

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development ("ministry") reconsideration decision dated December 6, 2012 which found that the appellant's application for Persons With Disabilities ("PWD") designation did not meet three of the five statutory requirements of section 2 of the Employment and Assistance for Persons with Disabilities Act. The ministry found that the appellant was at least 18 years of age and that her impairment was likely to continue for two years or more. However, the ministry was not satisfied that the evidence establishes that the appellant has a severe physical or mental impairment and 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 copies of the following:

1. Person With Disabilities (PWD) Application: applicant information dated July 10, 2012, physician report ("PR") dated July 13, 2012 and assessor report ("AR") dated July 13, 2012;
2. A letter dated October 25, 2012 from the ministry to the appellant denying PWD designation and attaching a PWD Designation Decision Summary also dated October 25, 2012;
3. A medical note from the appellant's family physician dated March 12, 2012 indicating that the appellant should not stand for 20 minutes at a time due to her medical condition;
4. A medical note from the appellant's family physician dated November 16, 2012 indicating that the appellant can stand and walk for only 20 minutes at a time and can manage walking for 2 blocks before having to rest for 10 minutes;
5. A letter from a medical specialist to the appellant's family physician dated February 6, 2011 regarding the findings of a medical diagnostic testing ("the medical letter");
6. A medical report dated December 9, 2010 ("the medical report"); and
7. The appellant's Request for Reconsideration dated November 22, 2012.

In her Notice of Appeal dated December 12, 2012, the appellant states that she has pain in her low back which radiates to both thighs and legs and she specifically feels a sharp pain on her left thigh. The appellant states further that on May 29, 2012 she had surgery on her neck due to a neck mass and that sometimes she continues to feel neck stiffness. The appellant states further that in 2009 she had surgery on her right wrist due to carpal tunnel syndrome and that she still has numbness and tingling in her right hand which causes her to be unable to grab things longer. Lastly, the appellant states that she has hypertension as well as diabetes for which she takes insulin.

Section 1 of the PWD application includes three parts. Section A sets out the appellant's personal information including her name, address, date of birth, personal health number, social insurance number and telephone number. This section was completed by the appellant and in response to the question "Do you need help completing this application?" the appellant has not checked the "Yes" or "No" boxes nor has she indicated that she needs help in completing the application. Section B asks the appellant to describe her disability and the impact it has had on her life. The appellant has not completed this section. Section C is the declaration and notification section and the appellant has signed and dated this section July 10, 2012.

At the hearing, the appellant gave her evidence with the assistance of a translator and stated that the ministry denied her request for PWD designation due to the PWD application completed by her doctor but the ministry does not appreciate what she is going through at home. With respect to her physical condition, the appellant stated that she is always in pain and that she is unable to grip a cup of coffee. The appellant stated that her daughter helps her all the time and the appellant is very upset that her application was denied as she has pain in her right shoulder, arm and left leg which causes her to wake up at night in pain. The appellant stated that she takes over the counter pain medication but can't take anything stronger because of the effect it would have on her stomach. The appellant reiterated her opinion that she is disabled, that she is not able to walk more than 20 minutes before needing to rest, that she is not able to do the house chores and even if she tries to do it after 3 or 4 minutes her hands and fingers go numb. The appellant stated that she has diabetes which makes her very weak and that she takes insulin and medication and a special diet for that. The appellant stated that she has high blood pressure that she takes medication for but not all of her medications are paid for by the ministry. The appellant noted that she needs assistance in the shower because she gets dizzy and that she often waits until her daughter comes home from school to take a shower so she can help her. The appellant stated that her sister comes to her home on occasion to cook for her. The appellant stated that she is unable to drive anymore and takes the bus now as she cannot properly steer and she does not feel that it's safe to drive. The appellant noted that if her sister is not available to take her to the doctor or grocery store another

relative will take her.

With respect to her mental condition, the appellant stated that she still suffers from depression for which she takes medication and that she has been referred to a psychiatrist.

