

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated August 13, 2013 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* (EAPWDA) for designation as a person with disabilities (PWD). The ministry found that the appellant met the age requirement, was satisfied that the appellant had an impairment that would last at least two years and was satisfied that the appellant has a severe physical impairment.

However, the ministry was not satisfied that:

- the evidence establishes that the appellant has a severe 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 that
- as a result of those restrictions, the appellant requires the significant help or supervision of another person, 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 reconsideration consisted of:

- 1) Letter from the appellant's general practitioner dated August 12, 2013 stating that the appellant altered his answers then subsequently wrote the ministry a letter claiming inconsistencies in his answers;
- 2) Fax Sheet from the ministry to the appellant's general practitioner dated August 12, 2013 with telephone log;
- 3) The appellant's Request for Reconsideration dated July 30, 2013 with attached two page letter (RFR);
- 4) Letter from the appellant's sister to the ministry dated July 30, 2012;
- 5) Letter from the appellant's mother dated July 30, 2013;
- 6) Letter from the ministry to the appellant dated June 18, 2013 advising that her application for PWD designation was denied;
- 7) Letter from the ministry to the appellant dated June 12, 2013 advising that her PWD application was denied;
- 8) PWD Decision Summary dated June 12, 2013 with handwritten notes;
- 9) A PWD application comprised of a Self-report (SR) signed by the appellant on January 24, 2013; a Physician Report (PR) and an Assessor Report, both dated March 15, 2013 and completed by the appellant's general practitioner. The general practitioner reports that he has known the appellant for eight months and has seen the appellant two to ten times in the last year; and
- 10) PWD application Part C, D and E of the PR and parts B and C of the AR with changes made by the appellant.

In the Notice of Appeal the appellant states that her general practitioner has inconsistencies in his questionnaire in that he states that she does not require help or assistance for everyday living but the letters from her caretakers' state otherwise.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

The ministry did not submit any new information and relied on the reconsideration decision.

### ***Mental Impairment***

In the SR, the appellant reports that she suffers from addiction, PTSD, anxiety disorder, panic attacks and sleep disorder. She states that she has lost memory due to misuse of over the counter and prescription medication and suffers from confusion. She reports that she suffers from panic/anxiety attacks quite often and suffered one just thinking about writing about the attacks. She reports that because of her depression, she stays in bed for days/weeks on end, and only getting up when she must. The appellant reports that she is working with her family physician, psychologist, pain specialist, psychiatrist, and support groups.

In the PR, the general practitioner diagnoses the appellant with generalized anxiety and panic attacks and major depression, date of onset 1970; post traumatic stress disorder date of onset 1968 and substance abuse since 1990. The general practitioner reports that the appellant has been prescribed medications that interfere with her ability to perform daily living activities (DLA) as they are all sedating medications. The general practitioner reports that the appellant will likely require the medications for her lifetime or a prolonged period.

The general practitioner reports that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, impulse control, and attention or sustained concentration. The general practitioner comments that the appellant has significant symptoms from her depression and anxiety.

In the AR, the general practitioner reports that the appellant's impairment of concentration and decreased motivation impact her ability to manage DLA. The general practitioner reports that the appellant's ability to communicate with speaking, reading, writing and hearing are good. For section 4, cognitive and emotional functioning, the appellant's physician reports that there is major impact to the appellant's emotion and attention/concentration and moderate impact to the impulse control, insight and judgment, memory and motivation. There is minimal impact to executive and other emotional or mental problems, and no impact to bodily functions, consciousness, motor activity, language, psychotic symptoms or other neuropsychological problems. For additional comments, the general practitioner reports that the appellant has severe anxiety, PTSD and depression causing major impact on her life. The general practitioner also reports that the appellant has had issues with drug abuse in the past as a means of self-medicating her anxiety.

In the RFR the appellant reports that she suffers from PTSD, addiction disorder, panic/anxiety attacks and a sleep disorder. She reports that she suffers from memory loss due to her drug abuse and although she tries to avoid medications she has to take some because of her pain. She reports that there are some days when she cannot move at all and the pain and limitations trigger her depression. She reports that the depression can lead her to spend days in bed crying because of pain. When she has flashbacks from her PTSD the pain and the memories leads to migraine headaches.

The appellant's sister, who is also a registered nurse, reports that the appellant has suffered numerous physical and psychological ailments that caused her increasing difficulty in maintaining employment and caring for her family as a single mother. She reports that the appellant's physical pain increases her depression and suicidal ideation. The appellant's sister also states that the appellant suffers from substance abuse as a result of the pain medications she has had to take, and struggles with motivation due to her depression. She also states that the appellant suffers from PTSD and has resurfacing memories that cause increasing depression and suicidal ideation. The appellant's sister reports that the appellant tries to break her cycle of abuse and to stay from pain medications but is unable to do so due to severe pain.

