

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 20, 2012 which found that the appellant did not meet two 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, and the ministry was also satisfied that the evidence establishes that the appellant has a severe mental and physical impairment. However, the ministry was not satisfied that the evidence establishes 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; 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 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 August 23, 2012 with no description provided by the appellant of her disability or how it affects her life and her ability to take care of herself, and physician report and assessor report completed by the appellant's family physician of more than 3 years, both dated August 8, 2012;
- 2) Undated, unsigned copy of the PWD application completed and marked "sample"; and,
- 3) Request for Reconsideration dated October 18, 2012.

Diagnoses

The appellant has been diagnosed by her general practitioner with repetitive strain injury in her right hand, arm, shoulder and neck, and depressive disorder.

DLA

- In the physician report, the general practitioner indicated for health history that the appellant's repetitive strain injury in her right hand, arm, shoulder, neck and head causes constant pain and decreased functionality and she is "...even restricted in activities of daily living ('ADL's') often." The appellant can do no lifting with her right arm.
- In the assessor report, the physician indicated that the appellant requires continuous assistance with lifting and carrying and holding as she can only lift 10 lbs. maximum with her left arm.
- The appellant is assessed as having significant deficits with cognitive and emotional functioning in the areas of executive, memory, emotional disturbance, motivation, and attention or sustained concentration "...due to pain and depressive disorder." In the assessor report, the general practitioner identified major impacts to daily functioning in executive, emotion, motivation and attention/ concentration, as well as with bodily functions. There is a moderate impact with language and minimal or no impacts in the 8 other listed areas. The physician commented that depression and stress cause severe anxiety, that she is unable to focus, concentrate or plan effectively and she is unable to comprehend.
- In the assessor report, the appellant's ability to communicate is assessed as poor with speaking, reading, and writing and good with hearing. The physician commented that it is difficult to have stressful discussions and her comprehension is poor when she is stressed.
- In the assessor report, the general practitioner reported that all of 8 listed tasks of the DLA personal care are performed independently with a comment by the physician that she can do these tasks for 5 to 10 minutes at a time before she experiences pain.
- The appellant is independent with doing her laundry one load at a time and requires continuous assistance with basic housekeeping with "no vacuuming, washing, cleaning."
- The appellant is independent with 4 out of 5 listed tasks of shopping, while requiring continuous assistance with carrying purchases home.
- The appellant is independent with 2 out of 4 listed tasks of managing meals, with continuous assistance required from another person with food preparation and cooking, with the explanation that she is unable to peel, chop, shred.
- All listed tasks for the DLA paying rent and bills and medications are managed independently with no noted restrictions with a comment added that "...financial stressors are large."
- The appellant is independent with 2 out of 3 listed tasks of managing transportation, with periodic assistance required for using transit schedules and arranging transportation with the comment "difficult transit."
- In the assessor report, the general practitioner indicated that the appellant is independent with 4 out of 5 aspects of social functioning and that she has good functioning in both her immediate and extended

social networks. The only restriction identified is with periodic support/supervision required for dealing appropriately with unexpected demands with the explanation that this is for stressful situations. No other narrative is provided by the appellant's physician.

Need for Help

- The general practitioner reported that the appellant requires an aid for her impairment, described as voice activated software for the computer and modified pens if writing is necessary.
- The appellant receives help for DLA from her family and friends.
- When asked to describe what assistance is necessary where none is available, the general practitioner wrote "...would like to be able to eliminate activities requiring assistance."

In her Notice of Appeal, the appellant expressed her disagreement with the reconsideration decision.

With the approval of the parties, the hearing proceeded on the basis of the written materials, in accordance with Section 22(3)(b) of the Employment and Assistance Act.

The appellant provided the following written submissions:

- 1) Submission by an advocate on behalf of the appellant dated December 7, 2012;
- 2) One page from the physician report of the PWD application dated November 20, 2012, completed and signed by the appellant's physician;
- 3) Letter dated November 20, 2012 from the appellant's physician 'To Whom It May Concern' providing responses to a series of questions.

The panel admitted the page from the PWD application and the letter, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail of the impact of her diagnosed conditions and being in support of information that was before the ministry on reconsideration. The submission was accepted as argument containing no new evidence.

In written materials, the appellant provided the following additional evidence:

- In the page from the PWD application, the general practitioner indicated that the appellant is continuously restricted in the DLA of personal self care, meal preparation, basic housework, daily shopping, use of transportation and social functioning. In additional comments regarding the degree of restriction, the general practitioner wrote that the appellant "...has limited use of right hand/arm and ongoing pain hand and in neck, with depressive disorder which makes all DLA's difficult." For social functioning, the physician noted that "...depression has caused social withdrawal, difficulty with relationships and marginal functioning."
- In the PWD page, the physician also indicated that the appellant is periodically restricted in management of medications with the explanation that it is difficult to open pill bottles at times due to pain, about once a week.
- The appellant is not restricted in her mobility inside the home and mobility outside the home and with management of finances.
- In the PWD page, the physician indicated that the assistance required by the appellant with DLA is adaptations to writing equipment, voice activated computer software, electronic openers/toothbrush and she "...still needs help with meals, housework, shopping, transport, counseling and emotional support."
- In the letter dated November 20, 2012, the physician agreed that the appellant's level of activity is significantly reduced as a direct result of her impairment, that she is "...unable to work or perform a lot of the ADL's- painful to dress, do meal prep, etc. Depression has caused social withdrawal also."
- Asked how often the appellant is significantly restricted in her daily functioning by one or more of her medical conditions, the physician responded "...every day, all day."
- In the letter, the physician agreed that the appellant's health limitations significantly restrict her ability to perform a range of DLA on an ongoing basis and that she is "...unable to do meal prep, dressing,