In response to a question, the appellant confirmed that she is still seeing her family physician who completed the PWD application, that he is aware of the extent and degree of assistance that she requires and that he knew of this at the time the PWD application was completed. In response to a question, the appellant stated that she has needed assistance from her daughter, sister and aunt for approximately 3 years and that she stopped working in August 2011. The appellant added that while she was working, she did receive some assistance from family members specifically with shopping from time to time. In response to a question, the appellant stated that she saw her family physician for hand and leg pain and that she has been referred to a neck specialist but no appointment has been made yet. The appellant added that she was sent for an x-ray and that it showed arthritis in her low back. In response to a question, the appellant noted that she is able to do some basic housekeeping but if she does it she experiences pain. The appellant noted that she is unable to sweep, mop, dust or do dishes and that she now uses paper plates and cups in order that she may avoid washing dishes. In response to a question, the appellant stated that she is able to do some light cooking. In response to a question, the appellant noted that she has used a cane for two years and that her family physician knows of this.

The medical report describes the physical examination and studies done of the appellant. The medical specialist who performed the tests offers the conclusion that the appellant's studies are "essentially normal" and that there is no evidence of carpal tunnel syndrome on either side or of a generalized polyneuropathy. A referral is made for a diagnostic test of the appellant's cervical spine.

The medical letter addressed to the appellant's family physician documents the referenced diagnostic testing of the appellant's cervical spine. The results are described as "unremarkable" and the letter goes on to provide that "no cause for [the appellant's] symptoms are identified."

The appellant's family physician prepared two medical notes concerning the appellant. The first is dated March 12, 2012 and describes the appellant as not being able to stand for 20 minutes at a time due to her medical condition. The second medical note is dated November 16, 2012 and describes the appellant as being able to stand and walk for only 20 minutes at a time and being able to walk for 2 blocks before having to rest for 10 minutes.

The physician who completed the PR confirms that the appellant has been his patient for 6 years and that he has seen the appellant 11 or more times in the past 12 months. In the PR, the physician notes a diagnosis of depression with onset in May 2012 as well as peripheral neuropathy – diabetes mellitus with onset in February 2011. The physician notes under Health History that the appellant has low mood, is anxious, has low concentration, poor stress tolerance, fatigue as well as pain and numbness in her right hand more so than the left. The physician goes on to comment that the appellant requires a grab bar in the bathroom. The physician indicates that the appellant has not been prescribed medication that may interfere with her ability to perform DLA. In response to the question whether the impairment is likely to continue for two years or more, the physician indicates "yes" and notes "Neuropathy chronic, may progress." The physician indicates that the appellant can walk 4 or more blocks unaided on a flat surface, that she can climb 5 or more stairs unaided, that she can lift 2 to 7 kg and she can remain seated less than 1 hour. The physician notes that the appellant has no difficulties with communication. The physician also notes that the appellant has significant deficits with cognitive and emotional function in executive function (planning, organizing, sequencing, calculations, judgment), emotional disturbance, motivation and attention or sustained concentration.

The appellant's physician also completed the AR and indicates that the appellant lives with her daughter and that her depressive illness and peripheral neuropathy which affects her hands in terms of pain and numbness

impacts her ability to manage DLA. The physician further notes that the appellant has satisfactory ability to communicate in speaking, reading, writing and hearing. The physician indicates that the appellant is independent in all areas of mobility and physical ability other than lifting and carrying for which she requires continuous assistance from another person. Specifically, the physician comments "...aggravates pain in hands. Sister and daughter do most of these activities." With respect to impact on the appellant's cognitive and emotional functioning, the physician notes that the appellant's mental impairment has no impact on psychotic symptoms, other neuropsychological problems or other emotional or mental problems. The physician goes on to indicate that the appellant's mental impairment has a minimal impact on consciousness, impulse control, insight and judgment, motor activity and language, moderate impact on bodily functions, emotion, attention/concentration, executive, memory and motivation and the physician then goes on to comment "Depression and anxiety."

The physician indicates that the appellant is independent with all tasks of personal care including dressing, grooming, bathing, toileting, feeding self, regulating diet and transfers in/out of bed and on/off of chair but the physician adds the comment that all of these tasks take significantly longer to perform due to pain in the appellant's hands. The physician reports that the appellant requires continuous assistance with doing laundry and basic housekeeping and that these tasks are "done by sister and daughter."

The physician indicates in the AR that the appellant requires periodic assistance with going to and from stores, reading prices and labels, making appropriate choices and paying for purchases while requiring continuous assistance from her sister and daughter with carrying purchases home. The physician reports that the appellant requires periodic assistance from her sister and daughter with all tasks of managing meals, including meal planning, food preparation, cooking and safe storage of food and that these tasks take significantly longer than typical. The physician indicates that the appellant is independent with all tasks of paying rent and bills (including banking and budgeting) and with managing medications (filling/refilling prescriptions, taking as directed and safe handling and storage). The physician notes that while the appellant is independent using transit schedules and arranging transportation, she requires periodic assistance getting in and out of a vehicle and with using public transit.

