

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated September 4, 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:

- the appellant has a severe physical or mental impairment;
- 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; and,
- 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.

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

The evidence before the ministry at the time of the reconsideration decision included the following:

- 1) Person With Disabilities (PWD) Application comprised of the applicant information dated April 10, 2012 with a 5-page typewritten checklist of daily living activities (DLA) attached, a physician report dated May 8, 2012 and an assessor report dated May 17, 2012, both completed by the appellant's family physician of 30 years;
- 2) Final Discharge Summary from hospital dated February 11, 2012;
- 3) Consultation Report dated February 23, 2012;
- 4) Outpatient Department Clinic Note dated March 12, 2012; and,
- 5) Request for Reconsideration dated November 21, 2012.

Diagnoses

The appellant has been diagnosed by her general practitioner with degenerative arthritis (10 years), depression (30 years) and asthma. The reports from the hospital, namely the Final Discharge Summary, Consultation Report, and Clinic Note, also refer to other conditions being treated or investigated, including atypical pneumonia and cellulitis.

Physical Impairment

- In the physician report, the general practitioner indicated that the appellant is an "...obese woman with advanced degenerative arthritis."
- Functional skills reported in the physician report indicated that the appellant can walk less than 1 block unaided, she can climb 2 to 5 steps unaided, she can do no lifting and has no limitation with remaining seated.
- The physician reported that the appellant has not been prescribed any medications or treatments that interfere with her ability to perform her daily living activities (DLA) and she does not require any aids for her impairment.
- In the section of the physician report dedicated to an assessment of ability to perform DLA, the physician indicated that the appellant is not restricted with mobility inside or outside the home.
- In the assessor report, the appellant is reported as being independent with walking indoors, walking outdoors, climbing stairs, and standing. The physician indicated that the appellant requires periodic assistance from another person with lifting and carrying and holding yet does not provide any narrative to accompany this assessment.
- The Final Discharge Summary from the hospital dated February 11, 2012 indicated a diagnosis of atypical pneumonia with pre-admit comorbidities of chronic back pain/neurogenic claudication, asthma, and remote history of malaria.
- The Consultation Report dated February 23, 2012 related to a referral to a medical service provider for assessment of the appellant's cellulitis in her leg, developed while she was in hospital.
- The Outpatient Department Clinic Note dated March 12, 2012 summarized that the appellant's cellulitis was resolving, she is being investigated for abdominal pain, and her shortness of breath and wheezing are much improved on medications. She is being investigated for a left upper lobe pulmonary nodule and being followed up for bilateral pedal edema.
- In the checklist provided as the appellant's self-report, the appellant checked statements which indicate that her disability makes it difficult for her to do a number of activities, including moving about without restrictions such as pain, fatigue or shortness of breath, getting up and down stairs or ramps or a hill, or walking on flat or uneven ground.

Mental Impairment

- In the physician report, the general practitioner reported in the additional comments that the appellant's depression is chronic with poor motivation.
- The general practitioner reported the appellant has a good ability to communicate.
- In the physician report, significant deficits are reported in 3 of 11 listed aspects of cognitive and emotional function in the areas of memory, emotional disturbance, and motivation. In the assessor report, the physician indicated that the impact to the appellant's memory and motivation is moderate, with no assessment of impact provided in the area of emotion but a moderate impact indicated for attention/concentration. No assessment is made for the remaining 10 areas of functioning. The comment added is "chronic depression."
- The general practitioner indicated that the appellant independently manages 4 of 5 listed aspects of social functioning and has good functioning with both her immediate and extended social networks. Periodic support/supervision is indicated for her ability to deal appropriately with unexpected demands, but no further narrative is provided by the physician to clarify how frequently this assistance is required.
- In the checklist provided as the appellant's self-report, the appellant checked statements which indicate that because of her mental health disability she experiences a lot of anxiety, agitation and stress or depression, and that she has difficulty making herself understood by others when she speaks or writes and she has difficulty understanding what others say to her.

DLA

- In the physician report, the general practitioner indicated that the appellant is periodically restricted with personal self care with a comment that her arthritis limits daily functions. She is continuously restricted with basic housework, daily shopping and management of finances and "...needs assistance with independent living." The appellant is not restricted with meal preparation, management of medications, mobility inside or outside the home, use of transportation or social functioning.
- In the assessor report, the general practitioner indicated that it is the appellant's poor memory and motivation that impacts her ability to manage her DLA.
- In the assessor report, the general practitioner reported that 6 out of 8 listed tasks of the DLA personal care are performed independently without any noted restriction while the remaining two tasks (grooming, bathing) require periodic assistance from another person, with no description provided.
- The appellant requires periodic assistance from another person with doing her laundry and basic housekeeping, and with 2 of 5 tasks of shopping (going to and from stores and carrying purchases home), receiving help from her family and friends. She also requires periodic assistance with all tasks of paying rent and bills, and with 1 of 5 aspects of social functioning, with no further explanation provided.
- All listed tasks for the DLA meals, managing medications and transportation are managed independently with no noted need for assistance.
- In the checklist provided as the appellant's self-report, the appellant checked statements which indicate that her disability makes it difficult for her to do several activities, including tasks of personal care (bathing, dressing), preparing food and eating meals, keeping her home clean (cleaning, mopping, dusting, laundry), shopping (reading labels, taking groceries home), moving about indoors and outdoors, using public transit or personal transportation (walking, getting on or off the bus), and communicating (speaking, writing, understanding). The appellant has not checked tasks as difficult in the areas of taking medications and managing her personal finances.

