

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the Ministry) dated September 10, 2012, which found that the Appellant did not meet the statutory requirements of section 2 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) for designation as a person with disabilities (PWD). The Ministry found that the Appellant met the age requirement but that it was unknown if, in the opinion of a medical practitioner, her impairment is likely to continue for at least two years. Nor was the Ministry satisfied that the evidence establishes that she has a severe physical or mental impairment. The Ministry was also not satisfied that the Appellant's daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. As the Ministry found that the Appellant is not significantly restricted with DLA, it could not be determined that she requires help as defined in section 2(3)(b) of the EAPWDA.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), section 2  
*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), section 2

## PART E – Summary of Facts

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

A Persons With Disability (PWD) application relating to the Appellant; the various sections completed between February 15 and May 1, 2012.

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

- When asked to describe her disability, the Appellant stated that she had a hysterectomy to relieve endometriosis and cervical cancer in November 2010 and has been ill since then. She experiences nausea, "vomiting +++, abdominal pain +++." The episodes occur sporadically and without warning.
- When the episodes occur she must be admitted to hospital and receive intra-venous treatment for dehydration, nausea and pain. The episodes last from a few hours to a few days. Afterward, she requires two to three days to recover. The episodes occur with three to six weeks between them.
- This schedule of illnesses precludes her from being employed. The lack of employment prevents her from taking care of herself. She has had to move in with family to live affordably. They must take her to the hospital when her attacks occur. She provided records of her many hospital admissions.
- She is hopeful that a diagnosis will soon be made and a treatment found to enable her to return to work.

Section Two was completed by the Appellant's physician, Dr I, who has been the appellant's physician for more than two years and seen her eleven or more times in the past year.

- Dr I diagnosed "Digestive disorders – not yet diagnosed" and "Depression/Anxiety," both with an onset date of November 2010.
- Dr I listed her history:
  - Several episodes of abdominal pain, nausea or vomiting resulting in extensive missed time from work.
  - Emotional issues resulting from a lack of diagnosis of her condition, despite extensive testing.
  - Unable to work due her frequent hospital visits.
  - Difficulty doing domestic work because of her vomiting.
- She is not taking medication which interferes with her ability to perform DLA.
- In reply to the question "Is the impairment likely to continue for two years or more from today?" Dr I replied "Unknown." He elaborated by stating that the appellant's condition is still being investigated.
- In terms of functional skills, Dr I reported that when the appellant was sick, she had an ability to walk unaided less than one block, climb two to five stairs, had no limitation for seating and reported "unknown" regarding the amount she could lift. He reported no difficulty with her ability to communicate. He checked "Emotional disturbance" and "Motivation" as significant deficits with cognitive and emotional functions, explaining that the lack of a diagnosis and persistent abdominal pain and vomiting causes anxiety and depression.
- Dr I provided additional comments restating the lack of a diagnosis and the noting that her symptoms continue and can be violent.

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

- She lives alone.
- Her abdominal pain and vomiting make it difficult to do DLA.
- With respect to her Ability to Communicate, Mobility and Physical Ability, Dr I found her independent but that she had "Impaired activity with Abdominal pain."
- Regarding Personal care, Basic Housekeeping, Shopping, Dr I found her independent except "When symptoms occur Abd. Pain and vomiting unable to do these whole activity." With Meals, Pay Rent and Bills, Medications and Transportation he found her independent but stated "Again fine if no symptoms."
- Dr I completed the assessment for a person with an identified mental impairment or brain injury and found the appellant condition had a moderate impact on her emotion and a minimal impact on her motivation.
- Dr I reported that the appellant is independent with all aspects of social functioning, although she has marginal functioning when it comes to dealing with immediate and extended social networks when her symptoms are present.
- Dr I noted that she requires assistance with transportation and housekeeping when her symptoms are evident.

The appellant attached a two page listing of her visits to hospitals in the two cities in which she lived, ranging from 1994 to 2012. She highlighted the entries relating to her illness following her November 3, 2010 surgery. She also attached a letter indicating her appointment for an 'M2A Capsule Endoscopy' on August 13, 2012.

Neither party was in attendance at the hearing. After confirming that the both parties were properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The panel notes that conflicting information was presented in the decision regarding what was accepted by the Ministry. On page two of the reconsideration decision (page eight of the appeal package), the Ministry checked the tick boxes indicating 'Yes' to:

- Age
- Duration

and 'No' to:

- Severe Impairment
- Directly and significantly restricted daily living activities
- Assistance required with daily living activities as a result of significant restrictions.

On pages three through five of the reconsideration decision (pages nine through eleven of the appeal package) the tick boxes indicated 'Yes' to:

- Age
- Severe Impairment

And 'No' to:

- Duration
- Daily living activities
- Help required with daily living activities

The text contained in the decision clarifies the ministry's decision and the panel adopts it as the ministry's position. It makes it clear that the ministry said 'Yes' to age and 'No' to duration, severe impairment, daily living activities and help required with daily living activities.