The physician reports that the appellant requires periodic support/supervision in all aspects of social functioning and comments that she is socially isolated in relation to developing and maintaining relationships and that further she has poor stress tolerance when faced with unexpected demands. The physician notes that the appellant has marginal functioning in respect of her immediate social and extended social networks. The physician notes again that the appellant relies on family for help with DLA but requires no assistance animal to compensate for her impairment.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet three of the five statutory requirements of Section 2 of the EAPWDA for designation as a person with disabilities (PWD). The Ministry found that the appellant was at least 18 years of age and that her impairment was likely to continue for two years or more. However, the ministry was not satisfied that the evidence establishes that the appellant has a severe physical or mental impairment and 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.

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;

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- (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 ministry referred to the Reconsideration Decision and submitted that to be eligible for PWD designation, the appellant must satisfy all five criteria as set out in section 2 of the EAPWDA and that in the present case, the appellant has failed to do so. The ministry acknowledges that the appellant is a person who has reached the age of 18 and that it is the opinion of her family physician that her physical and/or mental condition will likely continue for 2 years or more. However, the ministry argues that the evidence does not demonstrate that the appellant has a severe physical or mental impairment. The ministry specifically points to the PR which indicates that the appellant is able walk 4 or more blocks, lift 2 to 7kg and remain seated for less than one hour. The ministry refers to the AR which indicates that the appellant is independent in all aspects of mobility and physical ability other than lifting, carrying and holding for which she requires continuous assistance from her sister and daughter for most activities but the ministry notes again that the PR indicates that the appellant's lifting limitations are between 2 and 7 kg. The appellant disagrees with the ministry's contention that she does not have a severe physical impairment. She argues that she is always in pain and experiences pain in her right shoulder, right arm and left leg and that she takes over the counter medication to manage it. The appellant argues that she is only able to walk for 20 minutes after which she must rest. The appellant argues that she is unable to do chores for more than 3 or 4 minutes and that she requires help from her daughter, sister and aunt for this as well as for cooking.

The panel finds that the evidence of a medical practitioner in the PR confirms a diagnosis of peripheral neuropathy and underlying diabetes mellitus. While the PR does not indicate that the appellant has been prescribed any medication that interferes with her ability to perform DLA, the appellant noted in her evidence that she takes over the counter medication for pain, insulin and medication for her diabetes condition and that she uses a cane. The appellant also added that she takes medication for high blood pressure. The physician indicates in the PR that the appellant can walk 4 or more blocks unaided on a flat surface, that she can climb 5 or more stairs unaided, that she can lift between 2 and 7kg and remain seated less than 1 hour. The physician assesses the appellant as independent with walking indoors, walking outdoors, climbing stairs and standing and that she requires continuous assistance with lifting and carrying noting that she gets help from her sister and daughter with "most of these activities." In the March 12, 2012 medical note prepared by the appellant's family physician, he notes that the appellant should not stand for 20 minutes at a time due to her medical condition. The appellant's family physician prepared a second medical note on November 16, 2012 which indicates that the appellant can only walk for 20 minutes and 2 blocks at a time before requiring a 10 minute rest. The medical report sets out the findings with respect to the appellant's carpal tunnel syndrome and generalized polyneuropathy as "essentially normal" and the medical letter notes that no cause for the appellant's hand and foot numbness could be identified.

While the appellant does use a cane, the evidence demonstrates that she is able to independently carry out all activities of mobility and physical ability with the exception of lifting, carrying and holding for which she requires continuous assistance from family members. However, the panel notes that the appellant's family physician

comments in the PR that the appellant is able to lift items that are between 2 and 7 kg. The panel notes that the November 16, 2012 medical note prepared by appellant's family physician differs from the earlier PR insofar as the former notes that the appellant can only walk for 2 blocks at a time while the latter provides that the appellant can walk 4 or more blocks at a time. Despite this difference in opinion, the appellant's ability to walk unaided on a flat surface is only one factor for consideration in the determination of whether a severe physical impairment exists. The panel notes that the findings of the medical specialists in the medical report and medical letter are inconclusive and while the panel finds that the evidence demonstrates that the appellant does have a physical impairment, section 2(2) of the EAPWDA requires that the physical impairment be severe in nature. Taking into consideration all of the circumstances as set out above, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant suffers from a severe physical impairment.

