

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 28, 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

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 January 4, 2012, and the physician report completed by the appellant's family physician of more than 5 years, dated November 11, 2011 and the assessor report completed by a registered social worker who met with the appellant once, dated September 12, 2012; and,
- 2) Request for Reconsideration dated October 29, 2012.

### *Diagnoses*

The appellant has been diagnosed by her general practitioner with lupus and arthritis, with a date of onset of August 2005.

### *Physical Impairment*

- In the physician report under health history, the general practitioner indicated that the appellant has chronic pain mainly in the hands and feet.
- Functional skills reported in the physician report indicated that it is unknown how far the appellant can walk unaided, how many stairs she can climb unaided, how much she can lift, or how long she can remain seated.
- The physician reported that the appellant has been prescribed medication that interferes with her ability to perform her daily living activities (DLA) as she is on long-term narcotics and a muscle relaxant which can affect cognition and energy. The appellant does not require any aids for her impairment.
- In the assessor report, the appellant is reported as independent with walking indoors and walking outdoors, with no assessment of assistance required for climbing stairs but a comment added "...limitation on number of stairs climbed", and no assessment of assistance required for standing but an explanation provided of "...limitation on standing." The appellant is assessed as requiring periodic assistance with lifting and with carrying and holding, with no further comments added by the social worker.
- In the additional information, the social worker commented that a change in the weather equals inflammation of joints with limitations on standing/walking; chores take longer.
- In her self-report included with the PWD application, the appellant stated that she has inflammation in her joints and has limited movement of the joints. She cannot stand or walk for periods of time.

### *Mental Impairment*

- The general practitioner reported that the appellant has no difficulties with communication and the social worker assessed the appellant with a good ability to communicate in all areas.
- In the physician report, no significant deficits are reported with cognitive and emotional function.
- In the assessor report, the section of the report for an applicant with an identified mental impairment or brain injury is marked by the social worker as not applying to the appellant.
- The social worker indicated that the appellant independently manages 2 of 5 listed aspects of social functioning, including making appropriate social decisions and interacting appropriately with others. For developing and maintaining relationships, the social worker has noted "N/A", or not applicable, and for dealing appropriately with unexpected demands, the comment is "frustrated/confused", with no assessment made for securing assistance from others. She has good functioning with her immediate social networks and marginal functioning in her extended social networks.
- Asked to describe the support/supervision required which would help maintain the appellant in the

community, the social worker wrote: "positive support from friends/families."

- In her self-report included with the PWD application, the appellant wrote that she has severe depression and that household duties affect her life every day, either physically or emotionally.

#### *DLA*

- In the physician report, the general practitioner commented that the appellant has difficulty with her DLA and "must take time out during the day to rest and get off her feet" and also indicated that it is unknown whether the appellant's impairment directly restricts her ability to perform DLA.
- In the assessor report, the social worker reported that 7 out of 8 listed tasks of the DLA personal care are performed independently without any noted restriction, with no assessment for transfers in/out of bed, but a note added that "limitations in/out of bed."
- There is also no assessment provided for basic housekeeping but notes added that there is "limitation in number of laundry" and "limitation to basic housekeeping."
- For shopping, she is independent with 4 out of 5 tasks and no assessment indicated for carrying purchases home, with the comment "...limitations to number of bags carried."
- All listed tasks for the DLA meals, paying rent and bills, and medications are managed independently with no noted restrictions or limitations.
- For transportation, the appellant is assessed as independent with 2 out of 3 aspects, with no assessment indicated for getting in and out of a vehicle but the comment added "limitations to style of vehicle."
- In her self-report, the appellant stated that it takes her longer to do chores like house cleaning and shopping and she cannot look after her children without some help and her daughter does a lot.

#### *Need for Help*

- The social worker indicated that the help required for DLA is provided by the appellant's family, being her daughter/ son's godmother. The section of the report for assistance provided through the use of an assistive device is marked "N/A" by the social worker.

In her Notice of Appeal, the appellant expressed her intention to dispute the reconsideration decision.

Prior to the hearing, the appellant provided a letter dated December 10, 2012 from a different social worker which included the following :

- The social worker who completed the assessor report did not know the appellant and did not ask pertinent questions to her performing the DLA and in fact had only met her that morning when the appellant was having a "better day."
- The writer has worked with the appellant for several months and has witnessed the challenges with the appellant and a psycho- social assessment will follow.
- The appellant has been on anti-depressants "off and on" for about 3 years. She is currently back on them and will probably remain on them long term as she has not had success breaking the depression on her own.
- The appellant receives assistance from her family, something which has not even been mentioned in her application.
- Enclosed pharmacy receipts for a narcotic pain reliever and an anxiety medication.

The ministry relied on its reconsideration decision as its submission and did not object to the admissibility of the letter and enclosed receipts. The panel admitted these documents, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further detail relating to the medical conditions and is, therefore, in support of information that was before the ministry on reconsideration.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's 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 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 her chronic pain due to lupus and arthritis, mainly in her hands and feet.

The ministry's position is that the information provided by the general practitioner in the PWD application indicates that the appellant has difficulty with her DLA; however it is unknown how far the appellant can walk, how many stairs she can climb, how much she can lift, or how long she can remain seated. The ministry argues that the general practitioner has not provided any information on the impacts of the appellant's impairment on her DLA. The ministry argues that the appellant reported that she has limited movement and inflammation of her joints, however the social worker assessed a requirement for periodic assistance only with lifting and carrying and holding with no information on how often the appellant requires assistance. The ministry argues that the social worker commented that the appellant has limitations on how many stairs she can climb and how long she can stand, however no further information is provided on what these limitations are. The ministry argues that the social worker assessed the appellant as independent with walking indoors and outdoors.