Need for Help

- The general practitioner reported that the appellant does not require an aid for her impairment, and

does not need or use an assistive device.

- The general practitioner indicated in the assessor report that help required for DLA is provided by the appellant's family and friends.
- In the checklist provided as the appellant's self-report, the appellant checked statements which indicate that she gets or needs help from family members and roommates.

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision because she needs help with her daily skills but her doctor did not write a good report.

At the hearing, the ministry relied on its reconsideration decision and clarified that the ministry only considered the conditions diagnosed in the PWD application since those discussed in the medical reports, including atypical pneumonia, were not confirmed by a medical practitioner as likely to continue for 2 years or more.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, that the appellant is not eligible for designation as a person with disabilities (PWD), was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant 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;
 - (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 Physical Impairment

The appellant's position is that a severe physical impairment is established by the evidence of the impact of her long-standing degenerative arthritis and asthma.

The ministry recognizes that the appellant's degenerative arthritis and asthma affect her functioning but argues that the information provided is ambiguous and the material that does correspond does not reflect a severe physical impairment. The ministry argues that the information provided by the appellant's general practitioner of 30 years in both the physician and assessor reports is not entirely consistent with that given by the appellant and is not consistent in some areas between the two reports. The ministry argues that the functional skill assessment indicates that the appellant can walk less than 1 block, climb 2 to 5 steps unaided, has no limitation with remaining seated, and cannot lift any weight. However, in the assessor report, the general practitioner indicates that the appellant can independently walk indoors and outdoors, climb stairs, and that she requires periodic assistance with lifting and carrying and holding. The physician does not describe the nature frequency or duration of the periodic assistance required. The ministry argues that the hospital records refer to the appellant's arthritis as lower back pain or spinal stenosis, that her asthma is described as the appellant's main difficulty yet the appellant does not report any difficulty or history of shortness of breath or other symptoms.

Panel Decision

The legislation clearly provides that the determination of severity of impairment is at the discretion of the minister, taking into account all of the evidence including that of the appellant. However, the legislation is also clear that the fundamental basis for the analysis is the evidence from a prescribed professional respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner, has diagnosed the appellant with degenerative arthritis and asthma and has confirmed that both medical conditions are likely to continue for 2 years, thus meeting the requirement of s. 2(2)(a) of the EAPWDA. Although the hospital reports refer to other conditions, including atypical pneumonia and cellulitis, the panel finds that these conditions have not been confirmed by a medical practitioner as being likely to last for at least 2 years. Accordingly, the panel will consider the reasonableness of the ministry's decision respecting severity of physical impairment based on the evidence respecting the appellant's degenerative arthritis and asthma.

Although the physician described the appellant's degenerative arthritis as "advanced," having suffered with the condition for 10 years, the appellant is nevertheless able to walk less than 1 block and to climb 2 to 5 steps without the use of an assistive device or the assistance of another person to perform these tasks. As the ministry points out, the general practitioner also assessed the appellant as not restricted with mobility inside

and outside the home and as being independent with all mobility tasks. The appellant stated that her disability makes it difficult for her to move about without restrictions such as pain, fatigue or shortness of breath, that it is difficult for her to get up and down stairs or to walk on flat or uneven ground. The hospital reports describe the appellant's medical history as including chronic back pain, without referring to her arthritis, and that her shortness of breath and wheezing are much improved on the prescribed medications. The panel finds that the ministry reasonably concluded that the information regarding the appellant's ability to lift was inconsistent as it ranged from an assessment that the appellant can do no lifting to an ability to lift with undefined periodic assistance. The evidence demonstrates that the appellant is impaired in her physical functioning; however the panel finds that the ministry reasonably determined that the information provided is inconsistent and unclear. Therefore, the panel concludes that the ministry reasonably determined that the appellant's level of independent physical functioning does not establish that the appellant has a severe physical impairment under section 2(2) of the EAPWDA.

Severe Mental Impairment

The appellant's position is that a severe mental impairment is established by the general practitioner's diagnosis of long standing depression. The appellant stated in her checklist self-report that because of her mental health disability she experiences a lot of anxiety, agitation and stress or depression and that she has difficulties with communication.

