

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated October 9, 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: undated applicant information, physician report dated January 27, 2012, and assessor report dated April 19, 2012;
- 2) Letter dated January 31, 2012 from a physician who is a specialist in rheumatology 'To Whom It May Concern' stating in part that the appellant has been under his care for the management of systemic lupus erythematosus since 2002; she is seen in follow-up approximately every three to four months;
- 3) Letter dated July 18, 2012 from the ministry to the appellant denying person with disabilities designation and enclosing a copy of the decision summary; and,
- 4) Request for Reconsideration- Reasons.

At the hearing, the appellant provided a print out from a medical website covering various issues relating to systemic lupus erythematosus (SLE), including the causes, symptoms, and treatments and states in part that SLE is a long-term autoimmune disorder that may affect the skin, joints, kidneys, brain, and other organs. The ministry did not object to the admissibility of this document. The panel reviewed the letter and admitted it into evidence, under Section 22(4) of the Employment and Assistance Act, as relating to the appellant's diagnosed medical condition and being in support of the information that was before the ministry on reconsideration.

In her Notice of Appeal, the appellant stated that she has no quality of life, that she is house bound and struggles daily with acute pain and severe depression. In her Request for Reconsideration, the appellant stated that she noticed that her diagnosed systemic lupus was not included in the list of her disabilities. The appellant stated that she is not able to walk, climb stairs, indoors or outdoors without her cane. She cannot lift or carry 15 lbs., that maybe she could lift 5 lbs. The appellant stated that she does have a severe mental impairment with suicidal thoughts and two very serious attempts where she was certified at one point. She does not get dressed, shower, etc. for weeks at a time and she has great difficulty coping. The appellant stated that there must have been a misunderstanding with her doctor's report.

In her self-report included in the PWD application, the appellant stated that she struggles on a daily basis just to do menial tasks that include eating and showering. She battles with pain, fatigue and depression which cause everything to be exhausting. The appellant stated that she has difficulty doing anything like shopping, walking, standing, even eating. The appellant stated that she has been unable to access any services for lack of funds for transportation and user fees, services like mental health and to help with pain management, i.e. chiropractic, massage and physiotherapy. Pain meds are becoming less and less effective and she has side effects such as addiction.

At the hearing, the appellant stated that she worked for the ministry for over 15 years and she finds going through this process very difficult. The appellant stated that she has not been sleeping properly which makes it difficult for her to think and to answer questions. The appellant stated that she fell and broke her hip and had it replaced 3 years ago, that it has not healed properly and she has a pinched nerve, and she wonders if her difficulties are related to the hip replacement product recall that has occurred in the U.S. The appellant stated that she has not been able to walk without a cane, even in the house, since her hip replacement. The appellant stated that she sometimes needs help getting into a vehicle, depending on the height of the seat. The appellant stated that there was a traumatic event in her family in the 1980's, that shortly thereafter she had her first bout of serious depression. The appellant stated that she has been suicidal, that she had two serious attempts and was in the critical care unit for a while and was certified in 2006 for 6 weeks. The appellant stated that she feels like she is always "...trying to climb out of a black hole."

The appellant stated that her son lives downstairs and helps her a lot and basically does everything for her, but he also gets frustrated with this. The appellant stated that she cannot lift more than 5 lbs., she cannot squat down to lift and she does not carry groceries or laundry. The appellant clarified that her son has gotten used to preparing meals and doing the laundry and shopping and so now she does not know when she needs him to do the task or if she has become dependent on him doing everything. The appellant stated that her son

manages her medications for her when she is depressed and she borrows money from him. The appellant stated that 18 months ago she was doing well but then she had a lupus attack and then her depression cycle started. She had to double-up on her lupus medications which caused an increase in her blood pressure and she had to increase those medications. Her medications for depression have also been increased.

The appellant explained that lupus is an autoimmune disease that attacks the body, beginning in the joints and eventually impacting the organs. The appellant stated that her lupus causes fatigue and is usually like arthritis but occasionally causes attacks of pain that results in a cycle of pain and depression and she has become addicted to Tylenol #3. In response to a question, the appellant stated that it is difficult for her to say how often she gets an attack from her lupus. The appellant stated that her family doctor is treating her for depression and she has no funds for transportation to mental health services. The appellant stated that stress can make the symptoms from lupus worse and her mother recently passed away. The appellant stated that she was treated for Hepatitis C through chemotherapy for 6 months and that was very difficult but she got through it. The appellant stated that she does not know why her doctor reported that she can do many DLA independently because he has known her for 20 years and is aware of her physical capabilities and knows that she cannot do these things. The appellant stated that she was going to have another doctor prepare the assessor report but then she could not find anyone to do it so she met with her family doctor and he asked a few questions and she left the forms with him, but he was "mad" about having to complete this report.

