

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 15 April 2013 denying the appellant designation as a person with disabilities (PWD). The ministry determined that the appellant did not meet all of the required criteria for PWD designation set out in the Employment and Assistance for Persons with Disabilities Act, section 2. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years and in the opinion of a prescribed professional

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

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

The ministry did determine that the appellant met the criterion of having reached 18 years of age.

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 the parties, the appeal hearing was conducted in writing in accordance with section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at reconsideration consisted of the following:

1. The appellant's PWD Designation Application dated 14 September 2012. The Application contained:
 - A Physician Report (PR) dated 19 November 2012, completed by the appellant's general practitioner (GP) who had known the appellant for 2 years and has seen her 11 or more times in the past year.
 - An Assessor Report (AR) dated 10 November 2012, completed by the same GP.
 - A Self Report dated September 14, 2012, in the form of a questionnaire completed by the appellant, with tick marks against multiple statements regarding difficulties doing listed activities
2. The appellant's Request for Reconsideration, dated 08 March 2013, in which the appellant requests more time to submit supporting documentation.

In the PR, the GP diagnoses the appellant's impairment as lumbar disc bulging (onset March 2012), mood disorder/depression and arthritis/knees (onset June 2012)

The panel will first summarize the evidence from the PR and AR relating to the appellant's impairments as it relates to the PWD criteria at issue.

Duration of impairment

PR:

The GP does not indicate whether the appellant's impairment will continue for 2 years or more

Severity/health history

Physical impairment

PR:

The GP reports that the appellant reports pain at her back – MRI showed some mild disc bulging and mild arthritic changes in knees. She worked until 2011 – she fell over and now feels disabled. She reports that she is unable to perform DLA and must depend on family for help as a result of the knee/back pain

The GP reports that the appellant has not been prescribed medication and/or treatments that interfere with her ability to perform DLA.

Functional skills: The GP reports that the appellant is able to walk 1 to 2 blocks unaided, climb 5+ steps unaided, lift 5 to 15 pounds, and can remain seated for 1 to 2 hours.

The GP reports that the appellant has no difficulties with communication.

Additional comments: The GP reports that the appellant complains of severe pain in back and legs and requires help from her daughter for most DLA.

Mental impairment

PR:

The GP reports that the appellant is depressed over the loss of her son, writing that the appellant is on medications and there are lots of inorganic findings.

The GP reports that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation.

Additional comments: The GP states that the appellant's depression limits her motivation, with a large functional component and secondary gain.

AR:

The GP did not complete the section on how the appellant's mental impairment impacts daily functioning.

Ability to perform DLA

AR:

The GP assesses the appellant's ability to communicate as good in all respects: speaking, reading, writing and hearing, with the comment that her English is limited, as she uses another language.

The GP made the following assessments (the GP's comments in parentheses):

- Mobility and physical ability: periodic assistance from another person required for walking indoors, walking outdoors, climbing stairs, lifting, carrying and holding; periodic assistance required from another person and takes significantly longer than typical for walking outdoors and carrying and holding (needs help for longer distances and heavier loads); independent for standing.
- Personal self care: independent in all aspects except for periodic assistance from another person for regulating diet.
- Basic housekeeping: periodic assistance from another person required and takes significantly longer than typical for laundry and basic housekeeping (daughter helps her).
- Shopping: takes significantly longer than typical for going to and from stores and carrying purchases home; independent for reading prices and labels, making appropriate choices, and paying for purchases (needs help for larger loads/distances; daughter helps).
- Meals: independent for meal planning and safe storage of food; periodic assistance from another person required for food preparation and cooking
- Pay rent and bills: independent in all aspects
- Medications: independent in all aspects.
- Transportation: independent for getting in and out of the vehicle; continuous assistance from another person required or unable for using public transit and using transit schedules and arranging transportation (unable to do on her own; lacks confidence).

- Social functioning: The GP did not complete the section on the support/supervision required in relation to restrictions in social functioning or to impacts of a mental impairment on the appellant's relationship with immediate and extended social networks.

Assistance required/provided

PR:

The GP reports that the appellant does not require any prostheses or aids for her impairment. The GP states that the appellant depends on her daughter for most DLA.

AR:

The GP notes that help for DLA is provided by family
The GP indicates that the appellant routinely uses a grab bar in the shower.

Additional comments: the GP states that there has been minimal arthritic change but larger functional outlay of with inorganic findings, and that depression adds to this feeling of dependency and secondary gain.