The ministry recognizes that the appellant's depression affects her functioning but argues that the information provided is ambiguous and that which does correspond does not reflect a severe mental impairment. The ministry relies on the evidence that the significant deficits to memory, emotional disturbance and motivation are assessed by the general practitioner as having a moderate impact on the appellant's daily cognitive and emotional functioning. The ministry argues that while the general practitioner describes the appellant's depression as chronic, there is no indication if this is being managed or whether medications have been trialed as this medical condition is treatable.

Panel Decision

The panel finds that although the general practitioner describes the appellant's depression as chronic and indicates that she has suffered with this condition for 30 years, the ministry reasonably determined that the evidence does not consistently demonstrate impacts to the appellant's functioning as a result of this condition. In particular, while significant deficits are identified in the areas of memory, emotional disturbance, and motivation, only two of these have moderate impacts on the appellant's daily functioning, with an additional moderate impact identified in the area of attention/concentration, and there is no further explanation provided. All other areas of cognitive and emotional functioning are not given an assessment by the general practitioner. The appellant stated in her self-report that because of her mental health disability she experiences a lot of anxiety, agitation and stress or depression and that she has difficulty communicating; however, the panel finds that the appellant's ability to function in terms of specific daily tasks does not reflect a severe impairment of mental functioning. In particular, the general practitioner indicated that the appellant has a good ability to communicate and that her social functioning is mostly independent and she has good functioning with both her immediate and extended social networks. There is no indication of support or supervision required in the 4 out of 5 areas of social functioning, and while periodic support/supervision is required with dealing appropriately with unexpected demands, there is no explanation or description provided by the general practitioner regarding the frequency of type of support required. Further, while the general practitioner identified the need for periodic assistance with all tasks of managing finances, he has not provided a description of the frequency or duration of the assistance required and the appellant has not identified any difficulty with tasks in the area of managing her personal finances. For these reasons, the panel finds that the ministry reasonably determined that a severe mental impairment was not established under section 2(2) of the EAPWDA.

Restrictions in the ability to perform DLA

The appellant's position is that her physical and mental impairments directly and significantly restrict her ability to perform DLA to the point that she requires assistance in various areas of DLA, including tasks of personal care, preparing meals, keeping her home clean, shopping, moving about indoors and outdoors, using public transit or personal transportation, and communicating.

The ministry's position is that the evidence of the prescribed professional is unclear and does not correspond with the information provided by the appellant in her self-report. While the general practitioner reports periodic restrictions in personal self care and continuous restrictions with basic housework, daily shopping and management of finances, the assessor report indicates personal care is largely independent, and that there is a non-specific requirement for periodic assistance with basic housework, shopping and management of finances.

Panel Decision

The evidence of a prescribed professional, the appellant's general practitioner, is that the appellant is not restricted and is independent with walking indoors and outdoors and she can manage distances of less than 1 block and climbing 2 to 5 steps without the use of an assistive device. The restrictions to DLA identified in the physician report are periodic for personal care, but only requiring periodic assistance for 2 of 8 tasks as set out in the assessor report, with no explanation provided. While continuous restrictions are identified in the physician report for basic housework, daily shopping and management of finances, the need for assistance with some tasks identified in the assessor report is periodic with no description provided by the physician as to the frequency or duration of the assistance required. The physician reported that the appellant is not restricted with meal preparation, management of medications, mobility inside or outside the home, use of transportation or social functioning and all listed tasks for the DLA meals, medications and transportation are managed independently with no noted need for assistance. In the checklist provided as the appellant's self-report, the appellant checked statements which indicate that her disability makes it difficult for her to do several activities, including tasks of personal care, preparing food and eating meals, keeping her home clean, shopping, moving about indoors and outdoors, using public transit or personal transportation, and communicating. The panel finds that while the appellant stated that she has difficulty with many tasks, her long-time physician reported that a majority of the tasks of DLA are performed independently and, where there is a need for periodic assistance, the evidence does not demonstrate that this is for extended periods of time. The panel concludes that the noted restrictions in the appellant's ability to perform some aspects of some DLA were reasonably viewed by the ministry as not constituting a direct and significant restriction of the appellant's ability to perform DLA in the opinion of a prescribed professional thereby not satisfying the legislative criterion of s. 2(2)(b)(i) of the EAPWDA.

Help to perform DLA

The appellant's position is that she requires the significant assistance of another person to perform DLA.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that significant help is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform a DLA.

While the panel finds that the evidence of the prescribed professional establishes that the appellant requires some assistance from her family and friends with tasks of some DLA, the panel also finds that the ministry reasonably determined that, as direct and significant restrictions in the appellant's ability to perform DLA have not been established, it cannot be determined that the appellant requires help to perform DLA as a result of those restrictions.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD designation was reasonably supported by the evidence, and therefore confirms the decision.