The physician who completed the physician report confirmed that the appellant has been his patient for 20 years and that he has seen the appellant 11 or more times in the past 12 months. In the physician report, the physician confirms a diagnosis of depression, Hepatitis C, COPD, narcotic addiction, chronic pain and hip replacement. The physician added comments regarding the appellant's chronic depression "...varying in intensity over time, difficult social situation, social isolation, history of suicidal ideation", and regarding Hepatitis C that "...treatment worsened depression, chronically tired", for COPD "...chronic smoking history" and for chronic pain "...has been on pain killers for 20+ years." The physician report indicated that the appellant has been prescribed medication that may interfere with her ability to perform DLA and that she does require an aid for her impairment, with the comment "...uses cane to walk for longer distances." The physician reports that the appellant can walk 1 to 2 blocks unaided on a flat surface, she can climb 2 to 5 stairs unaided, she can lift 5 to 15 lbs. and remain seated for 1 to 2 hours. The physician reported that the appellant has no difficulties with communication. The physician indicated that there are significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration. The physician reported, in Part E, that the appellant is restricted continuously in the area of personal self care and management of medications and that she is not restricted in the areas of meal preparation, basic housework, daily shopping, mobility inside and outside the home, and use of transportation, with no assessment for management of finances and social functioning. The physician added a note regarding social functioning that the appellant is "...withdrawn, socially isolates self."

The assessor report was also completed by the appellant's physician three months after the physician report was completed. The physician indicated that the appellant uses an assistive device for walking indoors and walking outdoors ("cane") as well as with climbing stairs ("cane, difficulty with stairs"), that she has difficulty with standing and requires periodic assistance from another person with carrying and holding and takes significantly longer than typical ("not able to do heavy lifting"; "difficulty carrying grandson"). The physician indicated 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, with a comment regarding dressing, grooming and bathing that the appellant is "...apathetic re personal grooming and appearance much of the time" and regarding feeding self, that she has "...no or reduced appetite." The physician reported that the appellant is independent with doing laundry and with basic housekeeping as well as with all tasks of shopping, including going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. The physician indicated that the appellant requires periodic assistance from another person with most tasks of managing meals, with no explanation or description provided. The physician indicated that the appellant also requires periodic assistance from another

person with budgeting and paying rent and bills while being independent with banking and no other comments added. The physician reported that the appellant is independent with all tasks of managing medications (filling-refilling prescriptions, taking as directed, safe handling and storage) and with one task of managing transportation, while requiring periodic assistance from another person with getting in and out of a vehicle, and using transit schedules and arranging transportation, with no other explanation provided.

The physician reported that the appellant's mental impairment has a moderate impact on her cognitive and emotional functioning in the areas of emotion, impulse control, attention/concentration, and motivation. The physician indicated that there are minimal impacts to insight and judgment, executive, memory, motor activity and other neuropsychological problems, with no further comments added, and no impact assessed to the remaining four areas. The physician indicated that the appellant requires periodic support/supervision in all aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships ("withdrawn, frequently isolates"), interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others, with no explanation or description provided. The physician reported that the appellant has marginal functioning in both immediate and extended social networks. The support/supervision required which would help to maintain the appellant in the community is described by the physician as "...needs assistance to attend physician, counseling, groups, visit with friends and family." For the equipment or devices routinely used by the appellant to help compensate for her impairment, the physician identified a cane.

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 meet all the criteria in Section 2 of the EAPWDA. The ministry found that 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;

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- (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 diagnosed the appellant with depression, Hepatitis C, COPD, narcotic addiction, chronic pain and hip replacement, while the date of onset of diagnosis or surgery was not reported. The ministry points to the physician report where it is indicated that the appellant is able to walk 1 to 2 blocks unaided, to climb 2 to 5 steps unaided, to lift 5 to 15 lbs. and to remain seated for 1 to 2 hours. The ministry argues that the physician indicates that the appellant requires a cane however the appellant does not require any assistance from another person with walking indoors or outdoors, climbing stairs and standing. The ministry points out that the physician indicates the appellant requires periodic assistance with carrying and holding as she is not able to do heavy lifting but in the functional skills assessment the physician indicates the appellant can lift 5 to 15 lbs. The ministry acknowledges that the appellant's impairment affects her physical functioning, but argues that evidence of a severe physical impairment has not been provided.