In her Self Report, the appellant indicated that her disability makes it difficult for her to do 5 of 6 tasks under personal hygiene and self care, 3 of 8 tasks under pairing food and eating meals, 2 of 3 tasks under managing medications, 5 of 5 tasks under keeping the home clean, 4 of 4 tasks under shopping for personal needs, 4 of 6 tasks under moving about indoors, 3 of 4 tasks under moving about outdoors, 5 of 5 tasks under using public or personal transportation, and 3 of 3 tasks under managing personal finances. She indicated that because of her mental health disability she experiences or has difficulty with 13 of 13 areas and has difficulty in 4 of 4 areas relating to communication. She indicates that she gets help from community agencies, family members, friends, health professionals and the community organization. She also indicates that she gets or needs help by using bathing aids, interpretive services and toileting aids.

In her Notice of Appeal dated 30 April 2013, the appellant gives as reasons for her appeal: "Because I have so many health problems, my family doctor knows about it, I barely walk, I'm not active as I used to be before, I live on pain and antidepressant medication." An attached note states that she wishes to notify the Tribunal that her family doctor will be away until 11 May 2013.

The appellant did not make a submission to the tribunal for the written hearing.

In an email dated 18 June 2013, the ministry stated that its submission will be the reconsideration summary.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is ineligible for PWD designation because he did not meet all the requirements in section 2 of the EAPWDA. Specifically the ministry determined that the information provided did not establish that the appellant has a severe mental or physical impairment that in the opinion of a medical practitioner is likely to continue for at least 2 years and 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 did determine that the appellant met the criterion of having reached 18 years of age.

The following section of the EAPWDA applies to this appeal:

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.

The following section of the EAPWDR applies to this appeal:

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.

Duration of impairment

The position of the ministry is that the appellant's medical practitioner has not confirmed that the impairment will continue for 2 or more years.

The appellant's position is that her medical conditions are lifelong afflictions.

The panel notes that the legislation requires that a medical practitioner be of the opinion that the person has a severe mental or physical impairment that is likely to continue for at least 2 years. As the GP, the appellant's medical practitioner, has not confirmed, either in the space provided in the PR or elsewhere in the medical documentation, that her impairment will continue for at least 2 years, the panel finds that the ministry reasonably determined that the duration criterion had not been met.

Severity of impairment

Mental impairment

The position of the ministry is that the evidence provided by the GP is not supportive of a severe mental health condition that significantly limits the appellant's ability to function either continuously or periodically for extended periods. Therefore the ministry was not satisfied that the information provided is evidence of a severe mental impairment.

The position of the appellant is that her mood disorder/depression constitutes a severe mental impairment.

The evidence is that the GP has diagnosed the appellant with mood disorder/depression for which she is being treated with medication; the GP has also indicated that the appellant has significant deficits with cognitive and emotional function in the areas of emotional disturbance and motivation. However, the GP has not identified any areas where, and the degree to which, the appellant's mental impairment has an impact on daily functioning. Without information on how the appellant's mental health condition restricts her ability to function independently, effectively, appropriately or for a reasonable duration, the panel finds that the ministry was reasonable in determining that a severe mental impairment had not been established.

Physical impairment

The position of the ministry is that the appellant's functional skill limitations are not significantly restricted and are more in keeping with a moderate degree of physical dysfunction. The ministry was therefore not satisfied that the information provided is evidence of a severe physical impairment.

The appellant's position is that with her knee and back pain, she can barely walk and has difficulties with most daily tasks.

The appellant's GP has diagnosed her with disc bulging and arthritis in the knees. The GP reports that she is able to walk 1-2 blocks and to climb 5+ stairs unaided and lift 5-15 pounds. MRI shows mild disc bulging and mild arthritic changes in the knees. Periodic assistance is required from another person and/or she takes significantly longer than typical in most aspects of mobility, needing help for longer distances and for heavier loads. She gets help from her daughter in aspects of basic housekeeping, shopping and cooking, but no narrative is provided that would describe how and to what extent her medical conditions significantly restrict her daily functioning (see below under DLA). The panel notes that the GP does not report the use of any assistive devices for ambulation, though grab bars are used in the shower. The GP reports that while there are large functional components to her conditions, there are also aspects of "secondary gain." In her Self Report questionnaire, the appellant ticks many "difficulties" in many aspects of DLA (e.g. "standing at sink, counter or stove long enough to prepare and cook a meal.") However, there is no description of the degree of such difficulties, and no detail provided as to how often, to what extent or under what circumstances she experiences these difficulties and what the consequences are as a result. Overall, the panel finds that the ministry was reasonable in concluding that the appellant's physical impairment was in keeping with a moderate degree of physical dysfunction and in determining that the information provided did not establish a severe physical impairment.