## PART F – Reasons for Panel Decision

This is an appeal of the Ministry's reconsideration decision dated July 10, 2012, which held that the Appellant did not meet 4 of the 5 statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act for designation as a person with disabilities (PWD). The Panel must determine whether this decision is reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The Ministry found that the Appellant met the age requirement and but not that her impairment is likely to continue for at least 2 years. The Ministry was also not satisfied that the Appellant has a severe physical or mental impairment nor that her daily living activities (DLA) are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The Ministry concluded that, as the Appellant is not significantly restricted from DLA, it could not be determined that she requires the significant help or supervision of another person and that no assistive devices are required.

The criteria for being designated as a person with disabilities (PWD) are set out in section 2 of the EAPWDA. The Minister may designate a person as a PWD when the following requirements are met. Pursuant to section 2(2) the applicant must have reached the age of 18 and the Minister must be satisfied that the person has a severe mental or physical impairment. Under section 2(2)(a) the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years. Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods. Section 2(2)(b)(ii) states that as a result of those restrictions, in the opinion of the prescribed professional, the person must require help to perform DLA. Section 2(3)(b) of the EAPWDA states that a person requires help in relation to a DLA if the person requires an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

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

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

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

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

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

The Appellant argues that:

- Her doctor states that she cannot perform DLA,
- She cannot walk one block when she is sick and barely walk two to five steps to her vehicle,
- She states that her hospital admissions log shows more days impaired than unimpaired,
- While her condition has not been diagnosed to last at least two years, it has been two years since her hysterectomy and possibly last indefinitely,
- Her mobility and physical ability are impaired. Her abdominal pain results in 15-20 days of being impaired monthly,
- Her doctor stated her DLA are restricted 15-20 days of being in pain or in hospitals monthly,
- She is unable to perform DLA because she is confined to a hospital bed or her home during her episodes,
- She has seen many doctors and specialists since her problems started in November 2010 but not received a diagnosis.

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

There is no dispute that the Appellant is over 18 years old.

To be granted PWD status, the Act requires that "the impairment must be likely, in the opinion of a medical practitioner, to continue for at least 2 years."

The ministry determined that this was not the case and the panel finds it was reasonable to do so. Despite the fact that two years have now expired since the onset of symptoms, in the absence of a diagnosis her physician stated that it was unknown whether the appellant's condition would last two years or more from the date he completed his section of the PWD application. He elaborated by stating that the appellant's condition is still being investigated.

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

The ministry concluded that despite being diagnosed with depression/anxiety stemming from her physical, that the Appellant's mental impairment was not severe. The panel finds this a reasonable assessment. There is no evidence of treatment for this condition nor medication prescribed which would indicate a degree of severity contemplated by the legislation. Furthermore, her restrictions to DLA result entirely from her abdominal condition, not her depression/anxiety.

The ministry also concluded that the appellant's physical impairment was not severe. The evidence of the appellant and her physician show that, when her condition manifests, she is incapacitated for days on end. In many cases she is hospitalized; otherwise she is bed-ridden at home. During these periods she is unable to do much beside receive treatment in bed. Dr I noted that when sick she could walk unaided less than one block and climb two to five stairs. He stated she has difficulty doing domestic work because of her vomiting.

The appellant stated that she has moved in with family so they can drive her to the hospital when the need arises. She reported that she can "barely make 2-5 steps to the vehicle."

Dr I reported the frequency of these episodes:

- Several episodes of abdominal pain, nausea or vomiting resulting in extensive missed time from work.
- Unable to work due her frequent hospital visits.

The appellant reported that when the episodes occur she must be admitted to hospital and receive intra-venous treatment for dehydration, nausea and pain. The episodes last from a few hours to a few days. Afterward, she requires two to three days to recover. The episodes occur with three to six weeks between them. The hospital logs show an admission pattern consistent with the appellant's report.

Based upon this evidence, the panel finds that the ministry was unreasonable in finding the appellant's physical impairment was not severe

Section 2(2)(b)(i) requires that the impairment, in the opinion of a prescribed professional, directly and significantly restricts the person's ability to perform daily living activities (DLA) either continuously or periodically for extended periods

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

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

For clarity, the panel notes that the assessment of DLA restrictions must be made by a prescribed professional - Dr I in this case - who acted as the appellant's assessor.

Unfortunately, despite the appellant's detailed self-report, the panel has little to analyze regarding her DLA restrictions from the assessor's report. She is found "Good" or "Independent" with every DLA category which relates to her physical impairment. Dr I notes that her activities are impaired from her abdominal pain but there is no more detailed evidence provided.

In its decision, the ministry noted "it is difficult to establish that your impairments restrict your ability to manage your daily living activities either continuously or periodically as your physician does not indicate the frequency and duration when you are unable to manage these tasks." This is a reasonable conclusion for the ministry to make and consistent with the legislation.

Similarly, the ministry was reasonable to find that, since it was not established that her DLA were significantly restricted, it cannot be determined that significant help is required from other persons.

In summary, the panel finds the ministry was reasonable in its conclusions with respect to duration,

lack of severe mental impairment, DLA restrictions and help with DLA but not reasonable in concluding that her physical impairment was not severe.

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