### **DLA**

In the SR, the appellant states that she suffers from migraines that last several days and can attack 3-4 times per month leaving her totally disabled. She reports that due to her daily physical pain, housework and DLA take a lot longer to finish and she embarks on daily tasks and does what she can.

In the PR, the general practitioner indicated, in Part E – DLA, that the appellant's impairment does not restrict her ability to perform DLA.

In the AR, the general practitioner reports that the appellant is independent with all DLA, including all aspects of social functioning except that she requires continuous assistance from another person with carrying purchases home as she cannot lift more than 7 pounds. The general practitioner reports that the appellant has marginal functioning with her immediate and extended social networks.

In the RFR the appellant reports that "... on an average day I can only function at one speed – SLOW!" and that by the middle of the day her lower back is so sore that she is walking, holding her back with one hand and spends the day bent over so as not to start back spasm. The appellant states that her general practitioner's reports are inconsistent and that she hopes the statements from her mother and sister will help to clarify her situation, as they are a part of her daily life and assist her with her everyday normal routines. She reports that

it takes her longer to do everything. The appellant also reports that she does not handle her finances well and her mother helps her with monthly bills and anything important.

The appellant's sister reports that the appellant is unable to lift her arms higher than waist or shoulder height which inhibits her from doing most household chores. She reports that the appellant cannot clean anything higher than waist height or that requires her to kneel down, lift, push or pull anything higher than waist height or greater than about 5 pounds. She reports that the appellant is incapable of lifting anything heavier than a 4 liter jug of milk without resulting severe pains in her arms, neck, upper and lower back which lasts days at a time, which increases her depression and suicidal ideation. She also reports that the appellant is unable to fasten her bra, wash her hair and struggles with motivation.

The appellant's mother reports that she has lived with her daughter for several months and observes her struggles on a daily basis. She reports that the appellant has difficulty dressing herself unaided, cannot sit or stand for more than 20 minutes and her ability to clean the house, do laundry and other DLA are impaired. She reports that when the appellant has migraine headaches she is totally debilitated for up to three days at a time.

### ***Need for Help***

In the AR, the general practitioner reports that the appellant's family provides help with DLA but she does not require any assistive devices or the assistance of an assistance animal.

In the RFR, the appellant reports that she gets assistance to get dressed, do laundry, make meals, grocery shopping and other DLA. She reports that when grocery shopping she has to lean on the buggy and needs help to carry her groceries as the bags are too heavy. She also reports that her mother helps her with finances and paying her monthly bills.

The appellant's sister reports that she and her mother both help the appellant and she has purchased numerous floor-washing gadgets and vacuums to help promote the appellant's independence but they have not worked.

The appellant's mother reports that as she lives with the appellant she is her "first responder" and helps with dressing, laundry, making meals and other DLA but as she gets older it is increasingly difficult for her to help her daughter which causes the appellant more stress as she does not like to be dependent on her mother.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying the appellant designation as a PWD was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant:

- does not have a severe mental impairment;
- that the appellant's DLA's 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, the appellant does not require the significant help or supervision of another person, 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.

**Severity of mental impairment:**

The appellant's position is that she has a severe mental impairment as she suffers from PTSD, anxiety disorder, panic attacks and sleep disorder. She states that she has lost memory due to misuse of over the counter and prescription medication and suffers from confusion. She reports that she suffers from panic/anxiety attacks quite often and suffered one just thinking about writing about the attacks. She reports that because of her depression, she stays in bed for days/weeks on end, and only getting up when she must. The appellant reports that she is working with her family physician, psychologist, pain specialist, psychiatrist, and support groups.

The ministry's position is that although the general practitioner has diagnosed the appellant with a mental impairment and reports that the appellant has deficits with cognitive and emotional function, in the areas of emotional disturbance, motivation, impulse control and attention or sustained concentration, the impacts described by the general practitioner are more in keeping of a moderate degree of impairment. The ministry's position is that there is not enough evidence to establish a severe mental impairment.

*Panel Decision*

In the PR, the general practitioner diagnoses the appellant with generalized anxiety and panic attacks and major depression, date of onset 1970; post traumatic stress disorder date of onset 1968 and substance abuse since 1990. The general practitioner reports that the appellant has been prescribed medications that interfere with her ability to perform daily living activities (DLA) as they are all sedating medications. The general practitioner reports that the appellant will likely require the medications for her lifetime or a prolonged period.