Significant restrictions in the ability to perform DLA

The position of the ministry is that, as the majority of DLA are performed independently or require little help from others, the information from the appellant's prescribed professional does not establish that impairment significantly restricts DLA either continuously or periodically for extended periods.

The appellant's position is that her GP has confirmed that her impairment significantly restricts her ability to move about indoors and outdoors, do basic housekeeping, shop for personal needs, prepare her own meals and use public transport. Therefore, she meets this criterion.

The legislation requires that a severe impairment, 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. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant – it must be more than trifling and more than merely an inconvenience. Finally, there is a component related to time or duration. The direct and significant restriction may be either continuous or periodic. If it is periodic it must be for an extended time. Inherently, an analysis of periodicity must also include consideration of the frequency. All other things being equal, a restriction that only arises once a year is less likely to be significant than one which occurs several times a week. While the legislation must be interpreted in a large and liberal manner, there still must be sufficient evidence on each of the legislative criteria to reasonably satisfy the ministry that they have been met.

The panel notes that in this appeal a severe impairment has not been established. As to restrictions in the ability to perform DLA as set out in section 2(1) of the EAPWDR, the appellant's prescribed professional – her GP – has reported no relevant restrictions in the following:

- Manage personal finances.
- Use public or personal transportation facilities (the GP notes that the appellant is unable to use public transit and use transit schedules or arrange transportation on her own due to lack of confidence, but the panel does not consider this to be a direct result of a severe mental or physical impairment).
- Perform personal hygiene and self care (the GP indicates periodic assistance from another person is required for regulating diet, but the AR form makes clear this is related to major disturbances in eating behavior, a condition not reported by the GP).
- Make decisions about personal activities, care and finances, and relate to, communicate or interact with others effectively – no information provided in the AR under social functioning.

The GP has reported the restrictions in the following:

- Prepare own meals: periodic assistance from another person required for food preparation and cooking.
- Shop for personal needs: periodic assistance from another person required for going to and from stores and carrying purchases home (needs help with larger loads/distances; daughter helps).
- Perform housework to maintain the person's place of residence in acceptable sanitary condition: periodic assistance from another person required and takes significantly longer than typical for laundry and basic housekeeping (daughter helps her).
- Move about indoors and outdoors: the GP reports in the PR that the appellant can walk 1 to 2 blocks and climb 5+ steps unaided and is limited to lifting 5 to 15 pounds. In the AR, GP indicates that periodic assistance from another person required and takes significantly longer than typical for walking outdoors and carrying and holding and periodic assistance from another person required for walking indoors, climbing stairs and lifting (needs help for longer distances and heavier loads).

The panel notes the apparent inconsistency between the appellant being able to walk 1 to 2 blocks unaided and to climb 5+ steps unaided, as reported in the PR, and requiring periodic assistance from another person for the same activities, as reported in the AR. The panel also notes that none of the restricted DLA requires continuous assistance from another person. For most of the restricted tasks noted above, the GP reports that periodic assistance from another person, usually her daughter, is required, but there is no explanation as to what form the help takes, and how often, for how long and under what circumstances the periodic assistance is provided. In the absence of such a description, the panel finds that the ministry reasonably determined that the information provided did not establish that this criterion had been met.

Help with DLA

The position of the ministry is that, as it had been established that DLA are not significantly restricted, it cannot be determined that significant help is required from other persons. The ministry notes that the only assistive routinely used by the appellant is a grab bar in the shower.

The appellant's position is that she relies on ongoing help from others, particularly from her daughter.

The panel notes that the legislation requires that in the opinion of a prescribed professional the need for help must arise from direct and significant restrictions in the ability to perform DLA that are either

continuous or periodic for extended periods. The panel finds that the ministry reasonably determined that since it has not been established that DLA are directly and significantly restricted, it cannot be determined that help is required as provided under section 2(2)(b)(ii) of the EAPWDA.

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PWD designation was reasonably supported by the evidence and therefore confirms the ministry's decision.