The doctor indicated that the Appellant does not require any prostheses or aids. The doctor also stated that the Appellant's impairment is permanent. She has seen a physiatrist who was unable to offer interventions.

Regarding the Appellant's functional skills, the doctor reported that she can walk 2-4 blocks unaided on a flat surface, climb 2-5 steps unaided, lift 2-7 kg., and sit for less than 1 hour. The doctor indicated no significant deficits with cognitive and emotional function. At the end of the report, the

doctor added, "poor daily functioning due to cervical stenosis and lumbar condition. Unable to work."

In the AR, the same doctor reported that the Appellant is independent walking indoors and standing. She is periodically restricted in walking outdoors, climbing stairs, lifting, and carrying and holding. The doctor added that the Appellant "cannot walk fast, climb many stairs, cannot lift more than 2 kg., or carry heavy objects. Her sister assists her with these tasks." The doctor also indicated no impact to any of the listed aspects of cognitive and emotional functioning (bodily functions, consciousness, emotion, impulse control, insight and judgment, attention/concentration, executive, memory, motivation, motor activity, language, psychotic symptoms, other neuropsychological problems, other emotional or mental problems).

Regarding daily living activities, the doctor reported that the Appellant is independent in all aspects of personal care, meals, paying rent and bills, medications and social functioning. She also has good functioning in her immediate and extended social networks. The doctor also noted that the Appellant needs periodic assistance with laundry and with basic housekeeping, adding, "she gets help from her sister with these." The Appellant also needs periodic assistance with carrying purchases home and the doctor added, "she needs help with this." The doctor also wrote, "she has pain with bending and lifting/carrying which limit these activities and she requires assistance." For all other aspects of shopping (going to stores, reading prices and labels, making appropriate choices, paying for purchases), the doctor reported that the Appellant is independent. The doctor also indicated that the Appellant is independent getting in and out of a vehicle, and with using transit schedules and arranging transportation. The Appellant needs periodic assistance "with getting in and out of buses, etc." The doctor added that the Appellant "has difficulty with mobilization such as using public transport due to her physical impairment. She would not be able to do this on a frequent basis."

The doctor indicated that the Appellant gets help from her sister, adding, "her sister assists her at home with her tasks." As for help that is required, the doctor wrote that the Appellant "would benefit from physiotherapy, occupational therapy, but she cannot afford these." With respect to assistance devices, the doctor indicated that the Appellant has used a cane in the past, but does not find it very useful. No assistance from an assistance animal was noted. As a final comment, the doctor wrote that the Appellant's "physical condition impairs her daily living and makes it impossible for her to work/function productively."

In her notice of appeal, the Appellant wrote that she had chronic pain in her back, neck, and lower back. She stated that she cannot go to work. The Appellant provided no other submissions for this appeal.

The Ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because she had not met all of the requirements for PWD designation as set out in section 2(2) of the EAPWDA, and specifically that the Appellant does not have 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 eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:
 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 "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

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.

Severe Impairment

In its reconsideration decision, the Ministry stated that it reviewed the Appellant's application including her self-report, the PR and the AR, as well as the additional documents submitted by the Appellant. The Ministry noted the medical conditions diagnosed by the doctor as well as the doctor's report that the Appellant can walk 2-4 blocks unaided, can climb 2-5 stairs, can lift between 5-15 lbs. and remain seated less than 1 hour. The doctor also reported that the Appellant needs periodic assistance with mobility outside the home, climbing stairs, lifting, and carrying and holding. The

Ministry reviewed the doctor's comments that the Appellant cannot walk too far, climb too many steps, lift, and carry and hold heavy objects, and that her sister helps with these activities. The Ministry also considered the doctor's report that the Appellant's conditions result in a significant disability so she cannot work and the conditions affect her daily function with chronic pain and limited activities. The doctor noted that the Appellant's sister helps with some activities, but the remainder of her daily living activities is independently managed. The Ministry also considered the Appellant's statements that she has pain when she walks two blocks, climb stairs, bends and lifts, carries more than 1 pound, and sits more than one hour. The Ministry noted that the Appellant stated that she does all the chores with pain and her sister helps sometimes. Based on this information, the Ministry was not satisfied that the information established a severe physical impairment.

