

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the "Ministry") May 6, 2013 reconsideration decision in which the Ministry determined that the Appellant was not eligible for Persons with Disabilities ("PWD") designation because she did not meet all the requirements for PWD designation in section 2(2) of the Employment and Assistance for Persons with Disabilities Act. The Ministry was not satisfied that the Appellant has a severe mental or physical impairment that in the opinion of a prescribed professional

(i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and,

(ii) as a result of those restrictions she requires help to perform those activities.

The Ministry was satisfied that the Appellant has reached 18 years of age and in the opinion of a medical practitioner her impairment is likely to continue for at least 2 years.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act ("EAPWDA") Section 2(2) and 2(3).

Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 2.

## PART E – Summary of Facts

The Appellant did not appear at the hearing. The Panel confirmed that she was provided with notice of the hearing and then proceeded with the hearing in her absence, pursuant to section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision, the Ministry had the following evidence:

1. Appellant's PWD application consisting of:

- Appellant's self-report.
- Physician's Report ("PR") completed on October 24, 2012 by a doctor who indicated that the Appellant has been his patient for 1.5 years and he had seen the Appellant 10 times in the preceding 12 months.
- Assessor's Report ("AR") completed on October 24, 2012 by the same doctor.

2. Appellant's request for reconsideration with her written statement and articles about Trigeminal Neuralgia from the internet. These articles noted that this condition is known as "the suicide disease" and described different causes, various treatments, therapies and medications used in treatment.

### Diagnoses

In the PR, the doctor diagnosed the Appellant with chronic refractory facial pain and sensory disorders - other, both onset in June 2010.

### Physical Impairment

In her self-report and in her reconsideration request statement, the Appellant stated that she:

- Went to a dentist in 2010 for a routine filling and suffered great pain; she went back and forth to the dentist for 6 months and the pain got increasingly worse.
- Switched dentists and was diagnosed with Trigeminal Facial Neuralgia.
- Has seen 4 neurologists and is waiting to see another one who has a 2 year wait list; has seen two pain specialists who have no idea how to help her deal with the chronic pain.
- Has tried all the medications; has had 2 small surgeries, several treatments and some alternative therapies.
- Has also been seeing a neuromuscular dentist and paid for a mouth orthotic on her own – none of these have relieved her pain.
- Knows the disease is called the "suicide disease" as it is very painful and there is no real cure.
- Is basically unable to work because of the pain; any noise, light wind affect the level of pain.
- Is in bed most of the day; is good for maybe 3 hours and then has to go back to bed.
- Has no life at this time because of the pain; is also feeling depressed.

In the PR, the doctor indicated the severity of the Appellant's medical conditions as "chronic facial pain-meds somewhat helpful". He reported that the Appellant has not been prescribed any medication and/or treatments that interfere with her ability to perform daily living activities and she does not require any prostheses or aids for her impairment. Regarding the Appellant's functional skills, the doctor reported that she:

- Can walk unaided 4 + blocks, climb 5 + stairs unaided, lift 5-15 lbs., has no limitations remaining seated and has no difficulties with communication.

In the AR, the doctor reported that with respect to mobility and physical ability, the Appellant is independent walking indoors and outdoors, climbing stairs, standing, lifting, and carrying and holding.

*Mental Impairment*

In the PR, the doctor reported that the Appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation, adding "2° to chronic pain". The doctor also indicated in the AR:

- The following impacts to cognitive and emotional functioning: moderate impact to emotion and attention/concentration; minimal impact to consciousness, memory and motivation; no impact to impulse control, insight and judgement, executive, motor activity, language, psychotic symptoms, other neuropsychological problems and other emotional or mental problems; and, no report regarding bodily functions.
- The Appellant's ability to communicate in all aspects; i.e., speaking, reading, writing, hearing, is good.

*Daily Living Activities*

The doctor indicated in the AR, that the Appellant was independent in all the listed areas of personal care, basic housekeeping, shopping, meals, paying rent and bills, medications and transportation. For social functioning, the doctor wrote "N/A" [not applicable] and crossed out that section of the form.

*Help with Daily Living Activities*

In the AR, the doctor indicated that the Appellant receives help from family and for assistance provided by assistive devices, he wrote "Nil". He also reported that the Appellant does not have an assistance animal.

At the hearing, the Ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for PWD designation because she did not meet all of the requirements in section 2(2) of the EAPWDA, and specifically, that the Appellant does not have a severe mental or physical impairment that in the opinion of a prescribed professional (i) directly and significantly restricts her ability to perform daily living activities either continuously or periodically for extended periods; and, (ii) as a result of those restrictions she requires help to perform those activities.

The eligibility criteria for PWD designation are set out in the following sections of the EAPWDA:  
 2 (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.