With respect to mental functioning, the ministry argues that the evidence does not demonstrate that the appellant has a severe mental impairment. The ministry argues that the PR notes that the appellant has significant deficits with cognitive or emotional functioning that are limited to executive, emotional disturbance, motivation and attention or sustained concentration and that in the assessor report, the appellant's physician indicates that her depression and anxiety has moderate, minimal or no impact on her cognitive and emotional functioning. The appellant argues that she suffers from depression and that she has difficulty sleeping.

The panel notes that the appellant's physician identifies in the PR that she has significant deficits with cognitive or emotional functioning that affect her executive, emotional disturbance, motivation and attention or sustained concentration. The panel further notes that in the AR, the appellant's physician notes that the appellant's mental impairment has no impact on 3 of 14 items (psychotic symptoms, other neuropsychological problems, other emotional or mental problems) and minimal impact on 5 of 14 items (consciousness, impulse control, insight and judgment, motor activity and language). While the AR does indicate a moderate impact on 6 of 14 items (bodily functions, emotion, attention/concentration, executive, memory and motivation) the panel finds that considering the evidence as a whole, including the fact that the AR does not reflect any major impact on daily functioning for any item, the ministry's decision that the evidence does not establish a severe mental impairment was reasonable.

The ministry argues that the evidence does not establish that the appellant's DLA are, in the opinion of a prescribed professional, directly and significantly restricted either continuously or periodically for extended periods. The ministry argues that while it takes significantly longer, the appellant is independent in all aspects of personal care including dressing, grooming, bathing, toileting, feeding herself, regulating her diet and transfers in and out of bed and on and off a chair. The ministry argues further that while the AR provides that the appellant requires continuous assistance from her sister and daughter with basic housekeeping and laundry, it is unclear why this conclusion was reached given the finding in the PR that the appellant is not restricted in her basic functioning. The ministry points out that the appellant is assessed as independent in all aspects of paying rent and bills and in all aspects of medication and only requires periodic assistance with most aspects of shopping, meal planning and preparation and transportation. The appellant argues that she receives assistance from family members including her daughter, sister and aunt with cooking and basic housekeeping and that she has been receiving assistance from them for the past 3 years. It is the appellant's evidence that she is able to do light cooking and housekeeping.

The panel finds that the legislation requires that the ministry be satisfied that the appellant has a severe mental or physical impairment that in the opinion of a prescribed professional directly and significantly restricts the appellant's ability to perform DLA either continuously or periodically for extended periods. In the AR, the physician indicates that the appellant is independent in all aspects of personal care although these do take significantly longer due to pain in her hands and that she requires continuous assistance with laundry and basic housekeeping. For shopping, the physician notes that the appellant requires periodic assistance going to and from stores, reading prices and labels, making appropriate choices and paying for purchases and that

she requires continuous assistance from her sister and daughter carrying purchases home. The physician notes that the appellant requires periodic assistance and takes significantly longer with all aspects of meals including meal planning, food preparation, cooking and safe storage of food and that she receives "a lot of help" from her sister and daughter. The physician indicates that the appellant is independent in all aspects of paying rent and bills and medications and that she is independent using transit schedules and arranging transportation but that she requires periodic assistance getting in and out of a vehicle and using public transit. The physician notes that the appellant requires periodic support/supervision with all aspects of social functioning noting that the appellant is "socially isolated" and has "poor stress tolerance." Finally, the physician assesses the appellant as having marginal functioning in terms of her immediate and extended social networks. While the panel finds that the evidence demonstrates that the appellant experiences restrictions on her ability to perform DLA, section 2(2) of the EAPWDA requires that the restrictions must be direct and significant in nature either continuously or periodically for extended periods. In applying the legislation, the panel finds that some of the DLA listed in the AR require periodic or continuous assistance from other persons but that others require none. Further, the appellant's functional skills as set out in the PR, when considered in conjunction with the results of the medical letter and medical report, lead the panel to find 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.

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 relies on the information from the physician and the appellant that she lives with her daughter and that she relies on her daughter, sister and aunt assistance with cooking, housekeeping and shopping. The appellant uses a cane and a grab bar in the bathroom. As it has not been established that the appellant's DLA are directly and significantly restricted as set out above, 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.

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.