grooming, open meds, shopping, standing/holding on in public transport, housework. She has difficulty interacting with others due to depression and social withdrawal."

- In the letter, the physician agreed that the appellant needs significant help from other people and/or assistive devices, that she needs adaptations to writing equipment, toothbrush, computer, kitchen aids and needs help with meal prep, foot/nail care, shopping, public transport, housework, emotional support and counseling.

The ministry relied on its reconsideration decision.

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) as she does not meet all the criteria in Section 2 of the EAPWDA, 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's 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.

Evidentiary Considerations

The panel finds that the evidence of the appellant's physician contained in the page from the PWD application and the letter dated November 20, 2012 is markedly different than that set out in the physician and assessor reports prepared approximately 3 months previously, on August 8, 2012. For example, the appellant was previously assessed as independent with all tasks of personal care and with all but one aspect of social functioning for which periodic support/supervision is required "for stressful situations" and the appellant has good functioning in both her immediate and extended social networks. In the new assessment, the physician reports there are continuous restrictions to both personal self care and social functioning, with marginal social functioning. While the physician noted with respect to social functioning that "...depression has caused social withdrawal, difficulty with relationships and marginal functioning", the physician did not provide an explanation for this change in assessment, e.g. whether the appellant's condition has rapidly deteriorated over 3 months or treatments are no longer effective, or there was a misapprehension in the initial assessment. For these reasons, the panel places little weight on the evidence contained in the page from the PWD application and the letter dated November 20, 2012 where it is inconsistent with that set out in the original physician and assessor reports included in the PWD application.

There is also no explanation for who completed the undated and unsigned copy of the PWD application marked "sample" and although the information set out in the physician and assessor reports is similar to that in the final PWD application, the panel finds that the ministry reasonably assigned no weight to this document by not relying on it in the reconsideration decision.

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 personal self care, meal preparation, management of medications, basic housework, daily shopping, use of transportation, and social functioning.

The ministry's position is that the evidence of the prescribed professionals establishes that although the appellant requires continuous assistance with some tasks of some DLA, the majority of the aspects of DLA (27 out of 33) are still performed independently. The ministry points out that the appellant is able to use her left arm and lift weights up to 10 lbs.

Panel Decision

The evidence of a prescribed professional, the appellant's general practitioner, is that the appellant is independent and not restricted with moving about indoors and outdoors. The general practitioner reported that

all of 8 listed tasks of the DLA personal care are performed independently with a comment that the appellant can do these tasks for 5 to 10 minutes at a time before she experiences pain. The consistent information from the new evidence is that the appellant experiences pain with dressing and grooming. There is no information provided from the appellant's physician in either the original PWD application or the new evidence regarding medications or treatments being trialed to potentially alleviate the appellant's pain. The majority of the listed tasks for all other DLA are managed independently, or 23 tasks of a total 28. The appellant requires continuous assistance from another person with basic housekeeping, although she is assessed as independent with doing her laundry one load at a time, one of a total of 5 tasks of shopping (carrying purchases home), and 2 of 4 tasks of managing meals (food preparation and cooking). The repetitive strain injury is to the appellant's right hand and arm with a functional skill limitation of no lifting with the right arm; however the appellant can lift up to 10 lbs. with her left arm. Although periodic assistance is required with using transit schedules and arranging transportation, the panel finds that the explanation "difficult transit" does not establish that the assistance is required for extended periods of time, as required by the legislation.

For the additional DLA for those with a severe mental impairment, the general practitioner has assessed the appellant as independent with making decisions about her personal activities, care or finances. The appellant is assessed as independent with making appropriate social decisions and all tasks of both personal care and finances are managed independently. The physician noted in the assessor report that "financial stressors are large" and the panel finds that the ministry reasonably concluded that external stressors such as finances are not considered aspects of DLA directly restricted by the impairments. While the general practitioner assessed the appellant as having a poor ability to communicate, the explanation is that her comprehension is poor when she is stressed and there is no indication of how often the appellant is stressed. As well, the appellant is assessed as independent with developing and maintaining relationships and with interacting appropriately with others, with good functioning in both her immediate and extended social networks.

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 as well as the use of assistive devices.

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 with tasks of some DLA and the use of assistive devices, particularly adaptations to writing equipment, toothbrush, computer, and kitchen aids, 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.