### ***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 medical practitioner respecting the nature of the impairment and its impact on daily functioning.

The medical practitioner, the appellant's general practitioner of more than 5 years, has diagnosed the appellant with lupus and arthritis, with associated chronic pain mainly in her hands and feet. The physician indicated that the appellant does not require any aids for her impairment. Regarding the appellant's functional skills, the physician reported that it is unknown how far the appellant can walk unaided, how many stairs she can climb unaided, how much she can lift, or how long she can remain seated. The appellant stated in her self-report that she has inflammation in her joints and has limited movement of the joints and she cannot stand or walk for periods of time. In the assessor report, however, the appellant is assessed by the social worker as independent with walking indoors and walking outdoors. The social worker reported that the appellant requires periodic assistance with lifting and with carrying and holding, with no further comments added regarding the duration of the assistance required. No assistance is required for climbing stairs or standing but the social worker commented that there is a limitation on the number of stairs climbed and a limitation with standing, without further defining those limitations. Given the lack of detailed information on how the appellant's medical conditions restrict her daily functioning, the panel finds that the ministry reasonably concluded that there is not sufficient evidence provided by the general practitioner and the social worker to establish that the appellant

has a severe physical impairment as required under section 2(2) of the EAPWDA.

### **Severe Mental Impairment**

The appellant's position is that a severe mental impairment is established by the evidence of the appellant's depression as set out in the social worker's letter dated December 10, 2012.

The ministry's position is that a severe mental impairment has not been established as both the physician and the social worker indicate that there are no significant deficits with cognitive and emotional functioning. The ministry argues that while the appellant reports that she suffers from severe depression, this has not been corroborated by either her physician or the assessor.

### *Panel Decision*

The panel finds that that medical practitioner did not diagnose a mental disorder and indicated that there are no significant deficits in cognitive and emotional functioning. In the assessor report, the section of the report for an applicant with an identified mental impairment or brain injury is marked by the social worker as not applying to the appellant. The social worker indicated that the appellant independently manages 2 of 5 listed aspects of social functioning, including making appropriate social decisions and interacting appropriately with others. For developing and maintaining relationships, the social worker has noted "N/A", or not applicable, and for dealing appropriately with unexpected demands, the comment is "frustrated/confused", with no assessment made for securing assistance from others. The appellant has good functioning with her immediate social networks and marginal functioning in her extended social networks. The support/supervision required which would help maintain the appellant in the community is described by the social worker as "...positive support from friends/families." In the letter dated December 10, 2012, the social worker stated that the appellant has been on anti-depressants "off and on" for about 3 years and she is currently back on them and will probably remain on them long term as she has not had success breaking the depression on her own and that a psycho- social assessment will follow. As no further information was provided by the social worker and as no mental health condition has been diagnosed by the medical practitioner, 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 and she requires the assistance of another person to perform her DLA.

The ministry's position is that the evidence of the prescribed professionals establishes that although the appellant experiences some limitations with aspects of some DLA, these limitations are not defined and the majority of the aspects of DLA are still performed independently.

### *Panel Decision*

The evidence of the general practitioner is that the appellant has difficulty with her DLA and "...must take time out during the day to rest and get off her feet" and also that it is unknown whether the appellant's impairment directly restricts her ability to perform DLA. In the assessor report, the social worker reported that the appellant is independent with moving about indoors and outdoors. She is also independent with 7 out of 8 listed tasks of the DLA personal care which are performed independently without any noted restriction, with no assessment for transfers in/out of bed but a note added that "limitations in/out of bed." Similarly, there is no assessment provided for basic housekeeping but notes added that there is "limitation in number of laundry" and "limitation to basic housekeeping." For shopping, the appellant is assessed as independent with 4 out of 5 tasks and no assessment indicated for carrying purchases home, with the comment "...limitations to number of

bags carried." In her self-report, the appellant stated that it takes her longer to do chores like house cleaning and shopping and she cannot look after her children without some help, but the details of these limitations have not been provided by the social worker as assessor. All listed tasks for the DLA meals, paying rent and bills, and medications are managed independently with no noted restrictions or limitations. For transportation, the appellant is assessed as independent with 2 out of 3 aspects, with no assessment indicated for getting in and out of a vehicle but the comment added "limitations to style of vehicle." In the letter dated December 10, 2012, the social worker stated that the assessor did not know the appellant and did not ask pertinent questions to her performing the DLA and in fact had only met her that day when the appellant was having a "better day;" however no further detailed assessment of the appellant's ability to perform DLA was provided in the letter. The panel finds that the ministry's conclusion that the evidence of the prescribed professional does not establish direct and significant restriction of the appellant's ability to perform DLA, thereby not satisfying the legislative criterion of s. 2(2)(b)(i) of the EAPWDA, was reasonable.

### **Help to perform DLA**

The appellant's position is that she requires the significant assistance of another person to perform DLA. In the December 10, 2012 letter, the social worker stated that the appellant receives assistance from her family which has not been mentioned in the PWD application.

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 from other persons and no assistive devices are required. The ministry points out that the social worker reported that the appellant gets assistance from her daughter and her son's godmother, however no information was provided on what assistance they provide.

### **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 or the significant help or supervision of another person or the services of an assistance animal in order to perform a DLA.

The available evidence of the prescribed professionals does not establish that the appellant requires assistance continuously or periodically for extended periods of time with any aspects of her DLA, and 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.