The "daily living activities" referred to in EAPWDA section 2(2)(b) are defined in the EAPWDR as:

- 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 because of the Trigeminal Facial Neuralgia she is unable to work, has chronic pain and is in bed most of the day. Any noise, light, or wind affects the level of pain. Also, no doctors, no treatments and no medications have helped relieve the chronic pain.

The Ministry's position is that the Appellant's doctor indicated that she can independently manage her physical and mobility activities as well as all of her other daily living activities. She requires no prostheses or aids. The Ministry acknowledged that the doctor diagnosed the Appellant with a significant medical condition; however, the Ministry was not satisfied that based on the evidence

provided by the doctor there was enough evidence to establish a severe physical impairment.

#### *The Panel's Findings*

The diagnosis of a medical condition is not in and of itself evidence of the severity of impairment. What is important is evidence of how and the extent to which a medical condition restricts daily functioning. The EAPWDA provides that the determination of severity of impairment is based on whether the Minister, taking into account all of the evidence including that of the Appellant, is satisfied that the Appellant has a severe impairment. That legislation is also clear that the fundamental basis for that assessment is the evidence from a prescribed professional regarding the nature of the impairment and its impact on the Appellant's daily functioning.

In this case, the Panel finds that the doctor diagnosed the Appellant with a medical condition, which he described as chronic facial pain. The Appellant also provided information about the chronic, persistent pain that she experiences and how no treatments or medications have helped her. She wrote that she is bed-ridden for all but 3 hours a day, but this was not confirmed by her doctor. Also, there is no other description of how her medical condition restricts her ability to function. For instance, there is no information about the duration and frequency of her severe pain episodes. Also, although the Appellant stated that her pain level can be affected by noise, weather or wind, there is no information about how these may affect her in activities such as walking outdoors, shopping or other daily activities. Instead, the Panel notes that the doctor reported that the Appellant is independent in all aspects of physical and mobility functions and she independently manages all her daily living activities. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe physical impairment.

#### **Severe Mental Impairment**

The Appellant's position is that because of her chronic pain she feels depressed. The condition she has is also known as the suicide disease because of how it impacts individuals who suffer from the same condition.

The Ministry considered the doctor's report that the Appellant has significant deficits in her cognitive and emotional functioning in the areas of emotional disturbance and motivation. However, the Ministry noted that the doctor also reported that the Appellant's impairment has no impact, or just minimal or moderate impacts on her cognitive and emotional functioning. Therefore, based on the information provided by the doctor, the Ministry found that there was not enough evidence to establish a severe mental impairment.

#### *The Panel's Findings*

The Panel finds that the doctor provided no diagnosis of a mental health condition. The doctor did indicate moderate impacts in two areas of cognitive and emotional functioning and minimal impacts in three other areas. Also, in the physician's report, the doctor noted that the significant deficits to cognitive and emotional functioning were "2° to chronic pain". However, the doctor provided no information about how these deficits affect the Appellant's daily functioning. Therefore, based on all of the evidence, the Panel finds that the Ministry reasonably determined that the information provided did not establish a severe mental impairment.

#### **Restrictions to Daily Living Activities**

The Appellant submitted that because of the daily chronic pain she experiences she spends most of the day in bed. She has no life and is basically unable to work.

The Ministry's position is that it must rely on the opinion and expertise of her doctor in this matter and in the doctor's opinion the Appellant is able to manage all of her daily living activities independently. Therefore, the Ministry determined that there is not enough evidence to determine that the Appellant's impairment directly and significantly restricts her ability to manage her daily living activities either continuously or periodically for extended periods.

*The Panel's Findings*

Section 2(2)(b) of the EAPWDA requires the opinion of a prescribed professional to confirm that the Appellant's severe impairment directly and significantly restricts her daily living activities. The Appellant's doctor is the prescribed professional and he reported that she independently manages all of her daily living activities. Therefore, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant met the requirements in section 2(2)(b) of the EAPWDA.

**Help with Daily Living Activities**

The Appellant submits that because of her impairment she needs help from her family.

The Ministry noted that the Appellant's doctor indicated that she does not require any assistive devices. Also, because the evidence does not establish that daily living activities are significantly restricted, it cannot be determined that significant help is required from other persons.

*The Panel's Findings*

Section 2(2)(b)(ii) of the EAPWDA also requires the opinion of a prescribed professional to confirm that because of her restrictions the Appellant requires help with her daily living activities. In this case, the doctor reported that the Appellant independently manages all of her daily living activities. Also, although he indicated that she receives help from family, he provided no information about the type or frequency of help provided. The Appellant also does not need any assistive devices. Therefore, the Panel finds that the Ministry reasonably determined that the evidence did not establish that the Appellant needs significant help to perform daily living activities and also because direct and significant restrictions in the Appellant's ability to perform daily living activities were not established, it cannot be determined that the Appellant needs help to perform those activities.

**Conclusion**

Having reviewed and considered all of the evidence and the 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. Therefore the Panel confirms that decision.