The appellant's position is that she has a severe physical impairment primarily as a result of chronic pain from her SLE and her hip replacement, as well as Hepatitis C, COPD. The appellant points out that she has not been able to walk or climb stairs without a cane, even in the house, since her hip replacement. The appellant argues that she cannot lift or carry 15 lbs., that maybe she can lift 5 lbs. The appellant points out that her lupus causes fatigue and is usually like arthritis but occasionally causes attacks of pain, however she could not say how often she experiences these attacks. The appellant argues that the pain medications are becoming less and less effective and she has side effects such as addiction. The appellant argues that there must have been a misunderstanding with her doctor's reports because he knows that she cannot do many activities.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of Hepatitis C, COPD, narcotic addiction, chronic pain from a hip replacement, as set out in the physician report, as well as from SLE as set out in the January 31, 2012 letter from a physician who is a specialist in rheumatology. The physician report indicated that the appellant has been prescribed medication that may interfere with her ability to perform DLA and that she does require an aid for her impairment, with the comment "...uses cane to walk for longer distances." The physician reported that the appellant is not restricted with mobility inside the home nor with mobility outside the home and that she can walk 1 to 2 blocks unaided on a flat surface, she can climb 2 to 5 stairs unaided, she can lift 5 to 15 lbs. and remain seated for 1 to 2 hours. In the assessor report, the physician indicated that the appellant uses an assistive device for walking indoors and walking outdoors ("cane") as well as with climbing stairs ("cane, difficulty with stairs"), that she has difficulty with standing and requires periodic assistance from another person with carrying and holding and takes significantly longer than typical ("not able to do heavy lifting"; "difficulty carrying grandson"). The appellant argues that she has not been able to walk or climb stairs without a cane, even in the house, since her hip replacement. The appellant argues that she cannot lift or carry 15 lbs., that maybe she can lift 5 lbs. The appellant points out that her lupus causes fatigue and is usually like arthritis but occasionally causes attacks of pain, however the appellant had difficulty identifying how frequently she experiences these attacks which result in a reduction of her functioning. The panel finds that the physician has indicated that the appellant uses a cane for walking indoors and outdoors and for climbing stairs but has also commented that her cane is used "for longer distances" and that she can walk 1 to 2 blocks and climb 2 to 5 steps "unaided", which is defined in the report to mean "...without the assistance of another person, assistive device or assistance animal." Whereas the appellant

stated that she can only lift a maximum of 5 lbs., the physician indicated that she is not able to do "heavy" lifting and that she has difficulty lifting her grandson. The panel finds that the evidence of the appellant's long-time physician demonstrates that the appellant experiences restrictions to her functional skills that indicate a moderate degree of impairment. 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 memory, emotional disturbance, motivation and attention or sustained concentration whereas, as the assessor, he indicates that appellant's impairments have a moderate, minimal or no impact on the appellant's cognitive and emotional functioning. The ministry argues that no narrative has been included that would describe how the appellant's impairments affect her cognitive and emotional functioning. The ministry argues that while the physician indicates that the appellant requires periodic support/supervision with all of her social functioning, and that she is withdrawn and frequently isolates, there is no description of the degree and duration of the support/supervision required.

The appellant's position is that she has a severe mental impairment as a result depression and narcotics addiction. The appellant argues that she has had suicidal thoughts and two very serious attempts where she was certified at one point in 2006 for 6 weeks. The appellant argues that she feels like she is always "...trying to climb out of a black hole" and that she does not get dressed, shower, etc. for weeks at a time and she has great difficulty coping. The appellant argues that she battles with pain, fatigue and depression which cause everything to be exhausting. The appellant argues that she has difficulty doing anything like shopping, walking, standing, or even eating.