The Appellant described her back pain as chronic and she stated she also experiences neck pain. She stated that her back pain gets worse when she lifts her legs and she has more pain when she has a long walk of about 2 blocks. The Appellant also wrote that she has more pain when she lifts something, when she carries something weighing more than one pound, when she sits for more than 1 hour, when she bends and when she climbs up steps. The Appellant stated that she does all chores with pain as her sister only helps sometimes.

The Panel notes that the Ministry considered all of the information submitted by the Appellant, including various medication prescriptions, X-ray reports and her self-report. The Ministry also considered the information from the doctor in the PR and the AR. The Appellant reported that she experiences back and neck pain. She has more pain when she has a long walk of about 2 blocks, when she lifts and carries something, and when she bends or climbs on a step. The Appellant stated that she does all chores with pain because her sister only helps her sometimes. The doctor reported that the Appellant's medical conditions affect her mobilization and daily functioning with chronic pain. The conditions result in significant disabilities affecting her daily function. However, the doctor also indicated that the Appellant can walk two blocks unaided, climb 2-5 stairs and lift up to 2 kg. According to the doctor, the Appellant is also independent with walking indoors and standing, with all aspects of personal care, with going to and from stores, and with getting in and out of a vehicle. These activities require physical functionality. For those activities for which the doctor reported the Appellant needs periodic assistance, such as walking outdoors, carrying and holding, and basic housekeeping, the doctor provided no information about the extent of any help needed or how much help the sister provides. Therefore, based on all of the evidence, Panel finds that the Ministry reasonably concluded that the Appellant does not have a severe physical impairment.

With respect to a mental impairment, the Ministry noted that the doctor reported no significant deficits with cognitive and emotional functions. The Appellant provided no evidence about a mental health condition, or impacts to cognitive and emotional functions. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant does not have a severe mental impairment.

Restrictions to Daily Living Activities

In its reconsideration decision, the Ministry stated that it reviewed all aspects of both the PR and the AR and specifically the parts relating to the Appellant's ability to manage daily living activities. The Ministry noted those activities the doctor reported as requiring periodic assistance - basic housekeeping, laundry, carrying purchases home and with using public transit, and that the Appellant's sister helps with these. The Ministry also considered the doctor's comment that the

Appellant has difficulty with mobilization and would not be able to do these on a frequent basis. However, the Ministry also noted that the doctor indicated that the Appellant managed most of the daily living activities independently and there was no indication that the Appellant takes significantly longer performing any of these. The doctor also reported that the Appellant is independent in all aspects of social functioning. Based on this information, the Ministry was not satisfied that the information demonstrated a severe mental or physical impairment that in the opinion of a prescribed professional significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods.

The Appellant stated that she has chronic pain when doing certain activities such as lifting, carrying and going up stairs. She also stated that she does all her chores with pain because her sister only helps sometimes.

The opinion of a prescribed professional is required to satisfy the requirements in section 2(2)(b) of the EAPWDA. In this case, the doctor who completed the PR and the AR is that prescribed professional. The Panel notes that the Ministry did consider the doctor's reports in its reconsideration decision. Specifically, the Ministry noted that although the doctor indicated that some aspects of daily living required periodic assistance, the doctor also reported that the Appellant managed most aspects of daily living activities independently. Also, the doctor provided no information about the frequency or duration of the periodic assistance needed for the some of the activities such as basic housekeeping, although she did add comments about the Appellant's sister helping with some of them. The doctor noted no use of an assistive device, except for past use of a cane. Therefore, based on the evidence, the Panel finds that the Ministry reasonably determined that, in the opinion of a prescribed professional, the Appellant's impairments do not directly and significantly restrict her ability to perform daily living activities either continuously or periodically for extended periods.

Help with Daily Living Activities

The Ministry decided that because it determined that the Appellant's daily living activities are not significantly restricted by a severe impairment, it could not determine that significant help is required from other persons. The Ministry did note that the doctor reported that the Appellant used a cane in the past, but did not find it very useful.

The Appellant referred to help she receives from her sister.

The Panel notes that section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional. The doctor only stated that the Appellant receives help from her sister and no longer uses a cane. The doctor did not describe the extent or type of help the sister gives, and the doctor reported no other assistance devices or assistance animal being used. Therefore, based on all of the evidence and the applicable enactments, and given the Panel's finding above that the Ministry's determination that the Appellant's daily living activities are not directly and significantly restricted was reasonable, the Panel further finds that the Ministry's determination that the Appellant does not meet the requirements of section 2(2)(b)(ii) of the EAPWDA was also reasonable.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore, the Panel confirms that decision.