The general practitioner reports that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance, motivation, impulse control, and attention or sustained concentration. The general practitioner comments that the appellant has significant symptoms from her depression and anxiety.

In the AR, the general practitioner reports that the appellant's impairment of concentration and decreased motivation impact her ability to manage DLA. The general practitioner reports that the appellant's ability to communicate with speaking, reading, writing and hearing are good. For section 4, cognitive and emotional functioning, the appellant's physician reports that there is major impact to the appellant's emotion and attention/concentration and moderate impact to the impulse control, insight and judgment, memory and motivation. There is minimal impact to executive and other emotional or mental problems, and no impact to bodily functions, consciousness, motor activity, language, psychotic symptoms or other neuropsychological problems. For additional comments, the general practitioner reports that the appellant has severe anxiety,

PTSD and depression causing major impact on her life. The general practitioner also reports that the appellant has had issues with drug abuse in the past as a means of self-medicating her anxiety.

As the general practitioner's reports indicate that the appellant's mental impairment has significant impact on her cognitive and emotional function, that she has significant symptoms from her depression and anxiety, has severe anxiety, PTSD and depression causing major impact on her life to her emotion and attention/concentration and moderate impact to the impulse control, insight and judgment, memory and motivation, the panel finds that the ministry's determination that the appellant does not have a severe mental impairment was not reasonable.

### **Restrictions in the ability to perform DLA**

The appellant's position is that she has debilitating physical and mental impairments that severely restrict her from performing DLA.

The ministry's position is that the information provided by the appellant's physician does not establish that the appellant has a severe impairment that directly and significantly restricts her DLA continuously or periodically for extended periods. The ministry states that they considered the information provided by the appellant's sister and mother but when asked to confirm the need for assistance, the appellant's general practitioner referred to the information provided by him in the appellant's original PWD application which states that the appellant is independent in the majority of her DLA.

### *Panel Decision*

Based on the evidence in the PR and the AR, the evidence of the prescribed professional indicates that the appellant is independent with all DLA and is not restricted with the exception of carrying purchases home as she is unable to lift more than seven pounds. While the appellant states that the general practitioner's reports are inconsistent and he does not understand her limitations, the general practitioner did not support the changes that the appellant made to the PWD application and did not support the information provided by the appellant's sister or mother. The appellant did not provide any explanation as to why she changed the general practitioner's information on the PWD as opposed to returning to her doctor and asking for clarification or further documentation supporting her self-reported restrictions to DLA. The panel finds that the ministry was reasonable in not accepting the PWD application as the opinion of the prescribed professional with the changes made by the appellant as they were not supported by the general practitioner.

The panel finds that as indicated by the appellant, there are considerable inconsistencies between the general practitioner's reports of the appellant's ability to perform DLA as compared with the reports of the appellant, her sister and her mother. Based on the evidence of the appellant, her sister, and her mother, the appellant would be considered significantly more restricted with DLA as compared to the reports of her general practitioner.

Although the appellant's sister is a registered nurse, thus falling within the definition of "prescribed professional" for the purposes of EAPWDR section 2, the panel finds that the ministry was reasonable in accepting the evidence of the general practitioner who, as the "prescribed professional", completed the PWD application. In particular, because the general practitioner was asked to confirm whether he supported the further information provided by the appellant, her sister and her mother, and he did not do so.

The panel finds that the ministry reasonably determined that the appellant's impairment does not significantly restrict her ability to perform DLA, either continuously or periodically for extended periods and that the information provided did not constitute a direct and significant restriction of the appellant's ability to perform her DLA in the opinion of a prescribed professional thereby not satisfying the legislative criteria of section 2(2)(b)(i) of the EAPWDA.

**Help with DLA**

The appellant's position is that she needs help with her DLA as she is unable to lift heavy items, bend over, do laundry and manage her finances and pay her bills without assistance.

The ministry's position is that as it has not been established that DLA's are significantly restricted, it cannot be determined that significant help is required from other persons, and no assistive devices are required.

Section 2(2)(b)(ii) of the EAPWDA requires that, in the opinion of a prescribed professional, 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.

As noted above, the evidence of the appellant, her sister, and her mother is inconsistent with the evidence of the appellant's general practitioner (Assessor) with respect to the help that the appellant needs. However, the evidence of the general practitioner clearly indicates that the appellant is independent with DLA. The panel 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 significant help to perform DLA as a result of those restrictions as required by EAPWDA section 2(2)(b)(ii).

**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 a reasonable application of the applicable legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.