The panel finds that the evidence of a medical practitioner confirms a diagnosis of depression and narcotics addiction, although the addiction has not been coded by the physician as a substance-related mental disorder. The physician added comments regarding the appellant's chronic depression that it is "...varying in intensity over time, difficult social situation, social isolation, history of suicidal ideation." The physician reported that the appellant has no difficulties with communication. In the physician report, the physician indicated that there are significant deficits with cognitive and emotional function in the areas of memory, emotional disturbance, motivation and attention or sustained concentration. In the assessor report, the physician indicated that the appellant's mental impairment has a moderate impact on her cognitive and emotional functioning in the areas of emotion, impulse control, attention/concentration, and motivation, with minimal or no impacts to the remaining 9 areas. In Part E of the physician report, the physician did not indicate a restriction in the area of social functioning, but added a note that the appellant is "...withdrawn, socially isolates self." The appellant stated that she has had suicidal thoughts, and the physician confirms this history and indicates that the appellant's depression varies in intensity over time, but is currently assessed as having no major impacts on her cognitive and emotional functioning. Likewise, the physician indicated that the appellant requires periodic support/supervision in all aspects of social functioning, including making appropriate social decisions, developing and maintaining relationships ("withdrawn, frequently isolates"), interacting appropriately with others, dealing appropriately with unexpected demands, and securing assistance from others, but provides no explanation or description of the degree and duration of the support/supervision required. The appellant stated that her son helps her with some tasks when she is depressed, but the evidence does not establish how often her depression is exacerbated to this extent. The support/supervision required which would help to maintain the appellant in the community is described by the physician as "...needs assistance to attend physician, counseling, groups, visit with friends and family." 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 indicates that the appellant is not restricted in her ability to manage the majority of her DLA. The ministry argues that although the physician reports that the appellant is continuously restricted in her ability to manage personal care and management of medications, as the assessor he indicates that the appellant can independently manage all her DLA. The appellant argues that the physician's evidence together with her own evidence shows that her 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 and, in the assessor report, that she requires periodic assistance from another person with meal planning, food preparation and cooking, while being independent with safe storage of food. There is no explanation or description provided by the physician regarding the duration or the frequency of the assistance required. The appellant stated that her son, who lives downstairs in her residence, does all the cooking, but she admitted that she is not sure if she cannot do all the tasks or if he has just gotten used to doing it for her. For managing personal finances, the physician has not indicated an assessment in the physician report but indicates in the assessor report that the appellant requires periodic assistance from another person for budgeting and paying rent and bills, while being independent with banking. There is no explanation or description provided by the physician regarding the duration or the frequency of the assistance required. In terms of shopping for her personal needs, the physician indicates in the physician report that the appellant is not restricted in this area and, in the assessor report, that the appellant is independent with all tasks of going to and from stores, reading prices and labels, making appropriate choices, paying for purchases, and carrying purchases home. The appellant states that her son does all the shopping for her and that she cannot carry bags of groceries, however the panel finds that this has not been confirmed by the physician.

For use of public or personal transportation facilities, the physician indicates in the physician report that the appellant is not restricted in this DLA and, in the assessor report, that the appellant requires periodic assistance with getting in and out of a vehicle and using transit schedules and arranging transportation while being independent with using public transit. There is no explanation or description provided by the physician regarding the duration or the frequency of the assistance required. The appellant stated that she sometimes has difficulty getting in and out of a vehicle, depending on the height of the seat. 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 not restricted with this DLA and, in the assessor report, that the appellant is independent with doing laundry and basic housekeeping. The appellant stated that her son does the laundry for her and that she cannot carry a laundry basket. For moving about indoors and outdoors, the physician indicates in the physician report that the appellant is not restricted with mobility inside and outside the home and, in the assessor report, that the appellant uses an assistive device for walking indoors and with walking outdoors ("cane").

Regarding performing personal hygiene and self care, the physician indicates in the physician report that the appellant is continuously restricted with this DLA and, in the assessor report, 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 is "...apathetic re personal grooming and appearance much of the time" and she has a reduced or no appetite. In her Request for Reconsideration, the appellant stated that she does not get dressed, shower, etc. for weeks at a time and she has great difficulty coping. With respect to managing her personal medications, the appellant's physician again indicates that the appellant is continuously restricted in this area and, in the assessor report, that the appellant does not require assistance with the tasks of filling/refilling prescriptions, taking medications as directed and safe handling and storage. For making decisions about personal activities, care or finances, the physician did not make an assessment of restrictions to social functioning in the physician report but in the assessor report indicated that the appellant requires periodic support/supervision with making appropriate

social decisions and requires periodic assistance with some tasks of finances, while being independent with her tasks of personal care. For relating to, communicating or interacting with others effectively, the physician reports no difficulties with communication and, in the assessor report, that she requires periodic support/supervision with interacting appropriately with others, with no further description provided. The physician 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 in the areas of personal care and management of medications but that she is independent with all tasks of these DLA. The evidence demonstrates that both the appellant's depression and the chronic pain from her SLE vary in intensity and the panel finds that the evidence does not establish how often she experiences the more debilitating impacts from these conditions. Although the appellant is also assessed by the physician as requiring periodic assistance in tasks of managing meals, finances and transportation, the panel finds that the ministry reasonably concluded that there is not sufficient evidence provided to establish that the periodic assistance is required for extended periods of time, as required by the legislation. 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:

The ministry's position is that since it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required from other persons. The appellant's position is that she requires the significant help or supervision of another person or her cane, an assistive device, in order to perform her directly and significantly restricted 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 notes the information from the physician and the appellant that she lives with family, friends or a caregiver and receives assistance for DLA from friends or family, primarily her adult son. The appellant stated that her son assists her with meals, laundry and shopping and that she cannot walk indoors or outdoors or climb stairs without her cane. 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 pursuant to Section 24(2)(a) of the Employment and Assistance Act.